Editorial

This issue of the Journal of Criminal Justice and Security covers discussions on contemporary criminal justice and security issues in Central and South-eastern and Eastern Europe.

In the first paper, Stojanka Mirčeva, Vesna Stefanovska, and Bogdančo Gogov address victim-offender mediation in the juvenile justice system in Macedonia. More specifically, they examine the extent to which procedural rights of the various parties in the juvenile justice process are practiced given the multicultural character of the community. Relying on secondary data that included court documents and interviews, the authors examine the extent to which the various players are aware of the institutional capacity and the willingness to accept reforms in the juvenile justice system.

The second article, by Ksenija Butorac, Marijan Šuperina, and Ljiljana Mikšaj Todorović, examines the incidence of elderly missing persons in Zagreb, Croatia, with the goal to assess a plan for the police to help track missing persons. The authors used original data from a survey of 170 elderly persons in Zagreb in which they gathered data on various demographic characteristics, the place and duration of disappearance, the methods employed to find the missing persons, and outcomes. The findings suggest that the elderly persons with Alzheimer's disease and those who are suicidal because of depression are at high risk of going missing. This study helps develop strategies for police to better plan searches for missing persons, especially for the elderly. The third and the fourth paper in this issue focus on terrorism. That by Renato Matić, Anita Dremel, and Mateja Šakić examines origins and variations in the interpretation of events connected with terrorism with emphasis on causes and consequences of terrorism. They conclude that the solutions employed to deal with terrorism are unsuccessful because the logic applied to discern the causes of terrorism is the same as the one used to solve the problem. The second paper related to terrorism focuses on jury trials in terrorism-related cases in Russia. Anna Gurinskaya, in what she refers to as the "gradual encroachment on the constitutional right" related to jury trials of offenders accused in terrorism cases, highlights the gradual withdrawal and reversal of judicial reforms related to these matters introduced in the 1990s. She suggests that the initial argument of the primacy of "state security" in terrorism cases made it possible to limit availability of jury trails.

The final paper, by Jasna Fedran, Bojan Dobovšek, and Branko Ažman, elaborates on the effectiveness of incorporating anti-corruption measures into public-sector undertakings in Slovenia. More specifically, the authors focus on the data drawn from secondary resources and interviews with integrity planners and producers, highlighting the latter's reluctance to participate in the study. Their findings also suggest that participation by employees in integrity plans is limited and that the current concept of the integrity plan should be partially upgraded.

We hope you will find the papers interesting, instructive, and useful. On behalf of the editorial board, we also invite potential writers to submit their articles for publication in the Journal of Criminal Justice and Security.

Mahesh Nalla & Gorazd Meško
Guest Editors

Uvodnik

Tokratna številka revije Varstvoslovje prinaša razprave o aktualnih vprašanjih na področju varstvoslovja v srednji, jugovzhodni in vzhodni Evropi.

V prvem prispevku Stojanka Mirčeva, Vesna Stefanovska in Bogdančo Gogov obravnavajo mediacijo med žrtvami in storilci kaznivih dejanj v pravosodnem sistemu za mladoletnike v Makedoniji. Natančneje, avtorji preučujejo, v kolikšni meri se upoštevajo procesne pravice različnih strank v sodnih postopkih, kjer so udeleženi mladoletniki, upoštevajoč multikulturni značaj skupnosti. Na osnovi sekundarnih podatkov, ki vključujejo sodne dokumente in intervjuje, avtorji preučujejo, v kolikšni meri se različni akterji zavedajo institucionalne zmogljivosti in pripravljenosti za uvedbo reform pravosodnega sistema za mladoletnike.

Prispevek avtorjev Ksenije Butorac, Marijana Šuperine in Ljiljane Mikšaj Todorović proučuje primere starejših pogrešanih oseb v Zagrebu na Hrvaškem. Njihov cilj je oblikovanje načrta iskanja pogrešane osebe za potrebe policijskega dela. Avtorji so v raziskavi zajeli 170 starejših oseb v Zagrebu, pri čemer so proučevali podatke o različnih demografskih značilnostih, kraju in času izginotja, načinu iskanja pogrešane osebe ter izidu le tega. Rezultati raziskave kažejo, da so najbolj rizična skupina starejše osebe z alzheimerjevo boleznijo in osebe s tveganjem za samomorilno vedenje. S pomočjo rezultatov raziskave lahko policija razvije učinkovitejši načrt iskanja pogrešanih oseb s poudarkom na starejših osebah.

Tretji in četrti prispevek tokratne številke revije Varstvoslovje se ukvarjata s terorizmom. Prispevek Renata Matića, Anite Dremel in Mateje Šakić preučuje izvor in razlike v interpretaciji dogodkov, povezanih s terorizmom, s poudarkom na vzrokih in posledicah terorizma. Avtorji zaključijo, da so trenutni pristopi pri obravnavanju problema terorizma neuspešni, saj je logika uporabljena za zaznavanje vzrokov terorizma enaka tisti, ki se uporablja za reševanje problema. Naslednji prispevek se osredotoča na sojenje pred poroto v primerih, povezanih s terorizmom v Rusiji. Anna Gurinskaya, skozi to kar imenuje "postopen poseg v ustavno pravico", ki se nanaša na sojenja pred poroto storilcem kaznivih dejanj obtoženih terorizma, vidi postopen umik in preobrat v pravosodnih reformah, ki so bile uvedene v devetdesetih letih. Zagovarja tezo, da je začetni argument o primarni pomembnosti "državne varnosti" v primerih terorističnih dejanj omogočil omejevanje dostopnosti sojenja pred poroto.

Jasna Fedran, Bojan Dobovšek in Branko Ažman v zadnjem prispevku ugotavljajo učinkovitost preventivnih ukrepov obvladovanja korupcije v institucijah javnega sektorja v Sloveniji. Pri tem se avtorji opirajo na podatke iz sekundarnih virov in intervjuje s snovalci in zavezanci za izdelavo načrtov integritete, pri čemer ugotavljajo, da slednji zavračajo sodelovanje v raziskavi. Prav tako ugotavljajo, da je sodelovanje zaposlenih pri izdelavi načrta integritete precej omejeno in da je treba sedanji koncept načrta integritete delno nadgraditi.

Upava, da bodo prispevki za bralce zanimivi, poučni in uporabni. V imenu uredniškega odbora vabiva avtorje k oddaji prispevkov za objavo v reviji Varstvoslovje.

Mahesh Nalla in *Gorazd Meško*
Gostujoča urednika

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Victim-Offender Mediation and Observance of Procedural Rights in the Macedonian Juvenile Justice System: Competitive or Balancing?

Stojanka Mirčeva, Vesna Stefanovska, Bogdančo Gogov

Purpose:

The paper examines the observance of procedural rights of the parties referred to Victim-Offender Mediation (VOM) in the Justice System for Children (JSC), and particularly pioneering practice associated with challenges pertaining to the multicultural character of the community.

Design/Methods/Approach:

Analysis is based on qualitative data collected by using in-depth interviews and document analysis. Sources of data were relevant stakeholders in the referral procedure, the Child and the Victim, as well as court/prosecutors files. In-depth interviews were carried out with 17 stakeholders to capture professional attitudes, attached meanings and experience of the respondents in relation to VOM. Document analysis as a data collection technique was applied to two prosecutor's files and one court file which, at present, are the only cases of VOM in JSC.

Findings:

The main findings pertain to the indispensable recognition that meanings attributed to VOM in JSC, as well as expectations, vary extensively among respondents. In turn, this situation shapes the procedural rights of the parties in 3 VOM cases. In addition, basic principles of VOM are implemented in line with the perceived significance of procedural rights in VOM cases.

Research Limitations/Implications:

The findings relate only to respondents' attitudes and views on VOM as well as data contained in court/prosecutor's files. In-depth knowledge on the implementation of procedural rights during VOM process is missing due to the impossibility for participatory observation of the joint meetings.

Originality/Value:

While across Europe much research on balancing VOM principles and fair trial standards has been conducted, no research at all has been carried out in Macedonia in relation to VOM in JSC. This small scale survey is particularly valuable in filling up the existing empirical gap, and findings might be used as a basis for developing system prerequisites for VOM.

UDC: 343.1

Keywords: victim-offender mediation, child offenders, victims, Macedonian Justice System for Children

Mediacija in zaznavanje procesnih pravic v makedonskem sistemu sodstva za mladoletnike: tekmovanje ali uravnoteženje?

Namen prispevka:

Članek obravnava zaznavanje procesnih pravic strank v mediaciji med žrtvami in storilci kaznivih dejanj (Victim-Offender Mediation – VOM) v makedonskem sistemu sodstva za mladoletnike (Justice System for Children – JSC) ter novih praks in izzivov, ki se na tem področju porajajo v multikulturni skupnosti.

Metode:

Raziskava temelji na kvantitativnih podatkih, ki so bili pridobljeni z intervjuji in analizo dokumentov. Vir podatkov so glavni deležniki v zadevnih postopkih ter izbrano gradivo iz sodnih in tožilskih spisov. Izvedenih je bilo 17 intervjujev s ciljem pridobiti podatke oz. informacije o pogledih in izkušnjah respondentov v zvezi s postopki mediacije. Analiza dokumentov kot oblika tehnike zbiranja podatkov je bila uporabljena pri analizi dveh tožilskih in enega sodnega spisa, ki trenutno predstavljajo edine znane primere mediacije v makedonskem sistemu sodstva za mladoletnike.

Ugotovitve:

Glavne ugotovitve raziskave vključujejo spoznanje, da se pomeni, ki jih pripisujejo procesnim pravicam v mediaciji med žrtvami in storilci v sistemu sodstva za mladoletnike ter pričakovanja v zvezi s temi postopki, pri respondentih pomembno razlikujejo. Ta okoliščina, po drugi strani, pomembno vpliva na zaznavanje procesnih pravic strank v mediaciji, pri čemer pomen, ki se pripisuje procesnim pravicam, pomembno vpliva tudi na zaznavanje temeljnih načel mediacije.

Omejitve/uporabnost raziskave:

Ugotovitve raziskave se nanašajo izključno na zaznave in stališča respondentov o mediaciji med žrtvami in storilci kaznivih dejanj ter na podatke, ki so vsebovani v sodnih in tožilskih spisih. Zaradi omejenih možnosti opazovanja z udeležbo v postopkih pričujoča raziskava ne prinaša izvirnega vpogleda v uresničevanje procesnih pravic v postopkih mediacije.

Izvirnost/pomembnost prispevka:

V Evropi so bile izvedene številne raziskave o temeljnih načelih in standardih poštenega postopka mediacije med storilci in žrtvami v sistemu sodstva za mladoletnike. Prav nasprotno velja za Makedonijo, kjer tovrstnih empiričnih raziskav ne zasledimo. Pomen pričujoče raziskave je zapolniti te praznine, pri čemer bi njene ključne ugotovitve lahko služile kot podlaga za razvoj sistemskih izhodišč postopkov mediacije.

UDK: 343.1

Ključne besede: mediacija med žrtvami in storilci kaznivih dejanj, otroški storilci, žrtve, makedonski sistem sodstva za mladoletne

1 INTRODUCTION

Restorative Justice is both a new and an old concept of justice and can be extensively applicable in countries with diverse cultures and legal systems. It is substantially a unique paradigm of crime and responses to it, based on mediation, reconciliation, restitution and compensation. Nevertheless, the introduction of Restorative Justice (RJ) as a more effective and humane response to crime (Van Ness, 1998) raises up some issues and dilemmas in practice, not only among its opponents but also among the advocates of RJ.

Like elsewhere across the globe, the entrance of RJ programs into the Macedonian criminal justice responses is through the justice system for children. The Macedonian criminal justice system (CJS) in treating young offenders implements welfare principles of education and rehabilitation influenced by demands of justice model. The strategy underlines the concept of "care" for the juvenile to return back on the track of positive behavior and integration into the social system as a positive person. The Law on Juvenile Justice as of 2007 (Zakon za maloletnička pravda, 2007) introduces restorative justice principles as a primary response.

The main feature of the legal provisions is that all activities undertaken are in line with the basic principle of acting in the best interest of the child, protection from stigmatization, early intervention and diversion from the negative influences of the formal justice system. Namely, the principle of diversion from formal court procedure is accomplished through the application of certain RJ measures, *inter alia*, through the most widespread form of RJ: the victim-offender mediation. VOM is defined as a process in which, with voluntary consent, victim and perpetrator actively participate in resolving matters arising from the crime with the help of an independent third party, the mediator. There are several modes of mediation, but our legislator has chosen the integration model as part of the justice system for children, which means that mediation, though applied independently, i.e., the procedure of mediation and reconciliation between victim and offender as such is conducted outside the system, the agreement reached between parties does not mean automatic termination of judicial procedure, but it has an influence on the decision of the public prosecutor or the court to terminate the procedure or proceed with it from where it has stopped before referral (for example, indictment will be either rejected or affect the sentence), depending on whether they confirm or reject the reached agreement. Victim-offender mediation procedure in our justice system for children has the meaning of diversion from formal judicial procedure, or one of its goals is to discourage the child from that procedure and thus protect it from the negative effects produced by the formal system itself (stigmatization, recording in criminal records, strict formal procedures, procedural actions towards evidence presentation, etc.). At the same time, the necessity for more productive safeguarding of the interests of damaged (victims) is identified, and by this they are placed into a new, more favorable position in the criminal procedure.

If we strive for VOM to become an integral part of the mainstream CJS, due attention need to be placed on the essence of the VOM program and procedural aspects that are well situated in the mainstream CJS, the focus being, in particular,

on the interplay between the VOM principles on one hand, and the CJS procedural safeguards, on the other.

One of these aspects is a question of fundamental procedural rights of the parties that protect them from possible abuses during the proceedings, by the formal judicial system and by the extra-judicial institutions responsible to implement RJ processes.

Clear standards and guarantees need to be set up and uphold, because informality means uncertainty and openness to different interpretations and abuses by the stakeholders. Therefore, formalism and clear written rules for the implementation of the procedures, and the rights and obligations of all parties are, in essence, their protection, because as noted by Eliaerts and Dumortier (2002: 205), "although procedures and formalism can discourage participation of offenders, victims and the community in dealing with crime, it also, at the same time, protects citizens against unwanted interventions in their lives".

The paper is concerned with the procedural rights of the parties in the VOM cases in Macedonian JSC. Worth noting is that although the share of juvenile crime in the total crime in the country in the twenty years period (1985–2005) is small, ranging from 5–14%, the recidivism rate among juveniles is between 7.1 to 19.9%, with special recidivism being very high, 80–94% (Caceva, 2008: 114). Potentially negative influences of the formal justice system on the juveniles' developments recognized, and number of diversionary measures, *inter alia*, have been introduced with the new Law on Juvenile Justice (Zakon za maloletnička pravda, 2007). The survey aims to provide general overview of the progress in implementation of VOM in the justice system for children. Research questions were concerned, whether or not in the implementation of VOM, the CJS professionals adhere to the procedural rights of the parties, what is the meaning attributed to VOM, and how it affects accommodation of CJS procedural safeguard.

Apart from the introduction, the paper is structured in five parts. In assessing procedural guarantees of the child and the victim in the VOM processes, the second section aims to make clear distinctions about the meaning and application of the procedural guarantees of the child alleged as or accused of having infringed the penal law, as well as the procedural safeguards of the parties in the restorative processes. Nevertheless, due to the limited length, only three procedural guarantees will be elaborated. The third part provides insight into the used methodology together with addressing ethical issues and limitations to the study. In recognition of the thesis that efficient implementation of any legal reform requires accomplishment of three key elements (appropriate legal framework, institutional capacity at all levels, and existence of culture, awareness and mentality to accept the specific legal reform), these elements have been particularly highlighted and addressed in the paper. Discussion of the research findings[1] is situated in the fourth part and focuses

1 *The small scale survey was carried out in the period April-May 2014 as part of the evaluation of the Project MAK-11/0011 "Assistance to implementation of Restorative Justice Concept", as part of Bilateral Co-operation Program between the Kingdom of Norway and the Republic of Macedonia. The paper focuses strictly on the penal cases referred formally from prosecutors and court. Apart from 3 VOM cases, there were also 14 civil cases referred directly from the parties to the mediation office established for the project. Thus, the paper does not give the full picture of the activities in the project.*

on analyzing the aforementioned rights referring to the views of all professionals included in the VOM processes. In the concluding remarks the paper opens further debate on the necessity not only to have set up clear written rules for the implementation of the VOM processes, but rather their observance.

2 PROCEDURAL RIGHTS OF THE CHILD AND VICTIM IN THE JUSTICE SYSTEM FOR CHILDREN

The last century is marked with a growing body of international documents concerned with children's rights. Article 40 of the Convention on the Rights of the Child (1989) set minimum procedural rights of the child (general and specific).

Development of victim's rights instruments and legislation showed rather pale progress on both, international and national level. Most of the efforts lead to a weak or non-binding nature of the established instrument (Lauwaert, 2013), which in turn impacted implementation of victim's rights. Worth noting are the CoE Recommendation R (99)19 concerning mediation in penal matters (Council of Europe, 1999), European Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings (2001) as replaced with the European Parliament and European Council Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (2012) (here and after Victims Directive). Though its impact on the victims' rights remains to be seen across EU Member States, the Victims Directive (2012) clearly sets safeguards for victims of crime and obligation to recognize and treat them with respect emphasizing individual approach.

Given that the aforementioned due process rights belong to the group of universal human rights, they must be protected in all procedures, even those which mean an alternative to court trial (Khatiwada, 2005: 57).

Thus, the critique that RJ fails to ensure the basic due process rights, particularly the right to the presumption of innocence, the right to silence, prohibition for self-incrimination, and the right to legal assistance is challenged with other established procedural legal safeguards for the parties in the RJ processes. They have a rather dual function. Primarily, they ensure that due process rights have a superior place in the proceedings, and that participation in a restorative process does not mean completely giving up of those rights, nor does it mean ignoring or violating them, or setting them aside. Secondly, they also protect the parties from possible abuses during RJ procedures by the formal judicial system, and/or by the main stakeholders within the RJ meetings. As McEvoy and Eriksson (2006: 331) noted, "what would normally be framed as due process rights concerning fair trial in the formal justice system have been substantially 'filled in' with RJ values concerning fairness, impartiality, quality, non-violence and so forth".

The issue that inevitably rises at this point is concerned with what counts for procedural safeguards during RJ processes? According to the Basic principles on the use of restorative justice programmes in criminal matters (United Nations, The Economic and Social Council, 2000), "the fundamental procedural safeguards should be applied in RJ programs, particularly in RJ process". The parties have the

right to consult with a legal counsel during RJ process, the right to information about their rights, the nature of the process, the possible consequences of their decision and the right to voluntary participation.

2.1 The Right to Information

The right to information about the possibility to resolve the case through mediation is an essential right of the parties, which includes information about the meaning of VOM, its benefits, the procedure, information about the agreement and its legal effect, the consequences in a case when the agreement reached is not fulfilled, and the right of the parties to withdraw at any time of the procedure. When one party is a child, in order to fully understand the information, the presence of a parent or guardian is compulsory, as well as presence and help by an interpreter if he/she cannot understand the language of the proceedings, and that of/by the legal adviser. Hence, the presence of these persons is *sine qua non* that allows the parties to fully enjoy the right to information and to fully understand and get familiar with the information provided (Khatiwada, 2005: 36). With regards to victims, observance of the right to information is of utmost importance and encompasses the right to understand and to be understood, as a precondition for informed consent to participate in VOM processes. Depending on the phase of the reference, the judicial authorities are obliged to provide an informed consent prior to referring parties to VOM. In addition, advocates and mediators have a legal and moral obligation laid down in international documents and the national legislation to inform the parties of all relevant issues related to VOM.

The right to information is one of the basic rights prescribed in article 4 of the Macedonian Law on Justice for Children (Zakon za pravda za decata, 2013), which provides that "the child has the right to be informed by all institutions that come into contact with him, for his rights that involve duties and responsibilities prescribed by the Convention on the Rights of the Child (1989), by other international instruments and by this law". It further stipulates that "the child has a right to be heard, examined and educated for the procedural rights and about the procedure itself". The right to information of a victim of crime is stipulated in Article 57 of the Law on Criminal Procedure (Zakon za krivična postapka, 2010). In particular, the right of the damaged party in relation to VOM is further elaborated in Article 57. Also, the availability of information on mediation is regulated as a basic principle in the Law on Mediation (Zakon za medijacija, 2007). Hence, the police, the prosecutor, the judge for children, social services, children's defendants, and mediators need to have sound knowledge of the legal conditions for and meaning and possible outcomes of VOM. Well-timed and correct information given to the parties contribute to more frequent use of mediation and to its promotion and development of the Macedonian practice.

2.2 The Principle of Voluntary Participation

The correct and complete information allows an informed choice of parties to participate in the VOM, and thus to give informed consent. Informed consent

means free consent that is basic procedural safeguards that participation in VOM can only be on a voluntary basis (Groenhuijsen, 2000). The free will of participants means the right to choose to participate or not to participate, the right to cancel at any time without consequences in further proceedings and voluntary fulfillment of the obligation of the agreement reached by the child.

However, this principle imposes certain dilemmas: whether participation in VOM is truly voluntary and whether the conviction of the parties or the implicit warning of serious consequences violates the principle of free will? Although international documents and legislation in almost all states incorporate the principle of voluntary participation of the parties to participate and the right to withdraw at any time of the procedure, in the wider scientific literature we can meet practical examples of deviations from that principle (Durmortier, 2003; Hedeen, 2005; Ikpa, 2007; Staines, 2013). One of those threats, as a "sword of Damocles" that constantly hangs over the offender's head, is the open and clear indication that the offender will be criminally charged if he/she did not agree to participate in VOM.

The principle of voluntary participation of the parties is regulated in almost all jurisdictions and international documents. The Guidelines for better implementation of the Recommendation R (99) 19 (Council of Europe, 1999, 2007) endorse the states to establish appropriate safeguards for children's participation in mediation who should pay particular attention to the child's age and his/her mental maturity, and the consequences of involvement in the arbitration process. No less importance should be given to the role of parents, especially when they disagree with participation in mediation, the role of social workers, psychologists and attorneys when children are involved.

The free will of the participants is the first and foremost principle in the Law on Mediation (Zakon za medijacija, 2007), while the voluntary participation of the child and the victim is legally regulated in Articles 79 and 84 of the Law on Justice for Children (Zakon za pravda za decata, 2013). Namely, the provisions regulate submission of a written consent for participation by the parties to the Public Prosecutor or to the Judge for children. Voluntariness applies throughout the procedure, because the parties may withdraw from the mediation at any time by submitting a written statement regardless of the reasons related to their decision.

2.3 The Right to Legal Assistance

The right to legal assistance should not be identified with the right to a defense lawyer, much less with the right to presence of defense lawyer during the VOM.

The right of the parties to seek and obtain legal assistance for any issue related to VOM is undisputed and guaranteed. Whether they consult with a lawyer, attorney or other legal service which provides legal advice to citizens regardless of their status in the specified procedures is irrelevant. Among some proponents and opponents, the only disagreement that appears is related to the right to defense lawyer to be present during RJ process, which is regulated differently in separate legislations.

Different interpretation of this right arises from the possible conflict of defenders with their commitment and dedication in providing due process

rights, particularly their frequent advice to their clients to defend themselves with silence or deny guilt in the court proceedings. According to Groenhuijsen (2000), the chances to manage to reach mutual agreement are generally reduced by the presence and participation of defenders during the VOM process. The problem is that lawyers often have resentment towards mediation, and the background for such reluctance is twofold: they want to maintain their monopoly in court proceedings and have a financial interest in the use of conventional legal procedures. Legal aid in traditional and conventional sense can seriously harm the achievement of the goals of VOM. Therefore, one position is to minimize the involvement of lawyers in the mediation process in order to avoid the "masked" trial.

However, the stated dilemma should be removed in the cases of child offenders participating in RJ processes because of the protection and assistance they enjoy within the proceedings. If the right to legal assistance is mandatory during the trial (in all proceedings), even more the presence of defense lawyer should not be challenged during the VOM for several reasons. It not only guarantees due process rights, but it is basic procedural safeguards for children from possible abuses during the VOM. In addition, the defense lawyer has an important role in providing protection against possible forced participation of the parties in the process, and according to Eliaerts and Dumortier (2002), the presence of a defense lawyer while reaching the mutual agreement between the parties should be mandatory.

In the international documents the right to legal assistance before and after VOM is guaranteed and does not exclude the right to legal assistance during the VOM process, which is perhaps more necessary in the process of negotiation between the parties. So when mediation may affect the rights and obligations of the participants, the mediator will advise them to seek independent legal advice before settling the case and signing the mutually reached agreement (Victim-Offender Mediation Association, 1998).

Law on Justice for Children (Zakon za pravda za decata, 2013) regulates only the mandatory presence of a lawyer during the information and the submission of a written consent to participate in VOM, but, referring to the Law on Mediation (Zakon za medijacija, 2007), in further stages of the procedure and during the signing of the agreement, the parties may have defense lawyer to consult him. So, the right to legal assistance and defense lawyer is guaranteed before, during and after the mediation in order to provide greater legal protection and security for the child.

The fulfilment of the basic procedural safeguards within VOM in juvenile cases, i.e., the participants' perceptions of the principle of voluntarily participation and the rights to information and legal assistance, is narrowly surveyed in the RJ literature and practice, mainly from a legal and organizational point of view. Recently, in 2012, in Belgium a study was carried out to examine the practical application of the core principles of RJ (voluntarily participation, impartiality and confidentiality). In terms of the voluntarily participation, the findings show that participants fell free to "enter" the restorative program and to have a say in the restorative process (De Mesmaecker, 2013: 357). Contrary, another study indicates

that coercion as a way to encourage or to persuade offenders to participate is recognized towards young offenders in some conference cases in Australia (National Alternative Dispute Resolution Advisory Council) (Field, 2004).

Though the Republic of Macedonia has a poor practice of application of mediation between victim and offender in the juvenile justice system, we cannot make a proper evaluation of its implementation nor analyze the situation of child-offenders and victims in the restorative processes. There are only few isolated projects that slightly contribute to the development of restorative practices, but without strong political will, support and understanding of the program implementation it is doomed to failure.

3 NOTES ON METHODS

The survey was conducted as part of the evaluation of the progress in the establishment of sustainable and functional mechanisms for criminal cases handling through restorative practices of VOM in the justice system for children, following the completion of the first year of implementation of the Project in one municipality in the country. Worth noting is the context within which the survey took place. Namely, the context refers to following: 1. Clearly expressed political will on national and local levels for integration of restorative practices within the justice system for children in line with EU standards and criteria; 2. Acceptance and incorporation of international standards for the rights of children at risk/in conflict with law, rights and interests of victims of criminal offenses and victim-offender mediation into the national criminal justice system; and 3. Still present isolated cases of ethnic tension and parallel living and functioning of different ethnic communities.

3.1 Scope and Data Sources

The scope of survey covered area of one municipality in Macedonia. Namely, it encompassed the activities of the key stakeholders pertaining to the mechanisms for referral to mediation, mutual cooperation and implementation of VOM procedures within the JSC. Worth noting is that the municipality where the survey took place is multi-ethnic, multi-confessional and multi-lingual environment. The survey concerns the period September 2013 to May 2014. Evaluation was conducted in the period March–May 2014.

Through analysis of the attitudes of all professionals involved in the system of mediation, the survey was intended to identify and articulate the factors of key influence. Attention was also devoted to experiences and prospects of the parties in mediation procedure and their reflection. In this way, a possibility is offered to "let dampened voices reach the surface", which opens the possibility to start from the zero point given the fact that the three cases referred to VOM are the first VOM cases in the country. Worth noting is that out of three referred cases, 2 were referred by the Public Prosecutor and one by the Judge for Children. The cases referred by the Public Prosecutor were related to property crimes and are

punishable with fine or imprisonment of up to three years, while the court referred case was for crime against public order which is punishable with imprisonment from six months to five years. Two of the referred cases were completed with reaching an agreement during the VOM procedure and subsequently confirmed by the Public Prosecutor or the Judge, respectively.

The survey applied multi-method approach. The following data sources were identified: documents (court and prosecution cases referred to VOM, files of mediators on the cases referred to mediation, decisions on referrals to mediation, agreements and decisions verifying agreements), statements from interviews (with professionals in the system and with parties referred to mediation), and data from observed victim-offender mediation procedures. Data collection included review of documents, interviews with identified respondents and observation of referral and mediation procedures.

Review of documents consisted of analysis of documents contained in cases referred to victim-offender mediation within the JSC.

Respondents with whom interviews were made were selected in two ways: the first group of respondents from institutions of the system at local level was dominantly selected by the heads of the relevant institutions of JSC in the selected municipality, while the second group of respondents (mediators, lawyers) was selected from the lists of professionals developed by professional associations that are trained in handling cases within the JSC. Also, persons responsible for the Project implementation on national level were selected. Data collection was conducted by way of face-to-face interviewing with application of semi-structured protocol for interview with different system stakeholders. Total of 17 respondents were interviewed.

For the purposes of data collection, semi-structured protocol for interview with victims referred to mediation, as well as children suspected to have committed act which is by law defined as criminal offense, were developed, but no interviews were conducted. Furthermore, protocol for observation of mediation procedure was developed, too. However, no data from participant observation of VOM procedure were collected.

The analysis of data from documents and from interviews relied on the use of thematic analysis. By means of data triangulation, key findings were identified. Besides triangulation, validation of the interpretations of narratives obtained from interviews was reinforced by requesting feedback from part of the respondents about authenticity of findings.

3.2 Access to Data and Ethical Issues

For the purpose of access negotiation, meetings were held with the Heads of relevant institutions, President of the Court, Public Prosecutor, Chief of Sector for Internal Affairs, and Director of the Centre for Social Work, while the list of lawyers authorized to handle cases in the justice system for children and the list of mediators authorized to manage VOM procedures in the JSC were requested and obtained from the Chamber of Lawyers and Chamber of Mediators, respectively. It is important to note that, within the negotiation of the access to data in

institutions, including access to professionals, identification of respondents was determined on the basis of their competence within the JSC and proposals of the heads of the relevant institutions.

Access to data was also supported by written communication by the partners in the Project. At the level of institutions, uninterrupted access to professionals and cases was provided subject to confidentiality rules. All professionals, except one, expressed readiness to be interviewed.

Due diligence was devoted to ethical issues arising from two aspects: vulnerability and specific protection of victims and children as parties in mediation procedure, and limited number of interviewed professionals preventing guarantees that no assumptions would be made of the possible identity of interviewed professionals. In this regard, all steps were guided by the general orientation towards protection of integrity and safety of vulnerable respondents (victims and children in VOM procedures) and making the least possible potential damage, as well as guaranteeing the anonymity of professionals to the maximum possible extent. This approach was applied starting with techniques for data collection, through the manner of data collection and presentation, up to findings validity checkup.

Besides the provided access to data on institutional level, and considering that research design included techniques of data collection from individuals – interviews with professionals, interviews with victims and children referred to VOM and observation of VOM procedures, researchers used bi-tariff model guaranteeing informed consent. Although interviewed professionals were not vulnerable category, yet bearing in mind that the access to them was provided by the heads of the relevant institutions, detailed information was given prior to the interview, concerning the goal and the content of the interview, while adhering strictly to the rules on voluntariness and informed consent.

Information to children and victims referred to VOM about the survey, goals and content was provided through mediators, without any contact being made with researchers. In this way, the relationship of confidentiality between mediator and parties in the procedure was guaranteed. With regard to observation of mediation procedures, the same approach of consent granting by the parties in VOM procedure was applied. All records from conducted interviews are subject of specific manner of keeping and only evaluators have access to them. With reference to personal data coming in contact with the team of evaluators in the course of data collection through interviewing or analysis of documents in files, such data is not used for identification of persons.

3.3 Limitations

There were four main limitations identified in the course of the survey: term of the evaluation, impossibility to observe procedures for referral and mediation, prevented access to the files of mediators of cases referred to mediation, and denied consent for participation in the evaluation by VOM parties in all three cases.

The period in which the survey was conducted occurred as a factor of limitation. Namely, the three cases referred to VOM and mediation procedures

finishing before the commencement of the survey prevented observation of the referral and mediation procedure, as well as interview taking with parties prior to referral and VOM procedure implementation. Another limitation is due to the period of evaluation starting after referral/implementation of VOM procedures, and their observation was practically impossible. Hence, evaluation does not provide an insight into applied procedures of referral and mediation.

All efforts employed to gain access to the files of mediators of referred cases, failed to produce any result.

As far as parties in VOM are concerned, denial of interviews both by children and their parents, and also by victims, is noteworthy. The causes could be the season of intensive agricultural activities, and shortage of time resulting thereof, and potential lack of understanding of their own role in VOM and possible skepticism. Therefore, the paper lacks data on the experience and prospects of the VOM parties.

4 FINDINGS

The presented discussion of the findings is along three procedural guarantees of the VOM parties. Correspondingly, the provision of process guarantees in the course of VOM procedure is closely related to the treatment of VOM within the justice system for children. Asked the question who should provide the process guarantees of the parties to the dispute during mediation procedure, professionals often answer that it is the mediator who should provide them, using his/her skills, ability to listen and secure equality of parties:

"So, here, it depends primarily on the skills of the mediator with regard to presenting or giving direction to the procedure itself. However, if the question concerns a check by some person or by any institution, each of the parties has the right to its proxy or defense attorney in the procedure as a person to take part in the mediation procedure, as neutral persons in a sense of safeguarding the interest of the side they represent."

The responses need to be seen in the broader social context and capacities of the main stakeholders. Most of the stakeholders in the JSC cope with limited spatial and human resources. The principle of separate access, separate units within institutions (court unit for children, public prosecutor for children, special office for interviews with children within police station) to relieve negative effects of the formal conduct of the court proceeding itself, faces severe constraints. In the labyrinths of court system, children confront overloaded court buildings, crowded offices, unpleasant and formal ambiance.

The professional's viewpoints of the meaning of VOM in the justice system for children matters, as well as their perception of the goal of the JSC. In general, the viewpoint for VOM as a possibility for alternative settlement of disputes and that mediation is a good possibility for extra-judicial settlement of disputes prevails among professionals, because, as they say, "*instead of maltreatment before courts*", long lasting procedures, citizens want to have their case settled faster outside the court. According to professionals, this derives from the lack of confidence in the judicial system, or its inefficiency in preventing a child to repeat the conviction of

an offence that is crime, which means in the segment of the exercise of the special prevention in the punishment. Furthermore, acceptance is conditioned by the lack of confidence in judicial system to secure the damaged party to be adequately compensated.

All stakeholders in the system have **well-articulated will for application** of victim-offender mediation. They recognize VOM as a positive possibility and support its more frequent application. They maintain that it could operate efficiently if the main preconditions for its application are secured. They identify such preconditions as development of institutional capacity and adequate election of mediators. In particular, the will for application of the mediation exists both in public prosecutor's office and court, because the so called "ice breaking" and recognition of positive outcomes of referred cases will bring positive climate and mood for further reference, provided that both parties agree to it.

However, part of professionals has insufficient and inadequate information and knowledge of the justice system for children and VOM procedure. Namely, part of the professionals in the JSC are not familiar with the provisions of the old Law on Juvenile Justice (Zakon za maloletnička pravda, 2007), as well as the new Law on Justice for Children (Zakon za pravda za decata, 2013), although the position they occupy assumes necessary knowledge of current legal solutions within the scope of their work. For example, part of respondents stated:

"I am not familiar with mediation and I was not invited and attended seminars and meetings on mediation. I have very little understanding of the term mediation."

"Now, I don't know how many mediators there are in … I think we still don't have list, as we have for example list of notaries, list of lawyers, list of enforcement agents … and, you see, I don't know if it is established as chamber or as association."

4.1 Perspectives of Professionals on the Right to Information

Despite of the manifested will for VOM, understanding of the benefits of mediation by professionals is of particular importance for its proper implementation, dominantly expressed through informing the parties.

Content of the information given to the parties analyzed through the content of 'what can parties expect and why to accept VOM' revealed the understanding and meaning attributed to VOM by professionals. Among professionals, there is a lack of confidence in the efficiency of formal system in dealing with children. According to them, judicial procedure is stigmatizing, it labels the child, and it is prone to secondary victimization of victims and has small effect on the prevention of juvenile delinquency. Therefore, they support mediation as extra-judicial resolution of disputes and child dissuading from formal procedure. According to the interviewed professionals, benefits of mediation are grouped around three topics among professionals: benefits on the side of referrers, benefits for child and benefits for victim.

Benefits on the side of referrers includes **relieve of the court and the prosecutor's office from case load and speeding the procedure.** In general, the viewpoint that mediation will relieve the court from judicial cases, accelerate the procedure and upon successfully completed mediation judicial cases will be closed successfully,

i.e. court proceedings will be terminated, prevails among professionals. This contributes to the assessment of the work of judges, because they will have the number of solved cases increased. By referring cases to mediation, part of professionals stated that the workload of the public prosecutor's office, which is overloaded with huge amount of work in conditions of staff shortage, will be relieved.

Benefits for child are dominantly seen by the respondents in **reduction of legal costs**. This benefit has been identified by almost all professionals. They maintain that mediation procedure is less expensive for the parties, as they will not bear legal costs or costs for the mediator, given the fact that the costs for the mediator are borne by the Budget of the Republic of Macedonia. In addition, the professionals have frequently expressed the viewpoint that the child will **not have criminal records** which means that harmful consequences involving stigmatization will be smaller. Child is not stigmatized and is not treated as recidivist.

Some of the professionals recognize the advantage of informal treatment of children and identify negative aspects of judicial procedures. This concerns a **child's fear of the court building in general**, fear from the rigid formalism during statement making, as well as fear of punishment.

"He comes and trembles before the court, when he sees the building, sees the court registrar, translator …"

"So, juveniles will not go to court doors. First, the juvenile will be saved from unpleasant situations. A juvenile is certainly not happy to go to prosecutor for five times, and then to investigating judge, and after that to juveniles' judge."

Professionals share the viewpoint that mediation is a better procedure for child, because by facing the victim and compensating harmful consequences caused by the committed crime they may **accept greater responsibility for their action**.

"He [the child] will be more responsible to solve his problem. Possibly … to make an apology and convince the victim that the deed will not be repeated and then the victim will be secure at least that the same offender will not do so another time."

Reaching the common grounds is frequently underlined benefit by professionals concerning the possibility for the parties, child and victim, to achieve jointly acceptable solution in the interest of both sides, where both sides will **reconcile and establish the impaired relationship**.

Major part of professionals regards the outcome from the mediation procedure **as more lenient treatment** compared to the outcome from formal proceedings. Some of the professionals declare that child "will not be punished" compared to the punishment he could face in a formal judicial proceeding.

Professionals recognize the advantages of mediation relative to judicial procedure and benefits for the child. Yet, part of them does not make sufficient distinction of what is the best interest of child. Statements that the outcome of the mediation procedure is a more lenient treatment of child compared to the outcome of the formal procedure minimize the essential meaning of VOM. Such approach could cause even more negative consequences for the child, who striving for more lenient treatment may fail to understand the substance of the procedure and its goals.

With regard to the *benefits for victim* major part of professionals regards **reparation** as the best benefit of mediation in the interest of the victim, who instead of exercising the right through judicial proceeding, has a possibility to agree on the compensation of damage with the child and his/her legal representative in a faster and easier way.

Part of professionals regards **the interest of the victim to get answers** to certain questions related to the crime as benefit of the mediation process.

"… well, I think that victims will try to understand why exactly they have become victims. Why exactly that person. Why I was selected to be a victim. And simply to overcome … I don't know, some fear, to simply talk about the problem, why, how, to hear what was the motive of the offender."

"… I think that when a case is solved through mediation, it will be much less painful for the victim as well to finish as soon as possible, to end well. Because, the shorter the process lasts, the better it is for the victim. In VOM the victim is not reminded constantly of what has happened, the same questions are not repeated in different offices, in different institutions."

Victims in judicial proceedings are still marginalized, have a role in the legal process and their rights and needs during the formal procedure are not addressed. Professionals still perceive the right of victim reparation as a right that can be exercised through civil judicial procedure and do not discuss compensation for damage in a so called adhesion procedure. Therefore, they see the mediation procedure as an important possibility for the damaged party to receive compensation for damage, because otherwise, if she/he gives no consent to agree with the offender on the type and level of the compensation, she/he could encounter difficulties during judicial proceeding towards exercise of that right. By this end, professionals attribute great importance to victim in mediation procedure.

Information of parties and content of information is left to the personal choice of the given professional. Proper and appropriate information is condition for prior informed consent. However, absence of victim information and referral of the case to mediation has been noted.

4.2 Perspectives of Professionals on the Voluntary Participation

With regard to the importance of genuine information of the parties about VOM to result in prior **informed consent**, professionals have consensus that parties should be informed and are informed about VOM. However, the content of information to be given to parties is a particular challenge. In the absence of uniform content of the information on what mediation is, how to select mediator, what can parties expect, how does procedure run, what are the rights of parties in VOM procedure and how can VOM procedure end up, information depends on the knowledge of professionals about VOM and their personal assessment of the content of the information. Parties' understanding of the procedure and what they can expect from VOM is strongly relevant for mediation acceptance.

In the frames of the three cases referred to mediation, the absence of certain process guarantees was noted on both sides. Namely, with reference to cases

referral to mediation, there was no record of appropriate prior information of the basic principles, the meaning of and the expectations from the mediation. Furthermore, no written consent of the parties or their legal representative was recorded. Cases lack written consent for case referral to mediation by the child, her/his legal representative, defense attorney and damaged party.

On the other side, it is a legal requirement that parties submit written consent to the public prosecutor or the court. It is left at the disposal of the parties to decide on the form of the written consent. The analysis of cases referred to VOM by the court and the prosecutor indicated that the consent is recorded in the minutes on the interrogation of the child defendant, and in the minutes on the hearing of the witness-damaged party. However, no entry has been found in the cases of parties' information. On the other side, Public Prosecutor's Office faces difficulties to secure the presence of the victims in the procedure in order to inform them on the goals and the meaning of mediation. Due to short deadlines of the procedure, it is necessary to establish efficient system of delivery and communication with children and victims, especially taking notes of their contact telephones in the criminal reports submitted by the police to the public prosecutor's office.

In addition, the document review in the referred files indicated a lack of record of prior establishment of the facts of the crime, i.e. acceptance of the responsibility by the child perpetrator. This aggravates further attempts towards reconciliation by the mediator and is at the same time contrary to the basic principles of mediation.

4.3 Perspectives of Professionals on the Right to Legal Aid

The right to legal aid was also part of the survey and the professionals were asked on their opinion of the role of the defense lawyer in the proceedings for VOM and what they expect from them. The survey identified cases where conversations with child offenders and child victims in the course of the procedures were held without legal representative. Professionals identified part of the reasons in the lack of motivation by lawyers themselves to be legal representatives in procedures involving children due to the difficulties in the payment of compensation of costs and award for their work. Though appointed by official duty, they give up during procedure and do not attend further process actions.

The role of defense lawyer in procedures against children has been minimized, not only by defense lawyers themselves, but also by other professionals. Due to inconsistent application of legal solutions and absence of defense lawyers in the procedure, process guarantees of child and victim are frequently violated, especially when parties involved are uneducated and poor. The role of defense lawyer in the procedure is important for proper information of its goals and principles and for safeguarding and providing the basic process guarantees, especially in cases of disparity in the power between the parties.

The right to a mutually agreed selection of mediator was not observed. Selection of mediator by agreement is not applied for the reason that the damaged party has not been even informed or consented to refer the case to mediation. Even in case of both parties being properly informed and written consent given,

the court or the public prosecutor cannot enable the parties to select mediator by agreement from the list of mediators, as there is no such list.

With regard to the implementation of VOM, professionals attribute great importance to informing citizens of the benefits of mediation and constant rising of public awareness. According to respondents, there is a tradition of alternative and extra-judicial resolution of disputes by a distinguished member recognized in the community. Professionals maintain that this is a strong argument in favor of regaining acceptance for alternative disputes resolution; however, a lack of familiarity with the term mediation is an obstacle which could cause lack of understanding of the procedure itself. Professionals also share the opinion that citizens are not informed sufficiently of the benefits of mediation and therefore they manifest non-confidence towards mediation and mediators in general. It has been stated that if citizens were more aware of the benefits of the procedure itself and felt the gain, then they would have wished to resolve their disputes by mediation much more frequently.

5 CONCLUSION

"*The ice is broken*." Even though the paper based on the 3 penal cases with limited access to the mediators case files and no interviews with the parties, but with 17 interviews with local professionals from the justice sector, cannot bring compelling general conclusions or provide a deeper insight into practice, it does give an insight in the viewpoints of professionals in the justice sector that certainly may serve as an important indicator of topics to be taken into consideration in the further developments. By referring the first three cases and a successful completion of two of them, positive practice and rising confidence in the benefits of its application for all participants in the dispute and procedure in general have emerged. Hence, the research findings are to be used as a basis of which we can learn, build good practices and identify certain weaknesses in the system. Given that VOM as a new criminal legal institute in JSC was established back in 2007 and the first three cases were referred to mediation in February 2014, they can serve as object lessons of how it should or should not be managed or what should be improved to build the practice. This small scale survey is particularly valuable in filling up the existing empirical gap, and the findings might be used as a basis for developing system prerequisites for VOM.

However, the findings from the first three referred cases do not provide sufficient grounds to draw a conclusion whether procedural rights of the parties during the VOM procedure were observed since no observation of the mediation processes happened accompanied with prevented access to mediator's files. On the other hand, the findings clearly point out to the lack of adherence to the basic VOM principles, especially the right to information and informed consent of the parties, which in turn shape the observance of procedural rights.

Proper and adequate information of the parties about VOM procedure, as well as their written consent and facilitation of mediator selection by mutual agreement, are still a serious challenge in mediation application.

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Developing Police Search Strategies for Elderly Missing Persons in Croatia

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Purpose:

This paper examines the distribution of elderly missing persons in the city of Zagreb per variables (age, sex of the missing person, social and marital status, employment, place and duration of disappearance, method of finding the missing person, its outcome, reasons for disappearance, etc.) needed for the design of the plan of the search for the missing person.

Design/Methods/Approach:

The paper uses data collected through a questionnaire with 417 variables and processed with certain basic statistical methods. The collected data are examined on a sample of 170 elderly missing persons in the city of Zagreb, and through characteristics of methods, measures and actions, together with the methods of search for elderly persons in cities, with special reference to Zagreb.

Findings:

The statistically established behavioural modes of certain groups of elderly people are analysed: persons with Alzheimer's disease and persons with suicidal risk. The stated findings largely assist in planning and conducting the search for those persons, especially for missing person profiling and his/her possible movement since disappearance. The success of the search for the missing person presumes knowledge about the stated specifics by all searchers. It especially applies to the police in the formal, due to its sole duty and competence for the search for missing persons, as well as in the real sense where they conduct search measures and actions together with other participants adapted to real situations of disappearance of elderly persons.

Research Limitations/Implications:

The research has been limited by data available from the police bulletin of daily events, but this limitation was partially removed by a direct insight into the police files containing the case history. During the research, the legal and ethical regulations regarding personal data protection were strictly followed.

Originality/Value:

There is a number of researches on police search for the missing persons (UK, USA, Australia etc.), but few of them deal with elderly persons. This paper introduces a new offensive approach to the search for the missing person on a strategic level (missing person profiling with regard to specific variables, possible

movement and routes, "wanderings"). New police procedures are suggested on a tactical level (e.g., stopping a person who disappeared in a certain area), but they include traditional police methods (car & regular patrols, police officers on bicycles, police search dogs, collecting information, conducting interviews, terrain search etc.). Introduction of the principle of partnership search for the missing person. Research results should be useful to police practice and their education.

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Keywords: missing persons, police search, elderly persons, Alzheimer's disease

Razvijanje policijskih strategij za iskanje starejših pogrešanih oseb na Hrvaškem

Namen prispevka:

Članek obravnava porazdelitev starejših pogrešanih oseb v Zagrebu po posameznih spremenljivkah (starost in spol pogrešane osebe, socialni in zakonski stan, zaposlitev, kraj in trajanje izginotja, način iskanja pogrešane osebe, izid le tega, razlogi za izginotje itd.), potrebnih za oblikovanje načrta iskanja pogrešane osebe.

Metode:

Podatke, predstavljene v članku, smo zbrali z vprašalnikom, ki ima 417 spremenljivk, in jih obdelali z nekaterimi osnovnimi statističnimi metodami. Podatki so zbrani na vzorcu 170 starejših pogrešanih oseb v Zagrebu s pomočjo metod in pripomočkov za iskanje starejših oseb v mestih, s posebnim poudarkom na mestu Zagreb.

Ugotovitve:

Analizirali smo statistično ugotovljene vedenjske oblike nekaterih skupin starejših ljudi: oseb z alzheimerjevo boleznijo in oseb s tveganjem za samomorilno vedenje. Ugotovitve so predvsem v pomoč pri načrtovanju in vodenju iskanja teh skupin ljudi, še posebej pri profiliranju pogrešanih oseb in ugotavljanju njihovih možnih premikov v času izginotja. Seznanjenost o posebnostih pogrešane osebe je en od dejavnikov, ki vplivajo na uspešnost iskanja. Še posebej to velja za policijo – tako v formalnem smislu, saj je iskanje pogrešanih njena dolžnost in so policisti za to tudi usposobljeni, kot tudi zato, ker policija vodi iskanje skupaj z drugimi ter ga prilagaja realnim okoliščinam izginotja starejših.

Omejitve/uporabnost raziskave:

Omejitve raziskave so vezane na razpoložljive podatke policijskih poročil o vsakodnevnih dogodkih, kar smo delno odpravili z neposrednim vpogledom v policijske kartoteke, ki vsebujejo tudi zgodovino samih primerov. V raziskavi smo upoštevali pravne in etične predpise o varstvu osebnih podatkov.

Izvirnost/pomembnost prispevka:

O policijskem iskanju pogrešanih oseb obstaja veliko raziskav (Velika Britanija, ZDA, Avstralija itd.), vendar se jih le nekaj osredotoča na iskanje starostnikov. Članek predstavlja nov pristop k iskanju pogrešanih oseb na strateški ravni

(profiliranje pogrešanih glede na specifične spremenljivke, morebitno gibanje pogrešanih, "potepanja"). Novi policijski postopki so predlagani na ravni taktike (npr. ustavljanje osebe, ki je izginila na določenem območju) in kot uporaba tradicionalnih policijskih metod (avtomobilske in redne patrulje, policisti na kolesih, uporaba policijskih psov, zbiranje podatkov, vodenje razgovorov, pregled terena itd.). Članek predstavlja načela sodelovanja pri iskanju pogrešanih oseb. Rezultati raziskave so lahko koristni za policijsko delo in izobraževanje policistov.

UDK: 351.741+364.642.6-053.9(497.5)

Ključne besede: pogrešane osebe, policijsko iskanje, starostniki, alzheimerjeva bolezen

1 INTRODUCTION

The increased number of the reported missing persons in the Republic of Croatia is getting more and more attention of the Croatian public, along with the police whose work volume in that area is marked by continual growth. The data collected in Table 1 show the *growth trend of the reported missing persons* with certain variations and falls in 2004 and the 2008–2010 period. In the presented period of time, the annual average number in the Republic of Croatia is 39 persons per 100.000 citizens, with round 18% of persons older than 60. These data do not include the persons who disappeared during the Homeland War or in natural disasters.

Table 1: The number of the reported missing persons*

Year	No. of Missing Persons	Base Index	Chain Index
2000	1247	100.00	
2001	1253	100.98	100.48
2002	1406	112.75	112.21
2003	1639	131.44	116.57
2004	1559	125.02	95.12
2005	1619	129.83	103.85
2006	1702	136.49	105.13
2007	1771	142.02	104.05
2008	1753	140.58	98.98
2009	1733	138.97	98.86
2010	1704	136.65	98.33
2011	1774	142.26	104.11
2012	1928	154.61	108.68
2013	2192	175.78	113.69

**The number of the reported missing persons in the Republic of Croatia in the period 2000–2013 with the calculated base and chain index (Source: htpp://www.mup.hr)*

Disappearance of elderly people must be considered a security event with a high level of danger and risk (e.g., danger of self-inflicted injury or accidental

injury, cause of death by accident/fall from a height or drowning, hypothermia, dehydration, life-threatening symptoms characterized by failure to take regular drug therapy etc.) (Koester & Stooksbury, 1992; Silverstein, Flaherty, & Tobin, 2002).

According to the last census, there are round 15% persons older than 65 in the city of Zagreb (www.zagreb.hr). In the last 5-year period, according to the police data, there are round 80 missing persons in the city area p.a., which makes up to 20% of the total number of the missing person in the city of Zagreb (Butorac, Šuperina, & Mikšaj Todorović, 2013).

Within the issues of elderly missing persons, there is a special category for the elderly persons with Alzheimer disease and related dementia as syndromes of the global decrease of the acquired cognitive abilities with preserved conscience (e.g., caused by strike/vascular dementia, Lewy body dementia, frontal-temporal dementia/Pick's disease, dementia caused by Creutzfeld-Jacob's and Parkinson's disease, etc.) (Lušić, 2011). With such persons, the occurrence of *wandering* caused by various causes is quite common: due to feeling of insecurity and disorientation in a new surroundings; short-term memory loss regarding the destination; search for someone or something in relation to his/her past; due to surplus of energy; insomnia and/or waking up in early morning, which makes them disoriented; for continuation of earlier habit of long-term walk on long distances; belief that they must do a certain job, but they are absent-minded in the space, time of the day or the season; due to inability to differentiate between dreams and reality, so the person reacts to something that (s)he dreamt about, thinking that it happened in the real life, etc. (Australian Federal Police, www.missingpersons.gov.au) (Klein et al., 1999; Laklija, Milić Babić, & Rusac, 2009).

The success in the search for an elderly missing person implies the knowledge on the psycho-physical and social and demographic structure of elderly persons, the reasons and motives for disappearance, methods of search, especially in urban surroundings, risk management and assessment of danger by all participants in the search (Šuperina & Gluščić, 2003). It especially applies to the police in the formal sense, because it is the only one in charge and competent for the search for the missing persons, as well as in the real sense of the word, where it exercises measures and works of the search together with other persons, adjusted to real situations of the disappearance of elderly persons.

2 METHODS

Data on social and demographic features and the health status, as well as the reasons and motives for disappearance of the elderly persons aged 60 or older and data on the police activities in relation to the missing persons were collected for the period 2010–2012 in the sample of 170 missing persons from the police database for the City of Zagreb. Three types of police databases were used: missing persons' registry, registry of daily activities (bulletin) of the missing persons, and the file of the missing person which was kept at the territorially competent police precinct. The first two databases were used in October 2013, and the case file was checked in February and March 2014. This must be mentioned because this

involves the so-called *"alive database"* which can be changed daily, e.g., by finding the missing persons or by establishing a certain important fact on circumstances of the disappearance of the missing persons.

A questionnaire was designed and was used to collect the stated data. It consists of 417 variables that were classified in 16 units. The data were processed by a statistical method, and absolute and relative frequencies were included in order to gain insight into the status of the analysed topic. The available literature was also analysed and presented in the work through the description and compilation methods.

3 SPECIFIC FEATURES OF THE URBAN SEARCH

3.1 Research Results

The analysed research results relate to the period 2010 to 2012. In 2010, there were 49 (28.8%) reported elderly missing persons in the area of the Zagreb Police Administration, and in 2011 that number increased to 62 (36.5%) of the reports, while in 2012 there were 59 (34.7%) reports.

Out of the total number of the elderly missing persons (N = 170), 105 (61.8%) of them were male, while there was 65 women (38.2%). Therefore, the number of the missing men was almost twice as big as the number of women. But the data from the Croatian Public Health Institute show that the share of women in the population of elderly persons increases with age and that the share up to the age of 70 is 57%, while the share above the age of 85 increases up to 75%. In the age group of 60–65, there were 34 (20%) missing persons; in the age group of 65–70, there were 32 (18.8%) persons and in the age group 71 and above, there are 104 (61.2%) persons.

Regarding the submitted reports on the missing persons, all 170 were submitted to the police, and mostly to the police precinct competent at that territory. 131 (77.1%) reports were submitted orally in the police precinct, 26 (15.3%) reports were sent to the territorially competent police precinct through a fax notice, 10 (5.9%) reports were submitted by telephone, and only 3 (1.7%) reports were submitted through a memorandum sent through the post. These data lead to a conclusion that the largest number of reports was made when the persons submitting a report came to the police precinct, and the reports made through the fax notice relate to the submissions from hospitals, psychiatric hospitals and senior residences.

The greatest number of reports were made by a spouse of the missing person, 53 (31.2%) of them. In 38 (22.4%) cases, the report on the missing person was made by a son of the missing person, and in 29 (17.1%) cases the daughter of the missing person. Psychiatric hospitals submitted 21 (12.3%) reports, while senior and disabled persons' residences submitted 17 (10.0%) reports. The other 12 (7.0%) reports were made by other notifiers (grandson or granddaughter, brother or sister of the missing person or other private persons). These data lead to a conclusion that the greatest number of notifiers comes from the circle of the closest family members. A large percent of the spouses as notifiers is understandable

because the elderly missing persons, if married, are oriented towards their family and marital relations and care provided by those persons, followed by their children, sons or daughters.

According to the level of education, our pattern fits into the total overview of education of the Croatian population, with 21.2% people with higher education. The greatest number of the elderly missing persons in our pattern completed secondary education, 87 (51.2%) of them, then 31 (18.2%) of them completed the university or college. 30 (17.6%) of the missing persons completed the primary education, 8 (4.7%) of them completed college, while 4 (2.4%) missing persons have not completed their university studies. One of each of the missing persons (0.6%) completed a three-year vocational school and acquired the scientific academic level (MA). In 8 cases (4.7%) the level of education of the missing person was not determined. Although there is a large proportion of the persons with completed secondary school and university among these data, it cannot be concluded that the level of education among the elderly missing persons is a significant factor. Especially because there is also a large number of those who completed only primary education. We believe that some other factors, especially endogenous ones, are more important for the disappearance of elderly persons.

Table 2: Personal data on a missing person at the time of disappearance: social, marital and employment status

Personal data on the elderly missing persons	No	Unknown	Yes	
			Abs.	%
At the time of disappearance, the missing person lived				
In marital alliance	91	37	42	24.706
In common-law marriage	133	36	1	0.588
With parents	133	36	1	0.588
With a child	105	36	29	17.059
With a grandson/granddaughter	131	36	3	1.765
With other persons	131	36	3	1.765
In Senior and Disabled Person's Residence	120	36	14	8.235
Alone	93	36	1	0.588
Marital status of the missing person at the time of disappearance				
Unmarried	127	37	6	3.529
Married	91	37	42	24.706
Divorced	124	37	9	5.294
Widowed	55	37	78	45.882
The missing person was the following at the time of disappearance				
Pupil or student	151	19	-	-
Employed	138	26	6	3.529
Unemployed	137	26	7	4.118
Retired	21	18	131	77.059

In Table 2, personal data of the missing elderly persons were analysed. According to the social status data, the greatest number of the elderly persons

lived married with their spouse, almost one quarter of them (42 or 24.7%). It is followed by living in the child's family (29 or 17.1%) and living in a Senior and Disabled Persons' Residence (14 or 8.2%). The smallest frequency was noted, among other, with singles (1 or 0.6%). These data lead to conclusion that the elderly missing persons had relatively good care, they were provided for and with nearby care provider, either a spouse, own child to persons in the Senior and Disabled Persons' Residence. The largest number of the elderly missing persons were widowed (78 or 45.9%), and there were 42 or 24.7% married persons. Regarding the employment status, 131 or 77.1% of them were retired, which could be expected with respect to the population where these data were collected.

The collected data can determine the period when the missing person was found. Thus 45 (26.5%) of them were found in 2010, 55 (32.3%) of the missing persons were found in 2011, and 59 (34.7%) of the missing persons were found in 2012, while one person (0.6%) was found in 2013. In the monitored period 10 (5.9%) elderly missing persons were not found.

Table 3: Time lapse from the assumed time of disappearance of the person to the time of reporting of his/her disappearance

Time lapse	Frequency	%
00–03 hours	31	18.2
04–06 hours	44	25.9
07–09 hours	23	13.5
10–12 hours	11	6.5
13–15 hours	5	2.9
16–18 hours	6	3.5
18–21 hours	7	4.1
22–24 hours	8	4.7
1–2 days	17	10.0
3–4 days	9	5.3
5–6 days	5	2.9
1–2 weeks	3	1.8
3–4 weeks	-	-
1–3 months	-	-
4–6 months	-	-
7–9 months	-	-
10–12 months	-	-
More than a year	1	0.6

Table 4: Time lapse from the time of reporting of the missing person to the time when he/she was found

Time lapse	Frequency	%
00–03 hours	28	16.5
04–06 hours	33	19.4
07–09 hours	14	8.2
10–12 hours	10	5.9
13–15 hours	9	5.3
16–18 hours	2	1.2
18–21 hours	3	1.8
22–24 hours	11	6.5
1–2 days	16	9.4
3–4 days	6	3.5
5–6 days	3	1.8
1–2 weeks	6	3.5
3–4 weeks	6	3.5
1–3 months	4	2.3
4–6 months	3	1.8
7–9 months	2	1.2
10–12 months	2	1.2
More than a year	2	1.2
Not found	10	5.9

Time lapse	Frequency	%
Came back on his/her own	35	21.9
Police Officer	78	48.8
Mountain Rescue Service	1	0.6
Family member	16	10.0
Other private person	27	16.9
Other legal person	3	1.9

Table 5: Subject who found the missing person

With the analysis of data from Tables 3, 4, and 5 and their deeper introspection, we reached data connected to the time lapse – from the time when the person disappeared to reporting and time lapse – from the time of reporting to the time when the missing person was found, and on the subject who found the elderly missing person. According to the data from the Table 3, 109 (64.1%) of them were reported within the first 12 hours from disappearance, while another 26 (15.3%) of the missing persons were reported in the next 12 hours, and 17 (10%) more were reported by the end of the second day. By adding these data, we establish that 152 (89.4%) persons are reported within 2 days from the assumed time of disappearance. This large percent of the early reporting of the elderly missing person is certainly but not only the result of the care of and relations with the closest family members, as we already concluded in the previous analyses, but also due to quick intervention of psychiatric hospitals and senior and disabled persons' residences, where their care was originally provided.

Likewise, the percentage of finding the missing persons is relatively high. The total of 85 (50.0%) missing persons were found within 12 hours, while 25 (14.7%) more was found in the next 12 hours, and in the period of the next two days, another 16 (9.4%) missing persons were found. By adding these data, we reach the result that from the time of reporting until the time of finding the missing person, 126 (74.1%) of the missing elderly persons were found in the period up to 2 days. This high percentage of finding the missing persons in the established time period can be also seen through the quick and efficient reaction of the police in relation to the missing persons, as well as through so-called partnership search, where the family members have a significant role.

Data on subjects who found a missing person are analysed in Table 5. These data show that the police participated in finding of the missing elderly person with 48.8%, in almost half of the cases of the missing person cases. That is understandable due to their duty to search for the missing person, but also due to possessing human and material resources included in every individual search for the missing person. Independent return of the missing person in his/her residence also has a large percentage of 21.9%, and it can be explained either through the conscious return of the missing person or a moment of *lucida intervalla* when a disoriented person finds his/her way and returns to his/her home (e.g., a demented elderly woman got lost in the city and approached the taxi driver, telling him the address of her apartment where he should take her). The other physical persons who found the missing person (16.9%) include the citizens who reported e.g. the person wandering around on the schoolyard, riding in a tram for

a long time, etc. to the police. Likewise, a significant percentage also belongs to the activity of the family members (10.0%) whose activities assist the police in the search for the elderly missing person. In the monitored period, it must be said, 10 persons remained missing.

Table 6: Residence and the location where the missing person was found

Location of residence/ disappearance	Frequency	%
Rural area	1	0.6
Larger town – city	20	11.8
County seat	148	87.1
Unknown	1	0.6

Location of finding	Frequency	%
Rural area	7	4.1
Larger town – city	17	10.0
County seat	135	79.4
Unknown	1	0.6
Not found	10	5.9

In Table 6, we analysed locations where the person disappeared and the locations where he/she was found. Data that we collected allow us only to draw a general conclusion that there was certain mobility among the elderly missing persons at the time of their disappearance. We thus recorded the trips of elderly persons from Zagreb to Osijek, Crikvenica, Križevci. This data is also useful in planning the scope of the search measures and operations during the search for the missing person. But in order to get a more complete and exact structure of responses to the questions, mapping/computer calculations of distances from the locations of residence or disappearance to the location where the person was found need to be done (Vaccaro & Guest, 2010), which will be a future assignment.

At the end of this summary analysis of the Table 7, we are providing you an overview of data giving us the reasons for disappearance of elderly persons in the territory of the City of Zagreb. We can see that the first place belongs to the various types of dementia (amnesia, intellectual difficulties, space disorientation, atherosclerosis, Alzheimer's disease, Parkinson's disease etc.) with a significant 49.4% share in the number of the missing person. It is followed by various mental disorders (18.8%) and mental diseases (18.1%).

Table 7: Established reasons for disappearance of the elderly person

Reason for missing	Frequency "YES" – relative share in the total number of the missing persons	Absolute share in the total number of the missing persons (*N* = 160)
Wilful leaving of the common living area and keeping the place of residence secret	5	3.125
Family disputes	10	6.250
Problematic family relations	6	3.750
Lack of care or abuse in the family	2	1.250
His/her divorce proceedings	2	1.250
Disappearance is related to adventurism	1	0.625
Disappearance is related to travel	3	1.875
Disappearance is related to unhappy love	2	1.250
Disappearance is related to wandering	3	1.875
Disappearance is related to alcohol intake	17	10.625
Disappearance is related to material and financial reasons	9	5.625
Disappearance is related to issues at work	1	0.625
Disappearance is related to adultery of the spouse	1	0.625
Disappearance is related to chronic disease	20	12.500
Disappearance is related to mental disorder of the person	30	18.750
Disappearance is related to mental disease of the person	29	18.125
Disappearance is related to suicidal disposition of the person	15	9.375
Disappearance is related to amnesia, intellectual difficulties, space disorientation, atherosclerosis, Alzheimer's disease, Parkinson's disease etc.)	79	49.375
The reason for disappearance is natural death - old age	2	1.250
The reason for disappearance of the person is sudden natural death	2	1.250
The missing person was a victim of an accident	1	0.625
The missing person was victimized by criminal act	2	1.250
The person hides a criminal act through disappearance	1	0.625

According to the data from Croatian Public Health Institute (2013), only 0.8% of Croatian citizens older than 65 suffer from mental diseases and disorders. These data show a clear discrepancy and point to the fact that mental diseases and disorders are a significant factor among the reasons of disappearance of elderly persons. Significant reasons for disappearance of the elderly persons include chronical diseases (12.5%), alcoholism (10.6%), suicidal disposition of a person (9.4%), various types of disputes, arguments in the family (6.2%) as well as bad material, financial status (5.6%). The total significance of these data is seen in the possible usage for planning of the search process in individual cases, but also as the instruction to those who design the regular and supplemental education programmes for police officers (Kiepal, Carrington, & Dawson, 2012).

3.2 Specific Features of the Urban Search

In the following section, the specific features of the urban search will be presented. The basic stages of the process of the search for the missing person include the following (Kelly, Koester, & John, 2007; Syrotuck, 2012; Šuperina & Gluščić, 2003; Young & Wehbring, 2007):

a) Data collection, starting with reception of the report on the missing person to data collection, or notification on interviewing of a certain circle of persons and the field police activity at the location of disappearance. These collected data will be arranged and classified according to certain criteria (the missing person, the location of disappearance, the searched on unsearched locations, interviewed persons etc.) in the further search process. The information will be further assessed according to its significance and value, whether it is important, unimportant, reliable, or unreliable and then distributed within the search team, the family of the missing person, and the media covering the search (mostly through the police PR) (Hedges, 2002).

b) Preparing for the search for the missing person, including the check of the reporting on the missing person, checking in hospitals or ERs, establishment of the last location where the missing person was seen or where the contact was established, overview of those locations, protection of the traces and potential scent holders of the missing person, publication of the search for the elderly missing person and releasing the information "on air" in the police system.

c) Conducting the search of the missing person, consisting of making of a plan for the search for the missing person and conducting the search and checking the location and the area in the approximate vicinity of the location where the person disappeared, taking measures and actions according to the plan of the search for the missing person. Planning the search for the missing person is a complex and difficult intellectual and cognitive process, permanently dynamic, submitted to constant changes in relation to the collected data and the results of the conducted search (Milke, 1994). This is a cognitive process where bits of the collected information are perceived and mutually confronted, and new conclusions are made and decisions made with regard to the continued search for the missing person.

d) Documenting and registration – It relates to all known facts and information acquired through the process of the search for the missing person. It is an important stage in the total process of the search for the missing person.

Based on those data, what has been done, what is being done, and what has not been done can be traced. The positive and negative results of the undertaken measures and actions are also registered. Good documentation and registration prevent oversights and omissions in implementation of the plan for the search for the missing person.

e) Holding the meetings (briefings and consultations) – The best practice is to set up a meeting with all members of the team included in the search for the missing person in the beginning of the search (and distribute information on detailed personal description and description of the clothes that the missing person is wearing, on the location where the person was last seen), and then with every individual group of police officers before the start of the search and after the search (in the beginning the data on the segment of the area where they are in charge to search etc are distributed.). That is important because this is the quickest way to find out, e.g., which locations could not be searched and why. This ensures the flow of particular pieces of information, even of those which have not been noted yet.

f) Making a decision to stop the intensive search for the missing person, which presents the hardest decision in the whole process of the search for the missing person. Finally, finding a person is not an easy task, especially in a vast traffic and confusing infrastructure of our cities, with facilities and locations of all types of danger as well as a large number of people in a small area which make the recognition of the missing person in the mob of other people harder.

We saw from the statistically analysed data that the success in finding the person rises with the speed of reporting the disappearance of a person. But, that is the final goal of the whole process. Here, it is important to see also that the speed of reporting the missing person also decreases or increases the urban area for searching. If there was a long waiting for submission of the report on the missing person, the missing person may be miles away from his/her residence or the location where he/she was seen for the last time (Šuperina & Gluščić, 2003). The possibility of the private transport (by one's own bicycle, motorcycle, car) as well as the organised urban, city public transport (trams, buses, trolley-buses, taxi service) as well as intercity and international public transport (coaches, trains, ships, airplanes) also contributes to that mobility of the missing person. For that reasons, taking measures in order to *"stop"* the movement of the missing person in certain wider or closer area of the city is recommended, depending on the assessment of the specific case and engage police and other potentials in that secluded area (e.g., partner search) in the search for the missing person (Quinet, 2012).

Likewise, every missing person will be driven to certain specific contents in the urban environment. In planning the search for the missing person, it would be most helpful to determine the areas with the greatest possibility where the missing person could be located, in relation to the profile of the missing person and his/her usual behaviour. For example, shopping centres, religious facilities (churches, mosques, seminaries, charities, etc.), social centres, can be attractive destinations for the missing persons for people with Alzheimer's disease (Young & Wehbring, 2007). With patients with the Alzheimer's disease, it is important to

remember that those people live in "reality of his/her past world". People with Alzheimer's disease and generally those with dementia cannot remember recent events and are often disoriented as regards time and space, i.e., they do not know the date. It is useful to know, and it will be explained further bellow.

In urban searches for the missing person, one must also do the **segmentation** or **limitation of search areas into smaller areas (segments, regions)**. There is a question: What is the best way to determine a certain segment of the area? The answer lies in *urban features of the area*. It can have certain density of residential buildings, with or without closed or open courtyard or gardens, in branching of streets, pedestrian areas or zones without public city or private transportation (e.g., markets, squares, areas around religious facilities etc.), green areas (floral density and horticultural arrangement of the area), and dangerous locations or facilities such as sewers, ducts, trenches, natural hollows, disordered courtyards, abandoned sheds, barracks or unfinished construction sites, as well as abandoned cars, illegal waste disposals with abandoned objects where a person could hide (e.g., abandoned old refrigerators or freezers etc.), abandoned and disordered river beds, swamps, brooks, rivers, etc. (Young & Wehbring, 2007). In such circumstances, a person in charge of planning and managing the search action for the missing person decides on the intensity of the included staff, the types and the amount of resources. It is usual that the police car patrols and foot patrols are included. But in certain cases, where it would be more efficient, it would be possible to engage police bicycle patrols, who can search more area in less time than foot patrols. Likewise, where specific circumstances require, a search of an area must be conducted with police dog handlers and search dogs or from the air by a helicopter. In the end, organising a search, one must not forget to plan various measures in order to collect data or notifications, e.g., "door to door", field treatment, etc. (Kelly et al., 2007; Milke, 1994; Syrotuck, 2012; Šuperina & Gluščić, 2003; Young & Wehbring, 2007).

1) POLICE CAR PATROL. The police car patrols are the most convenient methods for a quick search of a larger urban area. With the police car patrols, the police officers are searching for the missing persons while the vehicle moves, looking at all publicly available facilities in the street or the road, etc. While participating in conducting the field check, i.e. they conduct interviews with persons who might have seen the missing person. The police patrols are used by day and by night, usually with two police officers, the driver (who also observes right side of the street while driving) and a co-driver (observing the left side of the street and performs the activities of a navigator). A team of three police officers is recommended for night drives, where the third police officer would be in charge of observing the right side of the street and the driver would be focused only to driving, navigation and communication to the operational centre of the precinct. The officers could stop the vehicle and get out of the car and search the possible hiding areas, such as parks, schoolyards, sports courts, areas around the shops or kiosks etc. In order to enter private fenced areas and gardens, they must always look for a permit from the owner of that area. The tactics for the search of the area with the police cars can be in the form of a so-called grid, in the way that they first move on the streets of the sector from north to the south and vice versa, and then from east to the west.

2) POLICE FOOT PATROLS. The patrols are directed to those areas that are assessed as the probable destination of the missing person. These are the urban areas, buildings and other facilities which can be hard to search by using the police car patrols, such as: the station areas, tram or bus turnaround points, airports, park and zoo areas, homeless people, addicts and/or alcoholics spots, house entries, gates, inner courtyards etc. Because of that, they may spot more details than the police officers in the car (e.g., seeing different colours of socks, which could happen when a person has the Alzheimer's disease). Likewise, they could also spot possible traces observing the outer part of the street (e.g., abandoned clothing, bags, rucksacks etc) or the inside areas of the buildings, their closed yards, basements, shacks, etc. Due to the principles of the urgent searches of the area, the foot patrol police officers are the best solution. The possibility of communication with the citizens is also higher.

3) POLICE BICYCLE PATROLS. The police bicycle patrols in the urban city precincts are being formed in the last ten years due to the observed advantages in efficient performance of the police work and authority. We already mentioned the advantages of usage of the police bicycle patrols (access to the area which is inaccessible to the police car patrol, searching of the bigger area in the time unit before the police foot patrol), but two facts should be pointed out here. The first is that only fit police officers and those with the ability to distinct the relevant and the irrelevant content may participate in the police bicycle patrols. The other fact relates to the rushed search of the area. Although the bicycles (*mountain bike*) enable quick movement on the streets, roads, parks and playgrounds, as well as stations, the speed of the bicycle must be adjusted to the ability of perception of the police officer – cyclist. On the other hand, apart from taking part in the process of the search for the missing person in the urban surroundings of a continental town, (s) he also participates in the public transport, so (s)he must also dedicate a part of his/her attention to his/her own safety, as well as the safety of other participants in the public traffic in the city.

4) POLICE HANDLERS AND SEARCH DOGS. The statement that the search dogs together with their handlers are unusable and unsuccessful in the processes of searches for the missing persons in the urban areas is not true. Before their engagement and inclusion into the search, one must consult the police dog handler regarding the weather and local conditions in which the dog would be used. The following rule should be applied: *Even when there are small chances to use the police search dogs – they should be used.* It will be late when these animals that are so useful to the police, could not be used, because the trace of the scent has disappeared in the urban area. It is also wrong to demand that the police handler engaged in the search for the missing person with his dog must find the missing person. They would prove useful also if they found a trace or an object that belonged to the missing person or when they detect the lead of the missing person, e.g., by bringing the police officers to the city bus station. These facts can be useful afterwards, in designing a plan for further activity and determining the direction of movement of the missing person, or generally during the search for the missing person.

5) POLICE HELICOPTER. This helicopter may be included in the process of the search for the missing person from the very beginning. With a quick, swift flight over the search area, it can participate in the urgent *"closing"* off of the

search location. But even the arrival of the police helicopter is a message to the citizens that "something is happening": there is an increased public perception of the search. Therefore, in synergy with ground units, this combination of search methods can provide good results. The ground action may be coordinated from the helicopter. The advantage of the police helicopter is that it is equipped with additional gear, e.g., night vision (IC equipment, thermovision), illumination of the ground area during the night (strong light beams) or for sending acoustic messages (megaphone for sending oral warnings or orders). In rare cases, the officers and the equipment may be transported by helicopter. Their usage is especially visible in searches of the large urban parks (e.g., Maksimir Park in Zagreb), lakes (e.g., Jarun Lake in Zagreb), new city areas with two-floor family homes, each with a yard, a garden and a garage, and those with small alleys (e.g., a neighbourhood in Dugave, Zagreb). They are also useful in the searches of rivers and riverbanks and the areas around/under bridges. The use of helicopters is limited by weather conditions (strong wind, rain, snow), the time of the flight (distance from a helidrom to the search area and back is a so-called empty flight), amount of gas that it can take, etc.

The search of the buildings (e.g., multi-floor buildings and skyscrapers). The decision about that is brought in relation to the circumstances related to the missing person and its disappearance (e.g., the missing person lives in the 16th floor of the sky-scrapper). Before any search, one must check for any legal obstacles to an entry on a private property. Should there be any, one must ask for permission from either the owner or the user of the property or wait for the search warrant. If there is no such warrant, the search of the building starts, but the hurry and haste must not affect the principles of methodical and gradual proceedings in the search of the building. The best practice is to search the residential area from the highest floor and the terrace downstairs, towards the ground floor, basement premises, shacks and garages. A pair of the police officers will walk to the highest floor by stairs, while the other pair of the police officers would use the lift (if there is one) and disable its usage after the arrival to the highest floor. The missing person with dementia can be hiding on some of the floors (e.g., due to the panic fear) or may be sleeping there. If some areas are locked (e.g., an entrance to a terrace), one must check whether they were unlocked or opened recently (e.g., a trace of dust or trace of the door on the floor), and if they were, the manager of the janitor must be asked to open/unlock those closed and locked areas. There were cases where the missing persons were found in the attic areas of the houses that serve for clothes drying (for example, because of the paranoid attack, the person is lying in the attic of the building, covered by the items found in the corner of the room) or in the basements/areas with installations and heating equipment (for example, in such a heating room of a building, one person was found hung to the pipes of the heating system, successful in their intention to hide to commit suicide). All of the above also relates to the abandoned old buildings or unfinished buildings (where further construction was stopped due to bankruptcy of the construction company – an ideal location for homeless people and addicts). In such searches, one must also take into account the safety of the police officers, as they should not even enter such areas without adequate communication devices, personal weapons, and a torch.

Searches for the missing persons in the urban areas are more complicated than the ones in the open area because here we meet many characteristics of the urban environment which represent a special search location in itself (Colwell, 2001). That rule also applies to **garbage bins**. They can preserve many traces and objects, as well as the missing person. Therefore, if those bins are near the search location, they must be opened and skimmed, at least. Where needed and when reasonable, a more intensive search can be started. For example, in Zadar area, during the search for an elderly person, it was reasonable and necessary to search four dust bins. The contents were poured on the plastic bottom. In one of the bins, a black female bag, a couple of black shirts, a black skirt and two pairs of shoes were found. They belonged to the killed missing person. There was also a case of setting a fire to a bin where an elderly, short, but also very rich woman was hidden. After putting out the fire and observing the content of the container, she was found inside. It must be added that in order to prevent injuries, infections or diseases, police officers must be adequately protected by protective clothing and footwear while searching facilities such as garbage bins and any other objects representing a threat to their health.

Field Work. Here, police officers are divided one per each side of the street, stopping at every house, asking the tenants the information on the missing person (e.g., if they have seen them, and when and where that was, in whose company they were, about their behaviour, personality, temper or character, etc.). But we cannot even disregard the citizens met on the street, as they may be a source of information, especially if they live in the area. The questioning during the field work may represent the intensive work, taking up to 15 minutes per house, depending on the amount of data to be collected. In suburban areas and newly built city neighbourhoods, sometimes up to 200 family homes had to be checked. It is obvious that this field information gathering requires a significant staff put to work in a small time interval/period. It is also necessary to take into account the time when the information is gathered. It is normal that the police wants the latest information here and now, but one must not expect much from a man visited at 2 or 3 AM having woken his child who has just fallen asleep after nursing, even if the positive information would be gathered. This example leads to a conclusion that the police officer must have good interpersonal skills. Adjustment to the field work of request processing requires practice (Young & Wehbring, 2007). But there is no use of it if the police officer has no theoretic education, especially in perception of mistakes. The usage of certain communication patterns and set of questions that were prepared in advanced will help in alleviation of tension and this will save the precious time in the search for the missing person.

4 RISK GROUPS

Among the missing persons in the urban areas, the most prominent are those with relatively higher or high levels of risk and danger. Among those persons, Young and Wehbring (2007) include: a) children under the age of 14, b) elderly persons who cannot care for themselves, c) persons with Alzheimer's disease (or other dementias), d) people with mental disorders or diseases, e) persons with

diagnosed chronic illnesses (diabetics, coronary patients etc.), f) low-hearted, desperate, suicidally predisposed persons and g) persons who are subjected / become victims in the extreme environment conditions (e.g., during summer heat etc.).

In this paper, we will deal only with the risk group of elderly people with Alzheimer's disease. Studying their *behaviour* is considered a significant tool for determination of the locations or areas where missing person could be located (Syrotuck, 2012). *The assumed behaviour* may help the investigators to determine the search area and locations in the urban areas where the investigators will be sent. But these recommendations should be taken with a bit of reserve, as they are only a tool based on probability, statistics, and possible behaviour. Every disappearance of a person is unique, with a different set of circumstances and behaviour (Kelly et al., 2007).

4.1 Elderly Persons with Alzheimer's Disease (Dementia)

The term Alzheimer's disease became in everyday speech a generic term for persons with dementia or loss of memory in relation to various diseases and infections, blows, head injuries and/pr drugs.

In the paper, we will not deal with medical contents of Alzheimer's disease or other types of dementia. Our interest is focused on *behaviours that are characteristic and caused* by these types of dementia (Koester & Stooksbury, 1992). Therefore, it must be said that the symptoms of dementia include memory loss, confusion, decreased cognitive abilities, issues with speech, perception, identity/personality, estimations/judgements, skills coordination and changes in emotions (Klein et al., 1999; Koester, 2011; Puljak, Perko, Mihok, Radašević, & Tomek-Roksandić, 2005).

Alzheimer's disease and other dementia as reasons for disappearance among the elderly persons were represented in our research with *79 cases or 46.5%*. According to the research of Kelly et al. (2007), this reason appears in the USA in 44% of cases. Mental illness as a reason for disappearance in our research was documented in 30 cases (17.6%), and suicidal predisposition in 15 (8.8%).

Apart from the changes in the cognitive abilities, the Alzheimer's disease significantly decreases values of visual, speech and motor abilities. These symptoms become more obvious when a person is lost when dehydrated or under stress (Koester, 1998). We will isolate some behaviours and their causes with the persons suffering from Alzheimer's disease.

1. AGNOSIA – the loss or decreased ability of the brain to interpret pictures received by visual stimulus. This is the "mental blindness", the eyes "do not see", they only transfer the picture in the brain. The symptom results in not recognising one's own home, environment where he/she lives or not recognising the persons he/she once knew (e.g., a grandmother does not recognise her grandchildren). These persons have difficulty in recognizing dangerous urban facilities such as road or railway tracks, crossings across roads and rails, water surfaces, dense natural environment, etc. (Rowe, Greenblum, Polyak, Saunders, & Herrou, 2011). A person with Alzheimer's disease may interpret and the people in uniforms or "the picture of uniform" (and feel) as if (s)he did something wrong, which causes

panic in his/her mind, and uncontrolled behaviours are possible. A person with agnosia may interpret body language or facial expression of the police officer as a threat and might therefore react in an inappropriate way, even violently.

2. APHASIA – is the loss or decreased ability of the brain to interpret and formulate words and speech. A person replaces similar words with many different terms. A person becomes frustrated because he/she cannot utter his/her needs. In later stages, a person cannot control his/her speech, uses the wrong words (e.g., "on the chest at the table") (paraphrasia). It is important to know that persons who have aphasia can fail to react to the calls of the investigators during the search as they cannot understand them.

3. APRAXIA – loss or decrease of the ability to control motor abilities and skills. A person with apraxia will have difficulties in personal life skills, such as dressing up, washing teeth, and will often look like a homeless person (unshaved, with dishevelled hair and clothes, etc.) which can be used in finding and identification of a missing person.

4. COGNITIVE MAPPING DISORDER – cognitive mapping is the brain's ability to remember forms and objects of the location. In that way, we would be able to locate the bathroom in our own home without turning on the lights at night. But a person who suffers from Alzheimer's disease can enter into the closet or some other part of the apartment instead of the bathroom. A person who goes to the shop every day and who has to change the way because of construction works will be disoriented in that moment, and that can be the reason of her disappearance.

5. WANDERING – common with people suffering from Alzheimer's disease. It can be a simple clueless walk caused by a temporary short-term loss of memory, movement in the space caused by the feeling of insecurity and disorientation in the new space. But it can also be caused by something related to his/her past, visiting places where this person used to work, live etc. Therefore information related to the history of wandering of the missing person can be useful to the investigator (due to the checking of those or similar places in the urban surroundings). It is characteristic for elderly persons that they never or very rarely take the mobile phones with them or use them, and therefore the search for the missing persons through the mobile phone locating is almost useless. The associations for the Alzheimer's disease propose placing the bracelets on the hand of the patient that he/she cannot take down, and which would contain the most important data for his/her identification as well as the telephone number of the person providing care to the patient.

In the relation to the approach to the missing person who was found, tactical rules were set. First of all, it is important to show that you care about that person and that you approach him/her with respect. In communication, you should use your surname, not your function ("I'm from the police …"). The other tactical rules include the following:

The person is frontally approached only by one person, not two or more of them so that the person would not get scared.

The communication with the person is slow and clear, using simple sentences so that he/she can understand what he/she is told.

Touching the person is not desirable, except when appropriate.

It is advisable to give a person something to keep in his/her hand, to focus on something, similarly like a "child on a teddy bear", which might help in calming down the person.

At the end of this section, it must be said that there are still many other changes with the patients of the Alzheimer's disease, such as uncontrolled reactions, angry and violent tantrums, incontinence etc. It must be also said that the police officer will, apart from the set of general obligatory questions (Korajlić, 2012). in relation to the missing person, have to ask a set of the specific questions which go deep into the privacy of the patient and his/her family.

5 DESCRIPTION OF THE EXAMPLES

Example No. 1

One late February evening, the head of the Senior and Disabled Person's Residence came to the police precinct and reported the disappearance of her ward, aged 59 and diagnosed with Alzheimer's disease 3 years ago. The missing man was seen for the last time in the dining room of the Residence, looking at his photographs that were brought to him by the relatives, and he was missed at 6 pm, when he was supposed to come to dinner. The staff of the Residence organised the search in the facility and the very large area near the neighbouring closed factory. The missing ward was not found, despite their significant efforts. After the report made to the police, the police officers arrived to the place where he disappeared, and they also looked at the CCTV camera footage at the main road entrance to the Residence and they established that no person was recorded leaving that area. It was decided to hire a police handler with a dog. Upon his arrival, the police dog sensed the scent of the clothes that the missing person wore a couple of hours before he went missing, brought by the Residence official in a plastic bag. The dog took the lead and walked along the asphalt road next to the building of the Residence, then went towards the building of the ex-factory with various machine tools, then along the wire fence up to the sewer, where it left the fence and went through the grass to the spiky bush. There, after it passed 1000 meters, the dog stopped and lied down, signalling to the handler that it found the missing person. And really, in the thick and high spiky bushes, the missing person was lying down. The missing person was found despite hypothermia and disorientation in a large area with the set of urban obstructions and objects.

Example No. 2

In the evening hours in early April, a man came to the police precinct and reported his wife, aged 71, missing and gave a detailed personal description and the circumstances before her disappearance. This person had been suffering from dementia and Alzheimer's disease for more than five years, and she left her home willingly in the unknown direction. Before reporting her absence to the police, her husband spent two hours searching for her in the neighbourhood, observing various urban facilities (the nearby park, the area around the shop, the school yard, the open space around the kindergarten, the paths between the buildings,

open yards, unlocked gates of the buildings, etc.), but he did not find her. After they received the report, the Police engaged all available foot and car patrols at the precinct regions, who got involved in the search for the missing person. As the place of disappearance was near the bus and tram turnaround (the first/last stop), the husband of the missing person approached the bus and tram drivers, notifying them on the disappearance of his spouse and her description. Since the time of the report, logged at 20.20, significant resources were used: the police, the family, other people. At 23.15, one of the drivers called the husband and notified him that he probably found the missing person matching the personal description, sitting at the bus stop, disoriented and scared. The bus driver took her to the bus and drove her to the bus turnaround where her husband took her home. Although the person was scared and cried, she was found.

6 CONCLUSION

The statistical police data show that the police officers receive reports on the missing persons daily. This specific social relation is definitely one among those the so-called "security events" to which police officers must react promptly, especially because there may be caused by criminal acts, especially the most serious ones anyone can be a victim of.

Complexity of the issue of missing persons can also be expressed by the increased number of the missing persons in the Republic of Croatia.

We may also conclude that efficiency of a police search for a missing person depends on the time that passed from the disappearance of the person and the submission of the report on the missing person, on the quality and the content of the report, the type of the person who disappeared (a child, an adult or an elderly person, and whether or not the elderly person suffers from some type of dementia, which makes the problem even more complicated) and the activities that the notifier undertook before the submission of their report on a missing person (a partner search segment). Therefore, there are both objective and subjective factors which affect the quality and the efficiency of the police search for the missing person.

Although already looking as a pattern, it must be repeated over and over again: the knowledge acquired must be built into the curricula and training programmes of police officers, both in regular and specialist training. This general and special crime investigation (tactical and methodical knowledge, experience and rules) is of special importance when it involves the search for the elderly missing persons in continental towns, on urban searches where special skills are applied. For example, the interpersonal communication skills needed to conduct the interview and collect notices during the field checks should be highly developed. It is obvious that the time has come, influenced by constant life and professional needs, to implement the training of police officers in conducting the missing persons' search actions through a modular teaching. The modern practice assisted by adequate information and communication networks does not need criminal investigators lacking adequate education in individual subjects. It needs educated staff that acquired necessary multidisciplinary knowledge and

competences and developed the skills needed in solving specific practical cases, such as those involving missing person.

And finally, the urban surroundings are a complex vortex of various activities, pictures, lights, sounds, and people, and a missing person "fits" in them very well. Due to high complexity of this urban area, there is almost an unlimited number of tasks and solutions appearing and applied in such a search. In this paper, we discussed only the most common of them. Which of them will be applied depends on the knowledge and experience of the police officer.

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Terrorism: Social Causes and Perspectives

Renato Matić, Anita Dremel, Mateja Šakić

Purpose:

The aim of this paper is to analyze the origin of different interpretations of the events connected with terrorism, with special emphasis put on different interpretations of causes and consequences of terrorism. The objective is to show that the same logic has perpetrated the causes of the problem and is being used to solve it.

Design/Methods/Approach:

This research into the social causes of terrorism leans against a critical theoretical perspective and uses a historical comparative method aimed at deconstructing some taken-for-granted perspectives regarding terrorism and its actors. It brings the understanding of the causes of terrorism into connection with the history of mutual relationships between today's main actors of global terrorism and anti-terrorism in the wish to explain the consequences of terrorism as resulting from the stable and continued relationship between the main actors.

Findings:

The analysis has shown that current approaches to dealing with the problem of terrorism are so strikingly unsuccessful because, among other reasons, they rely on the same logic that led to the problem in the first place and thus cannot be used to solve the problem. Current power relations between the actors of "terrorism" and "anti-terrorism" point to the need for a possible alternative approach to preventing the mutually complementing "terrorist" and "anti-terrorism" violence.

Originality/Value:

The greatest value of this analysis is that it offers a view of the problem of terrorism based in the tradition of sociological theory, particularly that of deviance, serving thus as an important complement to more customary criminalist, criminological, psychological and legal perspectives. Without such historically grounded and sociologically informed approach, critical perspective would not be possible.

UDC: 343.3

Keywords: terrorism, colonialism, center, periphery, the logic of power, power relations

Terorizem: družbeni vzroki in vidiki

Namen prispevka:

Namen prispevka je analizirati izvor različnih interpretacij dogodkov, povezanih s terorizmom, s posebnim poudarkom na različnih interpretacijah vzrokov in posledic terorizma. Cilj je pokazati, da je pri vzrokih problema in pri njegovem reševanju prisotna ista logika.

Metode:

Raziskava družbenih vzrokov terorizma se naslanja na kritične teoretične poglede in pri dekonstrukciji nekaterih samoumevnih pogledov o terorizmu in njegovih akterjih uporablja metodo zgodovinske primerjave. Razumevanje vzrokov terorizma povezuje z zgodovino vzajemnih odnosov med današnjimi prevladujočimi akterji globalnega terorizma in protiterorizma. Pri tem želi pojasniti posledice terorizma kot rezultat stabilnih in kontinuiranih odnosov med glavnimi akterji.

Ugotovitve:

Analiza je pokazala, da so trenutni pristopi pri obravnavanju problema terorizma izrazito neuspešni, med drugim tudi zato, ker se zanašajo na isto logiko, ki je privedla do problema na prvem mestu in je zato ni mogoče uporabiti za reševanje istega problema. Sedanje razmerje moči med akterji "terorizma" in "protiterorizma" kažejo na potrebo po morebitnih alternativnih pristopih pri preprečevanju medsebojno dopolnjujočega nasilja "terorizma" in "protiterorizma".

Omejitve/uporabnost raziskave:

Največja vrednost analize je predstavitev tistega pogleda na problem terorizma, ki temelji na tradiciji sociološke teorije, zlasti teorij o deviantnosti. Tako predstavlja pomembno dopolnilo k bolj razširjenim kriminalističnim, kriminološkim, psihološkim in pravnim vidikom. Brez takšnega zgodovinsko utemeljenega in sociološko podkrepljenega pristopa kritični pogledi niso možni.

UDK: 343.3

Ključne besede: terorizem, kolonializem, center, periferija, logika moči, razmerja moči

1 INTRODUCTION

When you enter "terrorism" in the search engine of one of the world's largest scholarly multidiscipline databases, *Academic Search Complete*, it lists 91,839 hits[1] from various levels and fields, 90% of which have been written since September 2001. How can we interpret this disproportion regarding academic interest if we take into account that terrorist attacks prior to the collapse of WTC towers had not been an irrelevant or negligible occurrence compared to the period posterior to that event?

1 *In September 2014.*

This paper tries to argue that the political interpretation of the significance of a certain occurrence and its causes and consequences, terrorism in this case, imposed or artificially enforced the interest of scientists in it, making the obscure academic field, in Richardson's words (2006: 1), come to the limelight. Herschinger (2014: 46) also uses this as a starting point to stress that "(…) today, analyses of terrorism – in particular of transnational or international terrorism – are at an all-time high in Political Science and International Relations". This becomes particularly prominent when content analysis of articles on terrorism (cf. Ali & Gruenewald, 2006; Erez, Weimann, & Weisburd, 2011; Reid et al., 2005;) reveals that political discourse prevails over continuous scientific and critical empirical testing in representations of terrorism, trying to explain the reality in a "top-down" manner, i.e., dealing with a phenomenon as functional or dysfunctional in relation to a frozen picture of reality in which mutual relationships of actors are morally unquestionable.[2] What can also frequently be noticed is the attachment of a certain value to an observed phenomenon, precisely concerning its political (un)acceptability. The victims, who are almost without exception civilians not involved in previous relationships between the main actors,[3] thereby serve to intensify the argument on the political assessment and not as the originating point and the purpose of political activity.

In order to avoid the ideological and biased interpretation of observed reality and to simultaneously stay in the scientifically grounded discourse, it is necessary to include the analysis of the up-to-date mutual relationships between the main actors of global "terrorism" and "anti-terrorism" into the understanding of the causes of present-day terrorism. The notion of actor thereby encompasses in the widest sense the protagonists of economic, cultural, and political strategies and actions that marked and directed the relationships between the societies from which today's participants in terrorist and anti-terrorism activities come. We will therefore pursue to provide an explanation of the consequences arising as the end result of these relationships, or in other words of long-term and value-stabilized interaction between the main actors. The next step includes the questioning of globally accepted and actually imposed models of opposing terrorism, with a special emphasis on their origin, i.e., that same logic and way of thinking that have produced the threat and promoted it to the frightening extent it has today. The analysis of current power relations of protagonists and direct participants in "terrorist" and "anti-terrorism" activities aims to answer the question about the possible results that can be expected of the globally accepted "antiterrorism" model, which at the same time brings to the fore the question of authenticity of the political representation of the real intention of the "global war on terrorism" (cf. Baker-Beall, 2009, 2014; Lange & Dawson, 2009). Finally, bearing in mind the need to provide a possible alternative approach in addition to the critique, we consider

2 *On sociological and other theoretical approaches to this problem, and potential weaknesses of some, see for instance Park (1941), Markides and Cohn (1982), Worrell (2011), Burton (1978), Ross (1999), and Boggs (2011).*

3 *Civilian, non-combat victims are shown in many definitions of terrorism to be a crucial moment (cf. Thalif, 2005: 11). If only professional military victims were involved, terrorism would eschew the definition. The idea of purposeful spreading of fear is here very relevant (cf. Rapoport, 1984).*

still unused resources and models of preventing this so far symbiotic series of "terrorist" and "anti-terrorism" activities.

2 CAUSES OF TERRORISM

Scientific critique and academic autonomy are compromised if a social phenomenon, as destructive in its effects as terrorism, is under the pressure of non-scientific interests not observed in the context of similar phenomena that have as destructive effects as terrorism but are called other names or are not treated as equally destructive.[4] These phenomena result from the social relations founded upon the root difference in power distribution, whereby one social actor (an individual or a group) seizes the status of the "stronger" one based on the greater amount of initial or subsequently gained power and thus succeeds in imposing his or her will to the "weaker" one against his or her consent (Weber, 1999), and acquires consequently from that kind of relationship a relatively permanent gain or realizes an intended interest. The relationship between the rich and the poor is developed out of or parallel to this relationship between the stronger and the weaker, whereby greater power and wealth are accumulated on the same side. These initial relationships further lead to the development of the relationship between the slaveholder and the slave, the colonizer and the colonized, the exploiter and the exploited, the developed and the undeveloped – and they all need to be dialectically taken into consideration when the dynamics between the center and the periphery (cf. Wallerstein, 1980, 1988, 2006) is considered.

The colonizer-colonized and center-periphery relationships are, among the mentioned ones, particularly important in the modern society:[5] they build rational activity directed to permanent multiplication of wealth and power into the most purposeful conception of desirability or a social value (cf. Nyatepe-Coo, 2004), without considering possible consequences in terms of human lives or cultural and natural assets along the way (cf. Habermas on the types of rationalization, 1988, 2002).

The concept of colonialism implies the division of the world on the basis of power defined as the will imposed in a certain social relationship by the stronger actor over the weaker with or without his or her consent, with the goal of realizing a certain pragmatic interest (cf. Onwudiwe, 2001). This definition also includes numerous social relationships historically appearing even before the end of the

4 *Economic, political and cultural dimension are thereby important to legitimize some forms of activities which have many victims but are treated as not nearly as problematic. Some pharmacological testing or the practice of artificially provoking armed conflicts for the purposes of spreading weapon sales market are among the examples that prove that it is not the perspective of victim that is really taken as the starting and final point of the fight against terrorism. The comparison of the number of victims in Iraq during US war on terror and during Saddam Hussein's time is useful here as well. The war that promotes democracy and human rights protection is treated differently from terrorism regardless of the number of victims (cf. Gordon, 2014). It is, therefore, very hard to talk of a possibility to "surgically" remove terrorism from the civilization that has participated in its production.*

5 *Without entering the debate on terminology and periodization, and avoiding the approach that looks for specific historical moments or processes, "modern" is here treated from the perspective of the consequences of the Enlightenment concerning dramatic changes to European societies and social institutions.*

15th century, but the discovery of the New World is conventionally taken as the dividing line (Braudel, 1973), which means that from 1492 to 1529 first colonial forces included Spain due to its occupation of the parts of the New World and the Pacific, and Portugal with its colonies in Africa, Asia, and a part of the Far East. Alongside Spain and Portugal, other countries on the list of global economic exploiters are the UK, the Netherlands, France, Belgium, and the USA after its late 18th century independence. Finally, but not less tragically, from the late 19th century to the mid-20th century, the countries that became or aspired to become colonial forces include Germany, Italy, Japan, and Russia with its possessions in Caucasus and a big part of Asia. Facing the First World War, 66.8% of the planet, with over 60% population, is occupied by England, Russia, France and Germany. The so called economic objectives, which actually aim at the exploitation of the resources and market of cheap or often even slave workforce, demographic objectives of migration of excess population to the colonies, and geopolitical objectives, including the control of the sea, road, strategic areas and strongholds, get to be realized with the help of continuous centuries-long genocide,[6] culturocide and ecocide.

Such long-term temporally and socially stabilized social relationships, which can be valued as unjust and exploitative, work to institutionalize a permanent relationship between the social roles of the stronger violent one, on the one hand, and the weaker victimized one, on the other. After that, regardless of the individual will of the members of concerning societies, the socialization process leads to the internalization of the norms and values that define such opposing roles in advance.[7] Despite the processes of decolonization after WW II, which have introduced certain changes in the social space of culture (though these changes need to be approached extremely carefully considering increasingly aggressive content and form of mediating the mass culture), politics, and economy, the power relations, and game rules have remained equally unjust. What is more, they have served as the model and basis for even more sophisticated forms of exploitation, which are in social sciences understood and explained with the help of a somewhat more contemporary category of "network", which presumes the existence and concentration of extraordinary power, but in a different way (Katunarić, 2000), dissimilar from traditional forms of hierarchy or the center-periphery relationship. This power is concentrated in financial centers, in which the decisions that change the destinies of all who are in any way financially dependent or controlled are made. Life quality and life itself are thereby pushed to the margins of the final consequences of the decisions made in the center.

This is where the level of causality is reached, which is understood and accepted extremely slowly in decision-making centers with global consequences – global strategic decisions. The results of the decisions, regardless of the decision-making level, are felt even after the first series of direct consequences had become finished past, and intensify multiply and unpredictably, especially if initial decisions are not though over in the light of all possible predictable consequences.

6 *In the sense that the consequence is the death of peoples, not necessarily the intent or motivation.*

7 *This process enables the birth of new forms of power and social control, less visible and less repressive but more efficient than ever (cf. Foucault, 1994).*

The paper, therefore, proceeds to develop the thesis on the consequences of decisions led by the same *logic of power,* i.e., by the absolute reliance on the inexhaustible capacities of wealth and power, along persistent yearlong refusal to accept responsibility for unwanted consequences.

3 CONSEQUENCES OF TERRORISM

Power and wealth are often uncritically accepted as exclusive resources that ensure the ability to manage the quality of one's life and to participate in the making of decisions about one's own destiny. The lack of these resources can thus produce several potential reactions. It is here that it is possible to apply the structural strain theory (Merton, 1968) which can, in addition to its original orientation to the American society, be used as a wider and even global framework, especially if the thesis is accepted that the development of a part of humankind, based on the unstoppable concentration of wealth and power, found its model in the acceptance of the American dream. The reactions of conformism, innovation, ritualism, retreat and rebellion in this context are, therefore, discussed below.

Conformism to the same success logic, or the goals and resources of the decision-making centers, is mostly only theoretical and practically available only to an extremely small number of individuals selected according to certain criteria from the periphery or the network margins.

Opposite to this, innovation potential created by this global power distribution is very much present in the form of organized crime which started spreading globally much before other forms of joint organized action. The flexibility of crime, its resistance to various ideological viruses and its possibility to neutralize and/or instrumentalize every, especially institutionalized, form of crime prevention or resistance, can be matched to the ability of capitalism to use and turn to its benefit everything that happens to be in its way.

Numerous local protagonists of war, masters of life and death, serve as role models that many would follow if they were given the smallest chance, because the only alternative they have is to work as slaves, if they are lucky, in marginal subsidiaries of global corporations for only couple of cents a day, which reminds of Merton's image of an adapted ritualist (Merton, 1968).[8]

The next possible reaction includes the biggest population and it can, with even greater amount of resignation, be called retreat (Merton, 1968), which can, in the center, in addition to rummaging through the garbage, be a matter of free choice and sometimes even create intense forms of mutual solidarity. However, this type of retreat is completely coercive, imposed and final, because in the long run it offers nothing but hunger, sickness, and death. All so far mentioned possibilities exclude the sense of purpose of one's life and actions, which are very much important but hard to find in the context of standard success, organized crime or some of the countless armed groups or militias, and impossible to find in inhuman conditions of economic production, or dying of AIDS or hunger.

8 *For some other versions of strain theory see for example Cloward and Ohlin (1960), Hirschi (1969), Agnew (1992), and Featherstone and Deflem (2003).*

The fifth reaction is, therefore, the consequence of all mentioned types of relationships between the weaker and the stronger, the rich and the poor, the colonizers and the colonized, the included and the excluded, and is frighteningly unstoppable and globally threatening: rebellion (Merton, 1968). It cannot be easily stopped by a police intervention, by a local intervention of the national guard, or a classical military intervention in a war in any part of the planet. The last thirteen years of practice have proven this – much has been invested in terms of money and human lives, but the threat has not been reduced (Pentagon admits this too).[9] The fifth reaction in its purest form reveals total absurdity of counting on unlimited material resources of economic, political and military power structures, which can ensure advantage over the real or fictional enemy for a long time but cannot offer the basis for making a personal decision to self-destruct oneself and to consecrate one's life by earning it the ultimate purpose in a handy individual or multiple murder.

Such an individual act is the final consequence of all before-mentioned types of relationships and strategic decisions that preceded it and produced a critical mass of external circumstances, which oriented individual socialization towards the internalization of norms and values directed at deadly suicidal attacks.[10] Such an act is legally a crime, subject to sanctions that were never before foreseen or applied to a long-term series of described decisions and actions. All activities so far performed or being initiated today in the name of civilizational progress, economic development or democracy, regardless of the number of innocent victims they have left behind, have never been subject to any law that would forbid, persecute or sanction them. This is so because the notions of civilizational progress, economic development and democracy are unquestioned values in the name of which the victims of colonial occupation were at one time called "uncivilized savages", and the victims of contemporary nuclear, chemical or biomedical experiments on new types of weapons merely "collateral victims".

Terrorism in the context of the reactions is sided with genocide, culturocide and ecocide that preceded and conditioned it and served as the legitimation basis for rationalizing its ways. The idea of fulfilling a life goal in a suicidal action, which is the result of the ideological instrumentalization of Islam (cf. Ranstorp, 1996), and the justification of such an act in the face of mentioned injustice, exploitation and crime, contribute to a relatively unproblematic status of ritual suicide and murder as heroic acts (cf. Rapoport & Alexander, 1982). This is particularly so if observed in relation to strategic planning of warfare from the safest places in the world, from which thousands or millions of victims are defined as a civilizational good or a collateral damage, and in relation to commands to do crime without personal risk or in relation to directly committed crime whereby only personal safety is taken into account.

Besides, provided the causes that led to it still exist, terrorism will still be, among the mentioned types of reactions and possibilities, an appealing and

9 *Far less money would be needed to deal with the problems of hunger and illiteracy in the world than it is being used for fighting with these consequences of hunger and illiteracy.*

10 *Religious and political indoctrination can suffice alone, as in the case of volunteers from the West, but white colonial Europe has played the crucial role in the sense of the beginning of this matter.*

acceptable choice for many of the "excluded" actors living in the periphery whose alterative is a miserable and inhuman living or dying of AIDS or hunger. A personal choice of suicide or murder of anyone considered as enemy (all those who in any way symbolize or present "the civilization of evil") (cf. Hacker, 1996; Klein, 2014; Stitt, 2003), including the most radical version of seeing as a life purpose the pulling with yourself into death all those who do not believe or think the same, will be represented by ideologists as the path to freedom, far from the distant center where the decisions directing numerous destinies far on the periphery are made.

Not only professional interest but also a normal human concern seek answers and consider the possibilities of exiting this vicious circle. Still, every scientific reflection must doubt the sincerity of most included actors when it comes to their determination to stop the terrorist threat.

4 CAUSE UNCERTAINTY AND THE LOGIC OF POWER

The question about the possibility to find exit or an efficient solution that would satisfy all included actors as well as all others who more or less against their will get involved as the space of neutrality is evidently and quickly disappearing, demands the analysis of up-to-date practical attempts of dealing with the problem. The first view of globally accepted (and in fact imposed) models of fighting terrorism puts accent on the persistent and consistent avoidance to deal with the causes of terrorism. Why is it that the causes of the problem are not talked about when this is the only proven and generally accepted way to create an efficient strategy for tackling any issue?

To a large extent because the main decision makers in the so-called fight against terrorism are precisely the actors who unreservedly want to preserve all the stabilized global social relationships and circumstances that are *conditio sine qua non* of terrorism. Thus, the conclusion is imposed that terrorism is opposed using the same way of thinking that provided the basis for the decisions that produced the threat in the first place and has advanced it to today's frightening extent. The second conclusion, seen as utterly subversive by the carriers of the official anti-terrorism politics, and actually only a logical consequence of everything done so far, is that antiterrorism is only another master narrative or a story and the terrorist threat a great instrument of realizing special political and economic interests of some groups. The direction of moral panic (cf. Furedi, 2005) towards the mood that allows the targeting of enormous economic resources, unthinkably enormous in the normal circumstances, towards the needs of internal security and war on those parts of the planet that are multiply economically and politically interesting. The easiest to realize among the political benefits is the keeping of the dominant position in internal affairs, using a simple pre-election rhetoric that at the same time points to visible threats and to itself as the only option guaranteeing an efficient solution to the threats, a higher safety level, and the salvation of democracy and the future of the generally desirable way of living.

Political and military strategies aimed at stopping the terrorist threat are based on the same principles that in the 20th century divided the so called interest

areas, used to maintain the so called balance of fear at times of the big East-West bloc division (Cohen & Mihalka, 2002). The approach to the problem of terrorism during the Cold War should also not be forgotten: each side saw its actors as the fighters for freedom, and the actors of the other side as terrorists, depending on who they opposed, and received accordingly the logistic support, weapons and combat training. It is well-known that today's notorious terrorists and "enemies" of global democracy and security, primarily the enemies of the national security of the countries leading the "anti-terrorism coalition", have for years and decades been considered the biggest supporters of intelligence and political elites of these countries.[11]

The origin of political decisions and different strategies created in one center but with consequences concentrically spreading to the global level lies in the logic of modern society. Modernization namely implies technical rationality that created the preconditions for the previously described institutional injustice and it still plays a dominant role when it comes to economic and political interests. The application of technical rationality to all areas of social life turned out to be in many cases an efficient means of standardizing a desirable life quality. The rise in the quality of life, on the one side, has as a rule caused the drop or degradation in the living standard on some other side, meaning that technical rationality has never stopped serving as the instrument of domination and irresponsible governance over people and nature in general (cf. Edkins, 2008 on biopolitics and governance; Pain, 2014). Marcuse (1987) sees the exercise of control as the essence of instrumental rational action, and rationality and exploitation as the key factors of power in not only industrially developed societies but also in all areas of making decisions that bring economic, political or cultural benefits.

But, can the same way of thinking that caused the problem be used to solve it? The *logic of power* that was dominant in the time when presuppositions for actual and so far insoluble global problems were formed and that directly led to terrorism as the central problem discussed here, can hardly be imagined to offer an original way out. What does the current selected model of action look like and can it neutralize terrorism as a global threat? The central question should actually be whether the same logic of power can defeat or completely change itself. Although the answer leaves no space for any doubt, the analysis of actual relationships between the forces of terrorist network and anti-terrorism coalition can serve as an additional argument.

5 POWER RELATIONSHIPS

The first comparison level includes the relation between the possibilities offered by hierarchy, on the one hand, and network, on the other. After that, we compare the risks for combat participants, the clarity of objectives and means at both sides, and finally the imperative of success.

11 *The famous examples of enemies serving as a part of intelligence or political services include Osama bin Laden in CIA during the Soviet War in Afghanistan and Saddam Hussein, who enjoyed the support of the USA during the Iran-Iraq War and propagated the western style (of dress among other things), but once his power grew he became a terrorist.*

Hierarchy-network

Ever since the concept of terrorist networks started being discussed (cf. Kastenmüller et al., 2011; Siqueira & Sandler, 2010), the weaknesses of rigid traditional hierarchal structures that prevail in the organization of political and military organization of anti-terrorism coalition have come to light. Network flexibility implies fine adjustment in unforeseeable and permanently changeable circumstances as well as the ability of fast coordination with the aim of innovation and continuity. A network is dynamic and strategically planned, it consists of self-programmed and self-directed units based on decentralization, participation and coordination, which all enables it to become the ground material out of which organizations are and will continue to be formed (Castells, 2000: 200). The inertia of hierarchical organization is conditioned by a number of factors. Primarily, the vertical flow of information causes the loss of clarity and the final sense of command at every lower operative level. This is contrary to the freedom of network from formal loyalty to superior structures, which produces greater clarity of the final vision, specific objectives and tasks, leading to the high motivation of participants. We can conclude that initial weaknesses of military action are visible already on this level of comparing organizational matrixes, especially when compared to very small groups or individuals who momentarily adapt to new circumstances exclusively led by the will to realize the ultimate objective.

Risk comparison

When the amount and dispersion of risk between terrorist and anti-terrorism structures is compared (cf. Caponecchia, 2012; White, Porter, & Mazerolle, 2012), a disproportion to the detriment of the latter can be noticed at first sight. The strategies are designed somewhere far high, in the protected centers of political and military power, without operative inclusion of any of the planners. The center has a minimum cost and a high motivation to realize the set objectives, because the objective realization multiplies their economic and political benefits. As we go down, i.e., toward direct operative executors of strategies on site, where even the smallest mistakes can be fatal or inexcusable, a disproportion between cost and motivation becomes increasingly visible. In other words, the potential cost is always at the maximum (one's own life), and the motivation to realize an objective, set somewhere far and high up, becomes minimal. To put it in simpler terms, direct participants have a minimum interest in the realization of strategic objectives, being permanently oriented to the preservation of bare lives. Contrary to them, is it necessary or possible to measure the ratio of risk and motivation of a suicide attacker? The motivation is, in this case, extremely high and hard to understand from the aspect of the preservation of one's life, and there is in this context no fear that the attacker will fail.[12]

12 *Sometimes terrorist group is not sure about the strong will of the suicide attacker and since they are afraid that he/she will change his/her mind in the last moment, they use remote triggers of explosive devices. However, the motivation is high in the great majority of cases, and it is the relevance of the general cause that imposes control mechanisms.*

Clarity of objectives and means

The next weakness of the current approach of war on terror is the wasting of time and energy on the harmonization of political goals and interests, as well as the permanent consideration of compromise and concession or often even abandoning basic intentions, all resulting from the attempts to achieve agreement of all interested actors, who are diverse like the special goals they aim for. Different military,[13] political and economic interests together with the actors representing them gather on the same side or become distant depending on instant assessments, which significantly influences the speed and efficiency of actions on site. Behind the big words of friendship strengthening and loyalty to common values, extravagantly pronounced at national meetings, along the unquestionable interest of the media and the public, there is quiet unscrupulous political and economic diplomacy constantly led by nothing but interest. Professional soldiers must agree to utterly unprofessional demands arriving from politics, which leaves them with little chance to finally succeed when they face a highly motivated opponent with clear objectives and tasks needed to fulfill the mission on mind when at the battlefield.

Imperative of success

When we take into account the time of planning, harmonization of objectives, compromise, promises to military and political allies, and particularly debts to their "friends" from the centers of big business, the mistakes of anti-terrorism coalition are very costly, which means that the success, and precisely the success that would fulfill the expectations of all participants, is simply imperative. Numerous political destinies and economic rewards and possibilities depend on it, while the lives of thousands of victims are calculated a "statistically acceptable loss" or a "collateral damage". Success can be expected for months and years, and it is hardly a tragedy if the set objective is realized only after a dozen of failures.

All these comparisons serve to supplement the so-far evident answer to the question about the success chances of the selected model of fighting terrorism. The current model cannot neutralize and overcome this global threat, but the creators of anti-terrorism strategies and all interested participants find it very hard and painful to accept this fact, especially because hundreds and even thousands of billions of dollars have been invested. The crucial question is thus whether the usual logic, traditionally relying on the trust in accumulated economic, political and military power, can defeat or completely change itself. This is the basic precondition for the breach in the continuity of causes leading to terrorism[14] and for building real foundations for overcoming it.

13 *Military goals are usually just instrument of political goals set by economic interests – although military industrial complex may create economic (and consequently political) interests. Both possibilities are included here, with the perspective that the interest of military industry alone will not on its own lead to a war, although its role is significant.*

14 *It may seem that this "usual logic" has more influence on anti-terrorism strategies than the causes of terrorism, precisely because it has prepared the ground for the causes to flourish and then attempted to deal with the consequences in the same way.*

6 NEW POSSIBILITIES TO FIGHT TERRORISM

If the victory over terrorism was a genuine authentic objective honestly fought for by the global protagonists of economic, political and military power, the neutralization of other common global threats like organized crime (human trafficking, dealing weapons of mass destruction or narcotics, etc.) or systemic genocide would become an attainable objective. The basic precondition is thereby to abandon the *logic of power* that led to these problems, which means that the main actors would have to willingly renounce the wish and privilege to accumulate all forms of power in their hands. This expectation is unrealistic and extremely idealistic, but it needs to be expressed clearly to stress the conclusion that it is otherwise even more irrationally idealistic to expect any success in the fight against terrorism.

The next step on the way of removing the causes of terrorism is a sort of global redistribution which would include a systematic approach to correcting the wrongs accumulated throughout centuries. Only if serious intent and determination to deal with the consequences of injustice were shown can we expect a gradual diminishment of still unquestionable and undoubted arguments for ideological influence and massive recruitment in ever more firm and numerous terrorist networks. Not much wisdom is needed to realize that this also is an unrealistic idealistic expectation in present circumstances. Besides, political short-sightedness has for instance in Iraq led to damage that is hard and maybe even impossible to repair. Still, it is never late to start fighting for the victory of reason and the honest striving for peace, which would in any case mean more than the present reckless hurrying into a wider and even global conflict.

The third step toward final success includes patient long-term activity of intelligence agencies, which are now not footed in the previous two wider preconditions, thus bringing only illusory success and results. The exposure of one group or the prevention of one terrorist action does not make potential perpetrators lose the motivation to continue, but only makes them become more persistent and skillful in the preparation of new strikes. This activity would be meaningful if good will and wisdom were used to fulfill the first two preconditions on the global level. Then the conditions would be created for the gradual disappearance of currently present circumstances that conduce to quick enthusiasm and recruitment of new generations into soldiers and perpetrators of terrorist acts world-wide. This would hopefully put a stop to the growth and spread of the network and turn the course of events in favor of the anti-terrorism coalition.

The intelligence work would in that case be meaningful because it would enable a clear knowledge of the position and plans of the remaining terrorist groups. Thus the preconditions would be ensured for efficient actions of highly trained and specialized anti-terrorism groups with the task to neutralize the remaining parts of the network without massive military interventions and innocent victims.

7 CONCLUSION

The chances of taking steps that would lead to an integral change of approach are not likely when we take into consideration previous and current strategic decisions and actions in the fight against terrorism. The logic based on unlimited trust in economic, political and military power succeeded in subjugating a big number of countries and peoples, creating the preconditions for centuries-long exploitation of the colonies, retaining yearlong economic, political and cultural domination, and exhausting resources that led to a complete destruction of individual cultures and even civilizational circles. At the same time, the same logic managed to stabilize the injustice on the global level, legitimize violence and oppression in the name of democracy and development. All this watered the soil on which powerlessness and pain accumulated throughout generations came to be expressed in the worst possible way – the need to destroy everything that reminds of or has anything to do with the exploiting civilization.

Age-long neglect of the severity of the problem, the ideologization of political violence and the attempts to instrumentalize it for particular goals, the strategies that developed capitalism managed to apply with the majority of threats to it and have provided a greater momentum for capitalism by giving it the logistic support. The same political actors have for decades applied the same approach and taken the leading positions in the war on global terrorism. The adventure in Iraq, feared for the possession of weapons of mass destruction, which was a strategy for gaining public support of the invasion, while future direct participants in the war were simultaneously being convinced that there was no real military danger in Iraq, has exposed all weaknesses of the stubborn and long-developed logic of the military supremacy that would efficiently solve all political problems. An opponent ready to sacrifice his life in order to thereby cause the death of at least one enemy presents a challenge not easily responded to with any known military skill. The approach based in the application of force has for centuries brought the best results and fulfilled all set objectives, but is now exposing its weakness and inertia faced with the phenomenon that is hard to accept as a fact for all those believing in the absolute superiority of highly sophisticated military technology and economic and political resources at its disposal.

It takes not much wisdom to reach these conclusions. How come then that the best paid civil servants and top advisers of the creators of global strategies cannot reach them? We are here truly not far from the "extremely subversive" statements that anti-terrorism is only another ideology, which uses the terrorist threat as a great source of general concern and panic-stricken fear that capture general attention, and under the excuse of protecting global security legitimately cater for particular economic and political interests of the most powerful global actors.

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Trial by Jury in Russia: From the Cornerstone of the Judicial Reform to the Constitutional History Artifact

Anna Gurinskaya

Purpose:

The article explores the process of gradual legislative encroachment on the constitutional right to be tried by jury in Russia that had started in 2008 when offenders accused of committing terrorist crimes were denied the right to opt for the jury. The objective is to show how the initial use of the security argument made possible further limitations of this right.

Design/Methods/Approach:

The research is based upon qualitative analysis of documents (drafts of legal bills, explanatory notes to the drafts, minutes of the Parliamentary hearings), decisions of the Constitutional Court of the Russian Federation and judges' dissenting opinions, statements of public officials, media reports.

Findings:

Jury trial that was once a cornerstone of the major judicial reform of the 1990-ies risks becoming a constitutional history artifact. The process of its curtailment came as a result of the inability of this institute to get adjusted to the realities of the Russian criminal process as well as of the need of the state to meet the challenges of the risk society. It is argued that the use of security argument allowed for the initial bill aimed at limiting this right for terrorists to be adopted swiftly and without much debate. It also opened the window of opportunity for further limitation of this right that came under vague agenda of victims' protection and case review system reform. The author demonstrates that decisions of the Constitutional Court of Russia have played a significant role in promoting limitations of jury trials.

Practical Implications:

The approach used in the article can be applied to researching other cases of limiting citizens' rights in the name of security.

Originality/Value:

The article represents an attempt to provide empirical evidence of the 'security paradoxes' described in the security literature.

UDC: 343(470+571)

Keywords: trial by jury, comparative criminal justice, Russian criminal justice, security, human rights, fair trial

Sojenje pred poroto v Rusiji: od temelja sodne reforme do relikta ustavne zgodovine

Namen prispevka:

Članek obravnava postopek postopne zakonodajne omejitve ustavne pravice do sojenja pred poroto v Rusiji, ki je stopila v veljavo leta 2008. Tega leta je bila obtoženim za teroristična dejanja odvzeta možnost odločitve za sojenje pred poroto. Namen prispevka je predstaviti, kako je prvotni argument varnosti pozneje omogočil dodatne omejitve te pravice.

Metode:

Raziskava temelji na kvalitativni analizi virov (predlogov zakonov, obrazložitev predlogov, zapisnikov parlamentarnih zasedanj), odločb Ustavnega sodišča Ruske federacije in ločenih mnenj sodnikov, izjav javnih uradnikov ter novinarskih prispevkov.

Ugotovitve:

Sojenje pred poroto, ki je bilo osnova temeljite sodne prenove v devetdesetih, je v nevarnosti, da postane relikt ustavne zgodovine. Postopek njegove omejitve je rezultat njegove nesposobnosti prilagoditi se realnosti ruskega kazenskega postopka kot tudi potrebe države, da se prilagodi zahtevam družbe tveganja. Zatrjujemo, da je uporaba argumenta varnosti omogočila, da je bil prvoten zakon, ki je omejil pravice teroristov, sprejet hitro in brez argumentacije. S tem je tudi odprl možnosti za nadaljnje omejitve te pravice, ki so jih utemeljevali na nedoločenem argumentu zaščite žrtev in sistemske reforme obravnave primerov. Avtorica pokaže, da so odločitve Ustavnega sodišča Ruske federacije odigrale pomembno vlogo pri propagandi omejitev sojenja pred poroto.

Praktična uporabnost:

Pristop, ki je bil uporabljen v članku, je mogoče uporabiti tudi v raziskavah drugih primerov omejevanja državljanskih pravic v imenu varnosti.

Izvirnost/pomembnost prispevka:

Članek predstavlja poskus zagotoviti empirične dokaze varnostnega paradoksa, obravnavanega v varstvoslovni literaturi.

UDK: 343(470+571)

Ključne besede: sojenje pred poroto, primerjalni kazenskopravni sistemi, ruski kazenskopravni sistem, varnost, človekove pravice, pošteno sojenje

1 INTRODUCTION

A novel history of the jury trial in Russia is an interesting phenomenon to study. On the one hand, it is a vivid illustration of a policy transfer failure. The model

that showed itself to be well working and quite efficient in many contexts, especially the Anglo-Saxon adversarial system of trial, appeared to be absolutely alien on the Russian soil. Most countries where jury is a deeply rooted part of the judicial process managed to retain this institute even in the face of terrorist threat (Kovalev, 2009) while Russia enthusiastically used the security argument to start the process of limiting access to the jury. It does seem that all attempts to plant the institute of jury and make it work that were undertaken during the last 20 years are leading nowhere. Most hopes that were attached to establishing the jury trials did not come, which led to a bitter disappointment and calls, if not to abandon this institute for good, but to at least study thoroughly the reasons for its failure (Tomin & Zinchenko, 2013: 69). In this sense, Russia demonstrates its difference from the countries where direct forms of citizens' participation in the judicial process proved to be an essential part of a democratic political process.

On the other hand, recent limitations of the jurisdiction of jury trials in Russia, when viewed not separately but along with other measures aimed at meeting the challenges of the new 'risk society' (Beck, 1992), seem to be in line with the international tendencies. In countries that are facing such problems as terrorism, transnational crime, illegal migration, and mass disorder, the system of criminal justice which is usually a mix of the 'crime control' and the 'due process' models (Packer, 1964) seems to be leaning towards the former increasing the efficiency of the assembly-line conveyor belt of the criminal process. In this sense Russia is not an outlier case. The curtailment of the right to a jury trial can certainly be (and usually is) explained by the authoritarian nature of the Russian political regime – by the political culture of power vertical and a lack of judicial independence (Kovalev & Smirnov, 2014: 129). However, this explanation does not seem to be completely plausible. It can be argued that in its crime and terrorism control policy Russia is not much more authoritarian than countries that claim to impersonate liberal democracy in its purest form. It can be argued that the factor that explains the nature and tendencies of the criminal justice system transformation is not the nature of the regime, but the nature of global risks of the 21st century, on the one hand, and the adherence of modern governments to neoliberal paradigm of governance, on the other. In Russia, as everywhere in the world, policy orientation towards crime control and security enhancing strategies serves as an example of triumphant technocratic depolitization – a move from democratic to technocratic society, from politics to governance (Morozov, 2009: 541). When security arguments come, first democracy tends to erode in favour of the development of a governmental politics without checks and balances (Bigo & Tsoukala, 2008: 2).

Finally, the history of jury trials Russia is a vivid example of at least two of the 'security paradoxes' described by Zedner (2005: 513–516, 2009: 147–149). Imposing limits on the rights of a certain category of population in the name of security may later result into expanding these limitations on other groups of the population or possibly all citizens. When we agree to exchange the alleged terrorists' freedoms for our security we are risking to find ourselves in the situation when our freedom will be at stake and eventually our security will be jeopardized, this time not by the criminals or terrorists, but our own government. The limitation of the right to

opt for the jury trial in Russia began with excluding this possibility for defendants accused of committing an act of terrorism. Security arguments were crucial for the legislators and the Constitutional Court of the Russian Federation that upheld the law. This precedent opened the possibility to amend jury trials for other categories of defendants although these limitations were no longer explained by security demands but rather by the need of protecting the victims and optimize the work of the judges.

This paper is not aimed at addressing the problem of the constitutional nature of the right to be tried by the jury or assessing the effectiveness of this institute in Russia that could lead to arguing whether it should be abandoned or retained. Rather we would like to look specifically at the process of gradual narrowing of its jurisdiction in order to see how security arguments were used and what consequences it had led to. We shall briefly describe the history and main features of jury trials in Russia as well as some 'pro et contra' arguments regarding whether it fits Russian criminal justice process, legal and political culture. Then we shall look at the process of introducing a ban on jury trials for the terrorists in details and further expansion of this ban to other categories of crimes. We shall analyze legislation, jurisprudence of the Constitutional Court of Russia, notes filed by the initiators of the bills and opinions of the State Duma's committees, public speeches at the hearings in Duma, media news and reports.

2 ESTABLISHING JURY TRIALS

2.1 History, Experiment, Introduction in all Regions

Following the collapse of the Soviet Union in 1991 most institutions including the judicial system became a subject of major reforms that were aimed at establishing free-market economy, political pluralism, democracy, including direct forms of citizens' participation in public affairs. Trial by the jury was to become a cornerstone of the judicial reform. One of the key promoters of this reform in the 1990-ies Pashin (1995: 75) would even state that "trial by the jury serves as a precious legal form that is capable of changing human material to the better, transforming officials into lawyers of the highest standard and judicial proceedings into the act of higher truth".

The involvement of lay adjudicators in the trials was not something completely new and unknown for Russia. During Soviet times, citizens also had a chance to participate in the proceedings – two lay adjudicators (Rus. *narodnie zasedateli*) were hearing cases alongside with the professional judge. However, their participation was rather a mean to provide additional legitimacy to the judge's decisions than to really include citizens in the judicial process. In 1989 a specific provision was added to the law of USSR on judiciary. It stipulated that a number of these lay judges could be increased if the case could have resulted in death penalty or the imprisonment of over 10 years. This provision can be seen as a predecessor of the modern system of jury trial, but in fact the tradition dates back much further.

In 1864, the Emperor of Russia Alexander II signed Judicial Statutes according to which jury trials were introduced in Russia starting with the capital

cities' regions (St. Petersburg and Moscow). More than 400 types of offenses that were criminalized in the Statute on criminal and correctional punishments of 1845 granted people the right to opt for the jury trial (Voronin, 2004). Trial by the jury was depicted by Dostoyevsky (1881) in his novel "The brothers Karamazov". He also discussed the problems concerning jury trials in his "Writer's Diaries" written in 1873 (Dostoyevsky, 1873). Dostoyevsky (1873) suggested several explanations of the phenomenon which he called the "acquittal mania" of the Russian jury. One of them being a wish of the jurors to oppose themselves to the acting government and the other one – a compassionate character of the Russian people. However, he believed that there is a more plausible explanation. Since the right to be tried by the jury was given to the people as a gift by the Emperor, citizens lacked responsibility for their actions as jurors. Responsibility comes when a right is fought over, but when it is given at no cost it does not possess any value. Acquitting without second thought, according to the famous writer, was possible because jurors did not realize the meaning of the institute of lay justice and did not envision any possible negative consequences of their actions. Despite the "acquittal mania", a case of Vera Zasulich who was acquitted by the jurors after committing an attempt to kill the Governor of St. Petersburg F. Trepov serving as a one example of it, jury trials survived up to the revolution of 1917 when the idea of this type of lay justice was abandoned for almost a century.

In 1991, the Concept of Judicial Reform by the Supreme Council of the Russian Soviet Federative Socialist Republic (RSFSR) (Decree of the Supreme Council of the RSFSR, 1991)[1] was adopted and the acting Constitution of the RSFSR (1978) was amended to include provisions reestablishing jury trials in Russia. The design of the new institute of the trial by the jury was only partially replicated from the 19th century model (Demichev, 2003). The Concept (Decree of the Supreme Council of the RSFSR, 1991) placed the need for recognition of the right to be tried by the jury as the second after creation of the new federal court system. It depicted the jury trial as the spirit of the justice machine and provided that it should be established for all cases when the punishment exceeds 1 year of imprisonment. According to the law it meant that jury will be introduced at the low level of the judicial system – at the district courts. It took two years to start implementing this idea. In 1993 a law of the Russian Federation was issued to provide amendments to the then-acting criminal, criminal procedure, administrative laws and laws on judiciary. It limited the jurisdiction of the jury trials to the regional level (the second highest level of the system).

The Constitution of the Russian Federation of 1993 adopted on December 12 states that the right to be tried by the jury shall be granted to those accused of committing especially grave crimes against life punishable by capital punishment (article 20, part 2). Other cases when the offender may opt for the jury trial are to be determined by the federal law (article 47, part 2; article 123, part 4). In 2001 a new Criminal Procedure Code of the Russian Federation was adopted that specified the jurisdiction and procedure of the jury trials. Article 30 stipulates that cases can be examined by a judge and 12 jurors but only when defendant files a petition.

1 *Postanovlenie Verhovnogo Soveta RSFSR ot 24 oktjabra 1991 No. 1801-FZ "O koncepcii sudebnoj reformi v RSFSR"*

The list of crimes that entitle a defendant to a jury can be found in article 31 (part 3) that provides that their hearing falls under the jurisdiction of a regional court. Initially the list included 44 articles of the Criminal Procedure Code of the Russian Federation (2001) that prohibited murder, kidnapping, rape, act of terrorism, taking of hostages, banditry, mass riots, piracy, treason, espionage, violent seizure of power, armed rebellion, sabotage, bribery, a number of crimes against justice, and crimes against peace and security of humankind.

Initially, 5 Russian regions (Moscow oblast, Ivanovo, Ryazan, Saratov, and Stavropol) joined by 4 more in 1994 (Altay, Krasnodar, Rostov, and Uljanovsk) began the "experiment" of establishing jury trials. It was not until 2003 when all other regions finally joined the initiative (except Republic of Chechnya, which was the last where jury trials were introduced only in 2010). This situation became a formal reason for the Constitutional Court of Russia to introduce a ban on capital punishment in 1999 (Decision of the Constitutional Court of the Russian Federation No. 3-P, 1999). The ban had lasted till 2009 when it was reintroduced on different grounds (Decision of the Constitutional Court of the Russian Federation No. 1344-O-P, 2009[2]). The main reasons for such delay included financial ones, as well as the lack of support for the new type of process by the judicial community and prosecutors. Interestingly, it was noted that even the defendants that initially expressed a high interest in the new jury system after 10 years of its functioning were much less likely to opt for the jury trial in their case (Dorogin, 2009: 80).

Currently, jury trials function at the regional courts of all subjects of the Russian Federation. According to the statistics of the Judicial Department at the Supreme Court of Russian Federation (2013) 542 cases of 1412 defendants were tried by the jury as compared to 695417 cases of 754729 defendants that were tried by a judge alone. More than 2/3 of the cases tried by the judge were cases when the defendant had pleaded guilty before the trial in exchange for a more lenient sentence - the so called 'special order' cases. 194 defendants were acquitted by the jury in 2013 while for 765 they pronounced 'guilty' verdicts. Roughly it amounts to 20% of acquittal verdicts. The judges acquitted less than 1% of defendants. But if we exclude those who pleaded guilty the figure rises up to 4.2%.

2.2 Pro et Contra: Professional and Academic Debates

Trials by the jury are an old arrangement that has many opponents and proponents. The academic and the public discussions on the jury in Russia in general reflect discussions that happen in all jurisdictions where jury is a part of the system (Pakes, 2004: 112–113). In general, the arguments that came from both sides of the barricades were neither new nor original. However, it does seem that in Russia so many hopes were vested in this "extraordinary element of the system of checks and balances" (Kovalev & Smirnov, 2014: 117) that any critique or attack on it from the legislators' or practitioners' side was for a long time perceived as a turn away from the democratic pathway, a reactionary measure aimed at destroying all achievements of a new democracy.

2 *Opredelenie Konstitutsionnogo Suda RF ot 19 noiabria 2009 No. 1344-O-P*

The proponents were to declare that trial by the jury should be viewed as a crucial step from a closed, centralized (neo)inquisitorial system of the criminal justice process towards transparent, decentralized and adversarial. It was argued that the jury plays a constructive role in forming the feeling of justice, serves as a guarantee from any attempts to infringe upon judge's impartiality, provides safeguards for citizens against unjustified accusations (Bobotov, 1995). Karnozova (2000: 303) argued that it should produce a paradigm shift in the understanding of justice. There were hopes that a 'threat' of an acquittal verdict might stimulate investigators and prosecutors to improve their performance and respect defendant's rights. In the political system that was characterized by a low citizens' trust in the state institutions including the police and the judiciary and a low efficiency of government it was argued that the jury would allow to enhance citizens participation and provide them with an effective mechanism of oversight (Kovalev & Smirnov, 2014: 117–118). Esakov (2013) suggested that jury trials are capable of positively affecting the substance of the criminal law because they allow to see its defects and alarm the legislator that the citizens approve or disapprove of certain norms.

The opponents of the jury trials in Russia, on the contrary, shared a view that the trial by the jury should be treated as a threat to Russian legal system (Alexeyev, 2005; Belkin, 2007; Bozhjev, 2006). The arguments supporting this point of view can be divided into two distinct groups.

The first group is concerned with the deficiencies in legal provisions that specify the jury trial model in Russia. The critique includes limited capacity of jury to explore the case stipulated by the law, i.e., the jury is not allowed to learn about the socio-economic status of the defendant, his alcohol or drug addictions, prior convictions, etc. Esakov (2013) argues that it seems that "the legislative authority as well as the Supreme Court of the Russian Federation are so afraid of the citizens that they do not allow in the courtroom simple human feelings and emotions". Another heavily used argument includes the insecurity of the jurors and a low level of their protection compared to other participants in the criminal trial.

The second group of arguments addresses a lack of professionalism and knowledge of legal matters, low legal culture, subjectivity and, hence, the alleged incompetence of the jurors. This incompetence is especially crucial for dealing with economic and organized crime, cases with many defendants and other complicated cases and is believed to result in the high rate of the acquittal decisions, unpredictability of the jurors' verdicts (both "guilty" as well as "not guilty"). Ryabtseva (2008) claims that one should be alarmed not with a high number of acquittals in the cases involving trial by the jury, but rather with a higher proportion of the reversals of such decisions in comparison with the non-jury cases that proves, as she believes, the low quality of verdicts. The acquittal 'bias' of the jury is heavily criticized not just by academics, but by the judges. As the research by Karnozova (2010: 371) has shown they do not understand the meaning of the institute of the jury trial considering it to be just a way to show the Western world that Russia is following democratic pathway. They believe that the jury is a hindrance for delivering justice, are not willing to share the judicial function with the lay people guided by emotions and are upset with the inability

to influence the verdict. Trying to address the 'lack of professionalism' argument Karnozova (2000) underlines that this 'presumption of incompetence' comes from a misunderstanding of the role of the jury in the proceeding that is shared by law-enforcement community. The jurors are viewed as a mere substitute for a professional judge who carry out the same task whereas they should be perceived as fulfilling a different function – to look at the case and make their judgments using trivial, commonplace models of reasoning about human behavior.

After 20 years of functioning of jury trials in Russia it does seem that the idealistic view of its potential is gone. Even consistent critics of the contemporary judicial system do not list the expansion of the jury jurisdiction as a measure of enhancing judicial independence and promoting rule-of-law (Volkov, Paneyakh, Pozdnyakov, & Titaev, 2012). Bezlepkin (2013: 259) argues that jury trials are better suited not for transitional periods, but for the times of stability and social justice, and does not believe that jury is capable of treating multiple disease of criminal justice.

3 LIMITING JURY TRIALS

3.1 No Jury for the Terrorists: The Use of Security Argument

On December 30, 2008 a Federal law No. 321-FZ was adopted. It amended article 30 of the Criminal Procedure Code (2001) excluding from the jurisdiction of the jury trials a list of 9 crimes including terrorism and crimes against the state. This law was aimed at improving anti-terrorism legislation and its adoption was initiated by a group of Duma's deputies, former Ministry of Internal Affairs and Federal Security Services officials.

Throughout the 1st decade of the XXI century especially after the events of September 11, 2001 in New York Russia was redefining its identity as an equal partner of the western countries in their fight against terrorism (Morozov, 2009). Russia's own military campaign in the Republic of Chechnya that had started in 1999 after two civilian buildings in Moscow were blown up by the terrorists was being portrayed as the crusade against Islamic terrorism. The newly elected President Putin was very determined to use any measures required to put an end to the terrorist attacks in the Russian cities. Those measures were both legal and political. A special Federal law "On countering terrorism" was adopted in 2006 to substitute the previous 1998 Federal law "On fighting terrorism". It allowed to introduce a special anti-terrorist emergency regime (the regime of contra-terrorist operation) in the regions where terrorist activity was high. Under this regime it was possible to limit certain rights of the citizens and what is more important – to destroy alleged terrorists using military weapons. Political measures were aimed at building a strong administrative vertical power that was seen to be critical to maintain order and stability in the huge country with lethal terrorist threats coming from both inside and outside. After the tragic terrorist attack on the school in the city of Beslan in 2004, these measures included abolition of the governor's elections – governors were now to be appointed directly from Moscow. In the light of this consistent and tough anti-terrorist policy, the decision to limit the

jurisdiction of the jury trial for the terrorist cases did not come as a complete surprise and did not seem to be illogical given all the critique of these trials.

The explanatory note that accompanied the draft of the bill filed to the Duma on November 10, 2008 (State Duma, 2008a) did not contain any specific reasons for its adoption. They can be found only in the Opinion of the Security Committee of the State Duma that was filed later – after the draft had been registered at the Duma (State Duma, 2008b). Main argument in favor of the abolishment of the jury trial for terrorists was that acquittal verdicts pronounced by the jury in the terrorism cases became more often in southern regions of Russia. At the Parliamentary Hearings Head of the Security Committee A. Vasilyev provided statistics that in 2005–2008 in the Republic of Dagestan and the Republic of Kabardyno-Balkarya (both are in the North Caucasus region of Russia) 12 out of 26 verdicts acquitted the defendants who were accused of committing grave crimes including terrorism (State Duma, 2008c). He claimed the region was characterized by close familial ties between citizens, often the jury members were distant relatives of the defendants and therefore biased. Vasilyev also provided several examples of cases when persons formerly acquitted by the jury had later participated in the organization and commission of terrorist crimes. He also mentioned that North Caucasus republics have even asked for suspension of jury trials in the region.

Mythen (2014: 99) analyzes how contemporary crime control policy is being shaped by the risk prevention paradigm suggests that threat assessments have become future-centric and highly speculative. They are drawing on possible rather than probable happenings. These observations can describe strategies used by supporters of the bill of 2008 in Russia. In his interview at the press-conference Vasilyev tried to convince journalists that the swift adoption of the law was a matter of life and death – he told without providing any details that there is a case pending in one of the courts and if the trial system does not change terrorists might be released (Surnacheva, 2008).

It is worth noting that the draft was not unanimously supported by the deputies. Several alternatives to limiting the jurisdiction of the juries were proposed to include temporal suspension of the jury trials in emergency situations, transferring the hearing of the case to a different region, ensuring participation of ombudsmen in such trials instead of the jury. However, alternative suggestions did not gain any support and were not thoroughly discussed. And despite the fact that neither in the documents nor during the hearing almost no arguments were provided to exclude the jury for the cases of crimes against the state these crimes followed the fate of terrorism.

Media claimed that the law was an attempt of the Federal Security Service to 'privatize' the courts and ensure that they do not pronounce decisions unfavorable to the interests of the agency (Ginzburg, 2008). An Open letter to the President of Russia was signed by a number of prominent human rights activists, participants of the program that supported the development of the jury system in Russia "Jury club", jurors, lawyers, academics, and journalists who expressed their deep disagreement with the new bill (Open letter, 2008). Federal Bar Association of Russia also criticized the law stating that ungrounded acquittals were much less dangerous for the society than the lack of certainty that every person who was

accused is really guilty (Federal Bar Association, 2009). Very thorough analysis of the law was presented by the Public Chamber of the Russian Federation, whose goal is to connect civil society and government. It claimed that the bill was not grounded on any evidence – there was no data provided by the deputies that the jurors unreasonably acquitted defendants, nor was there data supporting the claim that the jurors were threatened (Public Chamber of the Russian Federation, 2008). This argument seems to be particularly important since similar situation happened with the 2010 initiative of Moscow State Duma to abolish the jury for the hate crimes. Without any proof the proponents of this idea claimed that the prejudiced jury acquits native Russians defendants who have committed crimes against ethnic minority victims. The research by Kovalev (2011) based on thorough analysis of several case studies showed that this was clearly not the case. The jury pronounced acquittal verdicts because they had reasonable doubt in the offender's guilt and not because they were biased.

Despite lack of evidence of the necessity of the measure and all critical voices that sounded inside and outside of the Duma the bill passed swiftly. It took just a month to adopt it by the Lower Chamber of the Parliament and two more weeks to be approved by a Council of Federation and signed by the President D. Medvedev. The principle of certainty of punishment won over the principle of due process.

The bill was not the first to limit citizens' rights for the sake of security and effective anti-terrorist policy. Amendments to the Federal Law "On funeral and burial issues" (Federal Law of December 11, 2002 No. 170-FZ) stipulated that the relatives of those who were allegedly terrorists and died as a result of a counter-terrorist operation did not have the right to bury them in accordance with their religious and national traditions. The bodies were to be buried by the state. The Constitutional Court of the Russian Federation in its Decision of June 28, 2007 No. 8-P upheld this law on the grounds that in the times of fighting with terrorism such measures are aimed to protect constitutional values and are necessary to provide public peace and security, protect public order, health, and morality. Court's arguments can be described as focused on future possible, but not probable events that could happen if alleged terrorists were buried according to their religious traditions. It can be argued that the use of such arguments opened floor for similar tactics that was successfully employed by deputies in 2008. This decision had a Dissenting Opinion by the Justice G. Gadzhiev and was heavily criticized by the public (Koroteev, 2009). However, it was cited by the Duma's Security Committee in its opinion regarding the Federal Law of 2008 giving weight to its assessment of the necessity of the draft's adoption.

In 2009, 5 defendants who were accused of committing a number of crimes including acts of terrorism, participation in the military riot, preparation to the military seizure of power filed separate application to the Constitutional Court of the Russian Federation asking to assess constitutionality of the amendments of 2008. These applications were combined into one case and on April 19, 2010 a decision No. 8-P (Decision of the Constitutional Court, 2010) was pronounced that upheld the law of 2008. The Court grounded its decision in the norms of

international law and jurisprudence of the European Court of Human Rights. It held that the right to be tried by the jury has a special constitutional value but is not a mandatory constituent part of the right to fair trial and is not a mandatory condition for providing judicial protection of rights and freedoms of man and citizen. It had stated that the right to change the jurisdiction of the jury trial belongs to the federal legislative branch of government which does not have an obligation to provide the right to jury trial even to the defendants in the capital cases since capital punishment cannot be applied in Russia. However, the discretion of government is not absolute and it should be guided by the principles of justice, equality, and non-discrimination. The Court has also provided arguments that were not interpreting basic constitutional principles, but were grounded in the Court's assessment of the complexity of the current situation in Russia. The Court believed that the continuous terrorist threat required dismissing the jury from hearing the terrorism cases.

This decision was adopted by a majority of Justices. However, two of them, G. Gadzhiyev and V. Yaroslavtsev expressed their dissent. Justice Yaroslavtsev referred to the decision of the Parliament as arbitrary and argued that government's discontent with the acquittal verdicts cannot serve as a constitutionally appropriate substantiation for limiting citizens' rights to judicial protection. He also supported the view that the change of territorial jurisdiction could solve the problem of jurors' bias in the regions where citizens were members of familial clans and armed conflicts were not ceasing.

It is worth noting that, due to the nature of the proceedings in the Russian Constitutional Court that does not allow to review any parts of the law without applicant's request, the Court upheld the 321-FZ Federal Law (2008) only for limiting the jury's jurisdiction in the case of the three crimes that the applicants were accused of. However later an application was filed requesting to the Court to review the law in respect of other crimes, namely article 212 of the Criminal Code that prohibits mass riots (the applicant and 44 inmates of a prison for juvenile delinquents were accused of participating in a riot and disorganizing the normal operation of prison). The Court (Decision of June 28, 2012 No. 1274-O) dismissed the application and confirmed its position that change of the jurisdiction of criminal cases by a federal legislative authority does not interfere with the essence of the right to be judged by a court determined by law and should not be viewed as a limitation of the right to judicial protection. This decision also had a dissenting opinion by the Justice K. Aranovsky, who had mentioned that the jury trial is a valuable institution that promotes the principle of judicial independence in criminal trial and public acknowledgement of this trial. He also stated its importance for the development of the adversarial system of criminal process. Finally, Justice Aranovsky expressed his uncertainty that the goals of fighting with terrorism that were used by the Court as a solid ground for its 2010 decision can justify the same limitations of jury in other cases, namely mass riots that can happen in prison or at the football game and should not be equated with the acts of terrorism.

3.2 Jury Trials as 'Collateral Damage' of the Appellate System Reform

The Federal law of 2008 is often referred to as a law that opened the Pandora box for the further limitations of the right to jury trial. In just two years after its adoption a new bill was introduced to limit the jury's jurisdiction. However, in this case security argument did not sound.

On December 29, 2010 a Federal Law No. 433-FZ was issued to come in force on January 1, 2013. This law created a new system of the judicial review to substitute the limited cassation procedure with an appellation that allowed for a more thorough review of the case. It was a part of the judicial reform aimed at bringing the review process in accordance with international due process standards. However, the authors of the bill envisioning the increase in the caseload of the Supreme Court due to the introduction of the new system proposed to limit their jurisdiction and exclude a number of articles of the Criminal Code (1996) from it (traffic violations, violation of building construction safety requirements, bribery, crimes against justice, prison riot, illegal crossing of the border, etc.). Automatically it led to the exclusion of the possibility of requesting a jury trial for the defendants accused of these crimes. Neither the explanatory note to the draft of the bill mentions the word "jury" (State Duma, 2010a) nor the deputies at Parliamentary hearings raise the issue (State Duma, 2010b). It seems that in this case jury trial became a «collateral damage» of the reform aimed at solving technical organizational problems of the judicial system. The draft of the bill was criticized on the grounds that its provisions contradicted the position that the goals of enhancing rational organization of the branches of government cannot serve as a ground for limiting rights and freedoms as it was expressed in a number of decisions of the Constitutional Court of Russia (Smirnov, 2011). However, the bill has not attracted much attention of the public.

It appears that even Vladimir Putin was not exactly aware of how far the reform of the jury system had gone. He addressed the issue of diminishing jurisdiction of the jury trial in 2012 at the meeting of the President's Council on the development of civil society and human rights. He claimed that since the state currently does not have the capacity to provide protection of the jurors they inevitably will have an incentive to acquit the defendant. He also doubted that any of those present at the meeting would agree to participate as a juror somewhere in the south of the country where one would have to hold someone responsible for committing an act of terrorism and then walk out of the courtroom and think of his own safety and safety of his family because of such decision. Therefore he reasserted the Parliament's decision of 2008 that envisioned limitation of the jury's jurisdiction as a measure aimed at protecting the public from terrorism which is the duty of the state (President of the Russian Federation, 2012). He explicitly stated his belief that the jury trials should be used widely and it did seem that he was sincerely surprised to learn that their jurisdiction was not expanding contrary to his knowledge. It would be naive to claim that President Putin has nothing to do with the anti-jury reform and it is quite evident from his statements that he approves of limiting the access to jury for the terrorists. However, claims that the outcome of the reform depends mainly or solely on his decision (Kovalev & Smirnov, 2014: 129) seem to be an overstatement.

3.3 Death Penalty is no Longer an Argument: Abolishing the Jury for Women, Minors, Old Men and Pedophiles

The next wave of attack on the jury came in 2013. According to the Federal Law No. 217-FZ adopted on July 23, 2013, the defendants accused of committing crimes that were punishable by death penalty or life imprisonment were denied the right to jury trial if capital punishment or life imprisonment could not be applied to them as stipulated by the law. According to articles 57 (part 2) and 59 (part 2) of the Criminal Code (1996) these sentences were not to be applied to women, minors under 18 at the moment of committing a crime, and men who were over 65 at the moment when sentencing decision was pronounced. Article 62 (part 4) of the Code also provides that death penalty and life imprisonment are not to be applied in the case when a pretrial cooperation agreement has been signed by the defendant. Article 66 (part 4) guarantees that these punishments will not be applied in cases when a person was accused of preparing to commit a crime. By the same Federal Law the jury trial was also excluded for those accused of raping the minor. The bill was initiated by the Supreme Court of the Russian Federation. The main argument for its adoption was again the need to improve organizational structure of the judicial system and to reduce the caseload of the Supreme Court as well as regional courts after the new procedure of appeal was introduced. As for the sex crimes against minors it was argued that the hearing of such cases leads to intrusions in the private lives of citizens and is particularly difficult when child victims are involved. Therefore deciding on such cases should be left to professional judges (State Duma, 2013a). During Parliamentary hearings there was much less disagreement among the deputies than in 2008 when the jurisdiction of the jury was limited for the 1st time. Communist party spoke against adoption of this law, but did not provide any alternatives to solve the problem that the bill was aiming at (State Duma, 2013d).

Then came another Federal Law No. 432-FZ. Adopted on December 28, 2013, it was titled "On amending a number of legal acts of the Russian Federation in order to improve the rights of victims in criminal proceedings". This law excluded the jury from hearing cases where death was caused as a result of a rape, where victims of the sex crime were under 14 years old or the defendant was a recidivists who had been previously convicted of committing a sex crime. Federal law left these crimes under jurisdiction of the regional courts, but excluded them from jury's jurisdiction. As was stated in the note that accompanied the draft of the bill it was aimed at protecting child victims from extra psychological suffering because of the public hearing of their case and multiple reiteration of the information regarding the violent actions against a child (State Duma, 2013c). It was also alleged that members of the jury do not have special knowledge about psychological status of children which is crucial for deciding the case. This change of jurisdiction was just one out of many other measures proposed in the bill to protect rights and interests of crime victims (especially children) ensuring their full participation in the trial and some pre-trial procedures including deciding on pre-trial detention.

Deputy Irina Yarovaya, who was one of the initiators of the bill, at the Parliamentary hearings again expressed the idea that had won the hearts of

the deputies in 2008 that jury trials should be limited because jurors acquit too many defendants (State Duma, 2013b). She did not provide any exact numbers, but claimed that the absolute majority of verdicts in the cases of sexual violence against children are acquittal and explained it by the special manipulative abilities of the perpetrators. Yarovaya believed that defendants in such cases impose psychological pressure on the child and turn the trial into a television series, a show that does not protect the rights of a child victim. This time no questions or concerns were raised by the deputies and the bill was adopted.

The adoption of this law led to another proceeding in the Constitutional Court of Russia. A defendant who was accused of committing a number of crimes including rape and murder and who has not reached the age of at 18 at the moment of his trial was denied the right to be tried by the jury. He filed an application to the Constitutional Court asking whether the provisions of the new Federal Law No. 217-FZ of 2013 met constitutional standards of human rights protection. In its majority Decision of the Constitutional Court of May 20, 2014 No. 16-P the Court cited its previous position expressed in 2010 and 2012 decisions discussed above, but provided additional reasons that justified limitations of the right to be tried by the jury imposed by the legislative branch. First, it claimed that since the legislator had used an objective criteria such as the type of punishment that could or could not be applied to the accused, it was not discriminating against certain categories of citizens based on their age or gender. Second, it provided arguments that limiting the right to be tried by the jury for minors was actually aimed at enhancing and not diminishing their right to judicial protection. The Court suggested that hearing a case by a professional judge could ensure confidentiality and give minor defendant a chance to appeal the decision using standard procedure and grounds (according to the Russian rules of criminal procedure decisions that were based on jury's verdicts can be appealed only on the ground of a failure to apply the law properly, but not on the factual grounds). It was also stressed out that a minor was given the opportunity to request that his case is heard by three professional judges instead of the jury. In the opinion of the Court it served as an additional procedural safeguard of a lawful, objective, impartial and just judgment. This time the decision was unanimous, no dissenting opinions were submitted.

This Decision of the Constitutional Court (2014) clearly demonstrates that the jury trial is not a valuable and trusted institution. Any other concern is privileged over the right to be tried by the jury: security, administrative convenience, victim's rights. Even the defendant's right to appeal the decision is placed higher on the scale of rights that his right to choose the type of proceeding that he believes is better for protecting his own rights. The defendant is portrayed as a person who is not capable of making the best choice and therefore the state will make this decision for him.

4 CONCLUSION

It was not our intention to answer the question why the jury trial system does not seem to be successful in Russia. However, a few things should be noted because they appear to be important if one wants to understand why this institute was so

eagerly sacrificed in the face of uncertain security threats and why its limitation did not end there. First of all, it is worth noting that Russian post-soviet system of criminal trial was not molded upon the Anglo-Saxon adversarial system model. Rather it inherited distinctive traits of the German and French continental inquisitorial systems (Smirnov, 2000). However, instead of using their models of a mixed tribunal when a judge decides the case together with a few laypersons Russia opted for a 'classical' jury system. Secondly, given the current state of the judicial system it comes as no surprise that the acquittal verdicts by the jury are perceived as a threat to it. The low proportion of acquittal decisions by the Russian judges is not to be explained by the accusatory bias itself or lack of independence of the judges per se. It is an effect of the legal and institutional design of the law-enforcement system in Russia and the rules of criminal procedure. One of the consequences is the incorporation of the judicial system into a broader system of law-enforcement agencies that leads to the situation when the court serves not as an independent body that is to decide the guilt of the offender but as a last link in the chain of agencies that in fact approves the decisions of the previous chains on that matter (for details see Volkov, 2012; Volkov & Paneyakh, 2013). As during Soviet times the judges now view themselves as a part of the crime control mechanism and not just mere arbiters between the sides of prosecution and defense. This criminal trial system operates smoothly, orderly and efficiently, a small number of acquittal decisions allowing to correct for the inevitable mistakes in the work of the police and Investigative Committee. But jury trials with their acquittal rates of about 20% create disorder and even chaos in this efficient system. Therefore judges meet every acquittal verdict with disappointment (Karnozova, 2000: 291). And it does seem that in the political system that officially proclaims that stability and order are the main values to be promoted there is not much space for chaos especially when security is at stake.

The use of the security argument proved to be a very powerful tool of undermining undesirable and controversial institute of the jury trial. It allowed to abolish jury trials for the terrorists and state criminals and simultaneously opened the window of opportunity to expand these limitations on other cases. Decisions of the Constitutional Court of 2007 and 2010 have played a crucial role in the process. The former has created a precedent of upholding laws that limited the rights of terrorists for the sake of security. The latter (founded on the decisions regarding moratorium on the death penalty) has constructed the right to a jury trial as not being an indispensable part of the right to judicial protection but as a legacy of the times when death penalty could be applied to offenders. And it should not be surprising that such interpretation of this right might lead to a conclusion that the jury trial is better suited for the museum of constitutional history artifacts than for the real life.

Drafters of the bills aiming at the jury trial limitations did not bother to provide much evidence that the reform will reduce the risk of terrorism, protect child victims more effectively, or ensure better respect for the rights of young offenders accused of committing grave crimes. The only self-evident argument presented was the predicted decrease in the Supreme Court's caseload as a result of the reform. This demonstrates the technocratic nature of the political process

in Russia which is guided by the logic of promoting order and security even if it requires limiting human rights of the few (that eventually become many). The balance between liberty and security has clearly tipped towards the latter.

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Assessing the Preventive Anti-Corruption Efforts in Slovenia

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Purpose:

Corruption is one of the greatest and most serious social problems our country faces today. Slovenia was found to be burdened with systemic or structural corruption; therefore, one of its priority efforts should be establishing a more effective national structure and taking the most appropriate systemic anti-corruption measures. According to the fact that the previous repressive reactions against corruption have proven ineffective, it is necessary to pursue the objective of its anti-corruption measures aimed at its prevention. One of the major measures is the integrity plan, representing a successful breakthrough in the area of prevention of corruption, as Slovenia is the first in the European Union to have implemented it. Consequently, a research on integrity plans was conducted.

The purpose of the article is to highlight or emphasize the meaning of the topical preventive measure in curbing corruption in Slovenia from the perspective of public sector institutions which are obliged to elaborate the integrity plan.

Design/Methods/Approach:

This contribution is based on methods specific to qualitative research, particularly comparative and descriptive ones. Further, the methods of analysis and examination of relevant domestic and foreign primary and secondary resources and legal acts are used. As a data collection technique, the authors take interviews with integrity plan planners and producers.

Findings:

With regard to the issue at hand, aversion or unwillingness of integrity plan producers to participate in our research was found, generally. However, the detailed results of the research not only show that the current concept of integrity plan should be partially upgraded, but they also reveal that only few leading employees participate in elaborating their integrity plan.

Originality/Value:

An issue arising from the paper reflects the exceptional endeavor to establish a stable prevention national policy.

UDC: 343.352(497.4)

Keywords: integrity, integrity plan, integrity plan producers, corruption, prevention of corruption, Commission for the Prevention of Corruption, Slovenia

Ocenjevanje preventivnih protikorupcijskih prizadevanj v Sloveniji

Namen prispevka:

Korupcija je eden izmed največjih in najresnejših družbenih problemov, s katerim se sooča tudi naša država. Za Slovenijo je bilo ugotovljeno, da je obremenjena s sistemsko oziroma strukturno korupcijo, zato mora biti eno od njenih prednostnih prizadevanj vzpostavitev učinkovitejše nacionalne strukture in sprejem čim ustreznejših sistemskih protikorupcijskih ukrepov. Glede na dejstvo, da so se dosedanje represivne reakcije v boju zoper korupcijo izkazale za neučinkovite, je treba sprejeti ukrepe, ki so preventivno usmerjeni. Eden izmed večjih takšnih ukrepov je načrt integritete, ki predstavlja uspešen preboj na področju preprečevanja korupcije, kajti Slovenija je prva v Evropski uniji, ki ga je implementirala, zato je bila opravljena raziskava o načrtih integritete.

Namen članka je izpostaviti oziroma poudariti pomen aktualnega preventivnega ukrepa pri obvladovanju korupcije v Sloveniji, in sicer z vidika institucij javnega sektorja, ki morajo izdelati načrt integritete.

Metode:

Prispevek temelji na metodah, značilnih za kvalitativno raziskovanje, zlasti komparativnih in deskriptivnih. Opravljena sta bila tudi pregled in analiza ustreznih domačih in tujih primarnih in sekundarnih virov ter pravnih aktov. Kot tehniko zbiranja podatkov so avtorji uporabili intervjuje s snovalci in zavezanci za načrt integritete.

Ugotovitve:

V zvezi z obravnavano problematiko je bilo na splošno ugotovljeno, da obstaja pri zavezancih za pripravo načrta integritete odpor oziroma nepripravljenost sodelovati v raziskavi. Ne glede na navedeno pa podrobnejši rezultati raziskave niso samo pokazali, da je treba sedanji koncept načrta integritete delno nadgraditi, temveč so tudi razkrili, da le malo vodilnih delavcev sodeluje pri izdelavi načrta integritete.

Izvirnost/pomembnost prispevka:

Problematika tega prispevka odraža prizadevanje po vzpostavitvi stabilne preventivne nacionalne politike.

UDK: 343.352(497.4)

Ključne besede: integriteta, načrt integritete, zavezanci za načrt integritete, korupcija, preprečevanje korupcije, Komisija za preprečevanje korupcije, Slovenija

1 PROLOGUE

Corruption can be prosecuted after such an offense has been committed, but first and foremost it requires prevention (United Nations Office on Drugs and Crime [UNODC], 2005).

According to Dobovšek (2006, 2012), the goal of each effective strategy against corruption is to establish the environment for the prevention of corruption or the national system of organizational integrity; therefore, each organization should have elaborated its anti-corruption program based on recognition of their own vulnerable and exposed activities – i.e., its integrity plan (hereinafter: IP), developing adequate and appropriate combination of preventive measures that would support effective and quality activities and promote professional behavior in the areas particularly exposed to corruption.

In accordance with the United Nations Convention against Corruption [UNCAC] (Transparency International, 2003), corruption is no longer a local issue, but an international phenomenon that affects all societies and economies and, in particular, damages democratic institutions, national economies, and the rule of law; consequently, international cooperation for its prevention and control is needed, as well as a comprehensive and multidisciplinary approach and consistent implementation of the provisions of such areas, and also technical assistance, capacity building and institutional development for its effective prevention, detection and suppression – while not neglecting the support and involvement of individuals and groups outside the public sector; such as civil society, non-governmental organizations and community if we want the efforts to be successful (Zakon o ratifikaciji Konvencije Združenih narodov proti korupciji, 2008).

As many authors (Martinez-Vazquez, Arze del Granado, & Boex, 2007, etc.) have found, realization that corruption is a global phenomenon makes it clear that the fight against corruption is not an issue of international aid, but rather a matter of global subsistence.

Cockcroft (2012) considers that all forms of activities and efforts in fighting corruption, despite the progress made so far, are still underdeveloped and believes anti-corruption reform can succeed only with the support by active politics. *"Without this, all national efforts are meaningless – corruption will become a hostage to the growing problems of the 21st century."* (Cockcroft, 2012: 9)

Huther and Shah (2000) argue that in a largely corruption-free environment, anti-corruption agencies, ethics offices, and ombudsmen strengthen the standards of accountability. In countries with endemic corruption, however, the same institutions function in form but not in substance; under a best-case scenario such institutions might be helpful, but the more likely outcome is that they help to preserve social injustice.

Rose-Ackerman and Truex (2012) assert that real reform in fighting corruption requires systemic policy initiatives, but "a clean hands policy" in which wealthy countries hold themselves aloof from tainted countries and individuals; without doing anything, actually, adressing the underlying problems will simply further divide the world into rich and poor blocks.

Martinez-Vazquez et al. (2007) have outlined that leadership and political commitment is the key for the success of anti-corruption efforts. According to the persuasion of the latter, a comprehensive anti-corruption effort needs a double pronged approach aiming at controlling the opportunities of corruption by curative approaches based on enforcement and prosecution, while simultaneously

using a preventive approach that attacks the roots of corruption by adressing the system of incentives embedded in the public sector. Furthermore, they emhasize that anti-corruption strategies need to be sustainable, comprehensive, adequately implemented, and appropriately designed. *"But, we need to worry about other issues as how to adopt the implementation of a strategy to the particular characteristic of developing countries or, indeed, how to generate a genuine desire to fight corruption at the highest level of government."* (Martinez-Vazquez et al., 2007: 221) They (Martinez-Vazquez et al., 2007) have also found out, that the most common cause of unsustainability and failure is the lack of political will to maintain the fight against corruption. *"Political will against corruption can be supported by (or forced from) civil society's demand from the 'bottom up'."* (Martinez-Vazquez et al., 2007: 222) Nevertheless, comprehensiveness and sustainability of effort are generally not sufficient for success. Anti-corruption strategies need to be championed by the highest political officers in the country, which means the commitment of the office of the president and the entire government cabinet. Political will to fight corruption can be generated or reinforced by different stakeholders' advocacy and pressure imposed on the others. To be successful, anti-corruption efforts also need to be sustained over time. The international experience shows that one of the most common causes of failure in anti-corruption efforts is the lack of continuity in effort once the strategy has been put into motion (Martinez-Vazquez et al., 2007). *"When the most sophisticated and sound anti-corruption strategies and institutional strategies are technically in place, their success depends critically on the details of their implementation and the facto mechanisms that may bend or weaken the strategy to corrupt practices. Where these mechanisms have not been clearly identified, anti-corruption efforts may prove futile. Thus, we need to ask not only whether a country does undertake a given anti-corruption strategy or measure, but also whether they do it correctly."* (Martinez-Vazquez et al., 2007: 219)

One of such modern concrete measures of anti-corruption strategies is the integrity project, or more precisely, the IP. Dobovšek (2009: 269) points out that *"the IP is one of the most modern methods to establish legal, ethical, and professional quality of work in various governmental and non-governmental organizations. Operating with IP is one of the basic precepts of the Slovenian national strategy against corruption"*. The IP is an important institutional project and instrument an organization applies to raise awareness about strong and weak points of its operations, particularly focusing on the development and maintenance of its integrity and uncorrupted condition. As such, it is a relatively new phenomenon in the public sector (Meško, Dobovšek, & Ažman, 2014). But – if the IP is to be one of sustainable anti-corruption measures, it must not become just one of cosmetic corrections on paper only. Indeed, it is, for this reason, worthwhile to note that the IP requires operational integrity or activity, i. e., continuous project teamwork, applying to leadership as well – actually, it is inevitable. "In Slovenia, integrity plans have their custodians within each and every entity. They are individuals who are accountable for preparing, implementing, and constantly evaluating and updating their plans. Having such people on their staff enables the Corruption Prevention Commission (CPC) to work more effectively" (Organization for Economic Co-operation and Development, 2013). Dobovšek (2008: 20) argues that *"the basis for any IP is a focus*

on decent and honest behaviours" […] and that "stimulation of integrity relies on the dignity of all officials, but the leadership of the institution carries the greatest burden; and it is vital that the leading employees set an example within their own organizations". But not only Slovenia, also Serbia is engaged in IP (Transparency International, 2011).

2 THE ESSENTIAL FACTS ABOUT THE RELEVANT (PREVENTIVE) ANTI-CORRUPTION EFFORTS

The UNCAC (Transparency International, 2003; UNODC, 2004), in comparison with the other anti-corruption conventions against corruption, contains the most extensive provisions regarding the methods, means and standards for preventive measures in the public and private sector. Second chapter of the UNCAC (Transparency International, 2003) is completely dedicated to prevention, including measures in the public and private sector, and contains a model of the preventive policies, such as the establishment of anti-corruption bodies, and ensures transparency of political party funding, etc. (Transparency International, 2003; UNODC, 2005, 2009).

Meško (2009), similarly, gives a careful consideration to preventive measures. She concludes that preventive measures are a necessary and a very important factor, and the pro-active development of anti-corruption is needed. Dobovšek and Kordež (2005) also find out that a key objective to eliminate corruption is prevention, which has recently became a guiding idea of the modern criminal policy, and strong endeavours to prevent harmful consequences of corruppt practices.

The Stockholm Agreement (European Commission, 2011a; European Council, 2010) states that the best way to reduce the level of crime is to effectively prevent its emergence, and the same applies to corruption. In terms of successful crime prevention, crime prevention is particularly important, which is defined as a professional paradigm for understanding how to most effectively reduce crime. Meško (2002) defines it as a planned activity aimed at reducing and removing a wide range of opportunities for creating hazards, risks, jeopardy, interference in people's rights, especially setting obstacles to perpetrators to prevent them from committing offences while acting against the consequences of "ante delictum" and eliminating those situations that could possibly generate crime.

Previously mentioned authors (Martinez-Vazquez et al., 2007: 12) have argued that "*although corruption may be perpetrated by individuals, it takes place primarily within an institutional context – but people, not institutions, engage in corruption"*.

The European Commission [EC], in terms of strengthening the political will to tackle the problem of corruption in all Member States, announced publication of an anti-corruption report and urged the countries of the European Union [EU] to effectively reinstate or implement the existing instruments to combat corruption. EC welcomes the establisment of the measures focused on corruption in the internal and external policies of the EU. Therefore, every two years, an anti-corruption report is going to be prepared and published, including trends and weaknesses that need to be addressed, to promote the exchange of best

practices. The Report will be based on the data from numerous and various sources including monitoring mechanisms, such as the Council of Europe, the Organization for Economic Cooperation and Development, and United Nations, independent research experts, the European Anti-Fraud and Eurojust, Europol, the European Anti-Corruption Network, Member States Eurobarometer surveys, and civil society (European Commission, 2011b, 2014). In accordance with foregoing, the EC, a few months ago, released its first report and estimated that corruption costs us at least 120 billion EUR per year, which amounts to almost its annual budget, and acknowledged the current financial crisis to be result from a failure to control corruption risks, thus restricting corruption, which is one of the EU's 2012 priorities (Global Advice Network [GAN], 2013; European Commission, 2014). Acording to the estimates by the Commission for the Prevention of Corruption (hereinafter: the CPC), the value of corruption in Slovenia is even higher and varies between 1.5 and 2.5 percent of GDP, reaching, on a large scale, almost five percent of the global GDP (Fajon, 2012).

If we take a look at the previous research results by one of the foremost leading international preventive institutions or non-governmental organizations in fighting corruption, i.e., Transparency International, we get to the index of perception of corruption or Corruption Perception Index [CPI], which measures the perceived levels of public sector corruption in numerous countries and territories. The analysis of data shows that, between 2009 and 2013, Slovenia slided down the scale by 16 places (i.e. from the 27th to the 43rd place) (Transparency International, 2013), as mentioned in one recent research on corruption in Slovenia. Namely, Dobovšek and Škrbec (2012) found that corruption in our country not only impacts the rule of law and the manner of people's thinking or establishing certain values but also concluded that the most corrupt practices are actually promoted by those who are supposed to set an example of proper and honest attitude towards matters of public importance in all fields of social relations and processes. The foundations of moral and ethical values are indeed already violated by the individuals who should safeguard and expand or strengthen integrity.

According to Voliotis (2011: 555), *"the authority is the main driver of corruption, but organizations need it for coordination"*, and an independent media can be an important check on the arbitrary exercise of power by government if the government provides adequate information and the press is not controlled (Rose-Ackerman, 2008).

"Reporters without Borders 2013"[1] (GAN, 2013) ranked Slovenia at the 35th place (out of 179 countries), while the "Freedom House 2013" (GAN, 2013) ranked our country at the 40th place (out of 179 countries) and indicated the media environment as free, or "free". "National Integrity Assessment in 2011" (GAN, 2013) states the independence of the media in Slovenia is at risk due to political, advertising, economic, and equity pressures, and the same report states that the Slovenian media, however, play an important role in the prevention and reporting of corruption. Nevertheless, the "Bertelsmann Foundation 2012" states

1 *See more at: GAN. Business Anti-Corruption Portal. Private Anti-Corruption Iniciatives. Retrieved from http://www.business-anti-corruption.com/country-profiles/Europe-central-asia/slovenia/initiatives/private-anti-corruption-initiatives.aspx*

that the role of civil society organizations in Slovenia, despite their prolonged poor organization, already strengthens (GAN, 2013).

In 2004, Slovenia adopted two important strategic anti-corruption acts, i.e., the Resolution on the prevention of corruption in the Republic of Slovenia (Resolucija o preprečevanju korupcije v Republiki Sloveniji, 2004) and the Prevention of Corruption Act (Zakon o preprečevanju korupcije, 2004), but in the past ten years our country has not been as successful as it should have been. This area needs to enhance consensus on a common effort in fighting corruption, i.e., its prevention through implementation of preventive measures, which also refers to the IP.

Resolution on the prevention of corruption in the Republic of Slovenia (Resolucija o preprečevanju korupcije v Republiki Sloveniji, 2004) is actually not a legally binding regulation, but it strives for realistic, gradual, and prudent measures to tackle corruption. Its primary goals are preventively oriented, aiming at long-term and permanent elimination of the conditions generating and developing corruption, as well as at establishing an appropriate legal and institutional environment for preventing corruption and consistent enforcement of liability for illegal acts while establishing and reinstating a generally acceptable system of zero tolerance with regard to all corruption practices through various forms of education and with regard to the efficient use of internationally established standards in this area. For preventing, detecting and prosecuting corruption and successful implementing of anti-corruption measures, the assumptions arising from the the aforementioned resolution are significant, and they must be provided in respect of human rights and fundamental freedoms and be fully consistent with the Slovenian Constitution (Ustava Republike Slovnije, 1991), legislation, regulations, and international legal acts. It is necessary to highlight "the assumption" of "prevention before repression", because previous reactions to the manifestations of corruption were highly repressive and, consequently, eliminated only the concequences instead of the causes of this social pathological phenomenon (Resolucija o preprečevanju korupcije v Republiki Sloveniji, 2004).

The study conducted in the Netherlands and Slovenia in 2011 which examined the values of the organization outlines that values of organizations in both countries show considerable similarities, in spite of the fact the corporate executives also rank accountability relatively lower in Slovenia than in the Netherlands. These findings lend support to the thesis that post-socialist transition in Slovenia has not yet led to a comprehensive change in the mindset of managers or organizational culture. Formal administrative reforms, new legislation, and EU membership are apparently not (yet) sufficient conditions for completing the europeanization of public and business sectors' organizational culture (Jelovac, van der Wal, & Jelovac, 2011).

In April 2012, the CPC (Komisija za preprečevanje korupcije, 2012d) commissioned a study on quality of economic and business environment in the Republic of Slovenia conducted among Slovenian companies engaged in business activities. It was found out that the reasons a setback in competitiveness in the Republic of Slovenia derive from systemic corruption. Moreover, the CPC stated that systemic corruption in the Republic of Slovenia today is so ingrained that it may be regarded as structural. The "Global Competitiveness Report 2013-2014"

(GAN, 2013) of the World Economic Forum ranks corruption among the top five most problematic factors for doing business in Slovenia; after gaining access to financing, inefficient government bureaucracy, restrictive labor market regulation and tax rates. However, the surveyed executives report that financial resources are rarely diverted due to corruption, and companies' attitudes are considered to be relatively highly ethical. In addition to the above, investors are advised to carefully develop, implement, and enhance system integrity in investment management when operating in Slovenia.

In dealing with organizational culture, ethics needs continually to be stressed and reinforced, and clear messages need to be communicated about which behaviors are acceptable and which are not. Excuses are often given for corrupt behaviors because there is no clear message about unacceptable or dubious behaviors (Graycar & Villa, 2011). They (Graycar & Villa, 2011: 17) also assert that *"often, colleagues who transgress give the impression that their activities are what everybody does or have always done".* If there is no action against trensgressors, particularly if the behavior is widely known, then the organization has a culture problem. Workplace practices of good behavior need to be rewarded and celebrated and poor behavior penalized. Within an organization, anti-corruption culture needs to be reinforced with good personnel management and job design, reporting mechanisms for questionable behaviors, and no retribution against whistle-blowers. Robert Klitgaard's famous formula C = M + D - A (corruption equals monopoly plus discretion minus accountability) provides a basis for shaping culture and work activities (Graycar & Villa, 2011). Van Wart (2013) considers that ethic leadership requires not only clear principles and integrity but also, in the public sector and its high standards, a sense of duty, spirit, sustainability, and even sacrifice. Occasionally, such leadership tends to be built on superior self-knowledge and a sense of optimism infused with energy and perseverance. Many executives in recent scandals graduated from the most prestigious business schools. At this point it can be summarized that these scandals are not caused by executives' lack of inteligence, but rather by their self-interests and a lack of wisdom, virtue or integrity, honesty, and character (Li, Ping, & His, 2012).

After it has been found that Slovenia is burdened by systemic or structural corruption, one of the national anti-corruption strategies undoubtedly becomes an effort to establish a most effective system of anti-corruption measures. As the current repressive reactions against corruption have not proven to be effective, it is necessary to adopt anti-corruption measures that are prevention-oriented. One of such measures is the IP, which represents a new ambitious national breakthrough in the field of prevention of corruption and requires a new mental approach within the implementation of working processes whose actual efficiency was verified by a conducted analysis and research.

3 METHODS

According to an overview of the relevant literature, we conclude that no research or empirical survey has been done, at least according to the publicly available information. Therefore, we conducted a research to find out the Slovenian public

sector's opinion, i.e., the IP producers and public sector expert's standpoint, IP planners, or the CPC about the IP in the public sector with a focus on its efficiency. We chose qualitative research methods. Prior to the research, an analysis of the IP or examination of relevant domestic and foreign primary and secondary resources and legal, a review of the status of the IP as well as in-depth interviews with the IP producers and the CPC were done. The interviews took place in Slovenia in 2013. Each interview lasted for a maximum of one hour and half. The interviews were conducted on the basis of a previous written request and permission of the organization (i.e. the leadership).

A population unit consists of aproximatelly 2,000 IP producers and planners in Slovenia (N = 2,000), and we contacted 100 organizations. Our sample consists of 20 respondents (n = 20), as the rest did not agree on cooperation. We conducted convenience or an opportunity sample. The sample was generated by sending an e-mail request and full anonimity was guaranteed. The respondents were also assured that the information will be used in the aggregate form and for scientific purposes only. Prior to conducting the interview, a questionnaire or a list of questions was sent to the respondents, so that they could prepare for the interview.

Our efforts went in the direction of a respondent's full expression; therefore, all questions were fully open, and this applies to both, IP planners (employees of CPC) and IP producers. The questions were asked only by employees working in the scope of integrity or prevention of corruption. The answers were handwritten and the interviews were not recorded and transcribed or coded, as we assumed that the respondents prefer to participate in the research in such a way, especially when taking into account the nature of the topic.

Throughout the research period, special attention was paid to objectivity, and we tried to be nonpartisan. As regards validity of the gathered data, we can say that several indicators on the same variable were used, which means that more substantive domains of theoretical concepts were covered, as we tried to avoid systematic inaccuracy. In terms of reliability or repeatability of measurements, it can be said that we are going to conduct the research again, and an alternative form of a method and internal consistency method will be used.

4 OVERVIEW AND ANALYSIS

Originally, a deadline for the submission of the IP for the IP producers was June 5, 2011, but due to the novel of the Integrity and prevention of corruption Act the latter was extended for one more year, i.e., until June 5, 2012 (Komisija za preprečevanje korupcije, 2012c). By that time, the IP producers in Slovenia were obliged to elaborate their IPs, or in short, they were supposed to do an assessment of institution's corruption exposure and a plan of the measures for timely detection, prevention, and elimination of the risks of corruption and submit it to the CPC.

During the extended time, the CPC carried out lots of workshops, lectures, and open days (i.e., by March 2012, more than a hundred such events were organized), and extensive experience was shared between the CPC and the IP

producers. Within the time of examination and counting the submitted IPs, the CPC encountered problems due to a failure to update the information on the IP producer's changes concerning the legal status forms of organizations due to reorganization or transformation of the structure of organizations. For instance, some IP producers ceased to exist or got united, renamed or they changed their legal status form or structure of the organization, so the final number of the relevant IP producers was changing over the time.[2]

Notwithstanding the foregoing, the focus here was on April 2012 (i.e., two months before the deadline). As we can see below, the table 1 shows that little more than half or 1,032 IP producers out of 1,965 submitted the IP. However, the situation changed by the deadline (i.e., by June 5, 2012), which means that the number of submitted IPs most likely increased. Nonetheless, we were not interested in that date, but in that in April, i.e., an interim period.

No. & Pct. or %	*The IP producers by groups*	*Submitted IP (No.)*	*Non-submitted IP (No.)*	*Submitted IP (Pct. or %)*	*Non-submitted IP (Pct. or %)*
1	Courts (24)	23	1	95.83	4.17
2	Admin. units (58)	53	5	91.38	8.62
3	Protection work. centres (20)	18	2	90.00	10.00
4	Centres for social work (62)	54	8	87.09	12.91
5	Homes for the elderly (57)	38	19	66.67	33.33
6	Government services (17)	12	5	70.59	29.41
7	Nurseries (108)	76	32	70.37	29.63
8	People's universities (27)	19	8	70.37	29.63
9	Inspectorates (14)	9	5	64.28	35.72
10	Independent and sove-reign state bodies (11)	7	4	63.64	36.36
11	Pharmacies (24)	15	9	62.50	37.50
12	Hospitals (24)	15	9	62.50	37.50
13	Helth centres (57)	35	22	61.40	38.60
14	Primary schools (474)	284	190	59.91	40.09

Table 1: Review of the IP, April 2012, Source: the CPC (Komisija za preprečevanje korupcije, 2012a)

2 *An assertion acquired by the competent employees for the IP at the CPC in Republic of Slovenia on 15th March 2013.*

Table 1: continuation

No. & Pct. or %	*The IP producers by groups*	*Submitted IP (No.)*	*Non-submitted IP (No.)*	*Submitted IP (Pct. or %)*	*Non-submitted IP (Pct. or %)*
15	Ministries and constituent bodies (41)	24	17	58.54	41.46
16	Prosecutions (12)	7	5	58.33	41.67
17	Helth institutions (14)	8	6	57.14	42.86
18	Music schools (52)	29	23	55.77	44.23
19	Public funds (18)	10	8	55.55	44.45
20	Secondary schools (123)	58	65	47.15	52.85
21	Homes for pupils and students (18)	8	10	44.44	55.56
22	Municipalities (211)	86	125	40.76	59.24
23	Agencies (37)	15	22	40.54	59.46
24	Museums, galleries, archives and parks (79)	32	47	40.51	59.49
25	Institutes (22)	7	15	31.82	68.18
26	Other public institutions (221)	70	151	31.67	68.33
27	Public institutions for sport (44)	10	34	22.73	77.27
28	Universities, faculties and colleges (35)	5	30	14.28	85.72
29	Libraries (63)	5	58	7.94	92.06
Tog.	**1,965**	**1,032**	**935**		

As the table reveals, the approximate number of the IP producers obliged to elaborate the IP in Slovenia is 1,965 (data refer to April 2012), and they are divided into the following groups: courts, administrative units, protection working centres, centres for social work, homes for the elderly, government service, nurseries, people's universities, inspectorates, independent and sovereign state bodies, pharmacies, hospitals, helth centres, primary schools, ministries and constituent bodies, prosecutions, helth institutions, music schools, public funds, secondary schools, homes for pupils and students, municipalities, agencies, museums, galleries, archives and parks, institutes, other public institutions, public institutions for sport, universities, faculties and colleges and libraries.

5 FINDINGS

With regard to the issue at hand, aversion or unwillingness of IP producers to participate in our research was found, generally. However, the detailed results of the research not only show that the current concept of IP should be partially upgraded, but they also reveal that only few leading employees participate in elaborating their IP. In the following, some more detailed findings can be observed as well.

First, the great majority of them (87%) stated that they are already preoccupied and understaffed; therefore, the IP mostly burdened them considerably. In this respect, the respondents also answered that the Integrity and Prevention of Corruption Act (Zakon o integriteti in preprečevanju korupcije, 2011) – which is actually a legal framework for producing the IP – did not implement only the IP, but also established other new scopes, such as conflict of interests, restrictions on operations and gifts, functions incompatibility, anti-corruption clause, property registration, lobbying, etc., which consequently dictated lots of previously not known legal concepts and demanded an additional liabilities and responsibilities. To sum up, the IP initially burdened the public servants heavily whereat we are aware that our sample is small, therefore, the conclusions, in particular, generalization is not appropriate – which actually applies to all following findings.

Second, in most cases (84%) the respondents find the IP beneficial as well as viable and necessary preventive anti-corruption measure for strengthening usefulness of integrity in Slovenia, and they undoubtedly welcome and support it; however, in the form and the manner set at this phase (i.e., in the time of conducting research, not now), it is perceived more as a static document rather than a dynamic process. They also stated that "there is too much unnecessary administrative tasking within its elaborating". Thus, the IP was found slightly inelastic or exhaustive, particularly in terms of its usability. Furthermore, upgrading and refining of the IP were proposed, particularly in terms of its IT support or automation. The respondents suggested reminder's implementation and the establishment of a centralized and uniform environment for all of the IP producers. Hence, "we could be daily interactive when dealing with the IP". Moreover, they also recommended establishing "internal integrity or anti-corruption communication network", so that the employees could be daily acquainted with the content arising from strengthening of the utility of integrity, "we could identify, and cope as well as deter corruption more effectively". In a nutshell, the current IP is a beneficial as well as a viable and necessary preventive anti-corruption measure, but it is not applicable and effective enough and should be upgraded.

Third, as already mentioned, elaborating the IP merely concerned already burdened employees but not "the leading ones". In this context, the respondents argued that the "non leading employees" have no direct influence on decision-making, such as their superiors or executives; therefore, "it is necessary the latter participate in increasing or enhancing the organization's utility of integrity". The respondents answered that their executives should be primarily engaged in strengthening the integrity processes (i.e., in elaborating the IP), and

"it is not even necessary they directly produce it, they may be, for instance, just sent to a training in a similar content also referring to the IP". "It is essential the executives hear and listen to such content as many times as possible, because only that way they will consider the IP elaborating process more seriously and understand how much time it actually takes." The respondends conclude the executives do not show any particular interest in their IP or its contents at all. In short, the leadership, in principle, did not participate in producing the IP, which has been found inappropriate.

Fourth, employees from a wide range of a job descriptions were considered for IP custodians (i.e., within the range "Adviser III" – "Secretary" levels), which presents a huge difference and inequality in terms a particular public servant's salary. In facts, it means that there can even be a 16 salary-grade difference (i.e., from 28th to 44th), and it was observed that in some organizations the IP custodians are, as a result of their job description, already mainly engaged in working procesess related to quality evaluation, which, indeed, coincides with the content of the IP; however, on the other hand, there were employees to whoom the IP was simply added to the existing/quite a different/or regular job description and tasks. A finding resulting thereof is improper or unbalanced delegation of tasks according to various salary grades of the IP producers.

Fifth, the biggest issue at hand was to define corruption procedures of risks, and the smallest was to determine the measures for their reduction. Some respondents stated that defining the corruption procedures of risks was a big issue for them, because they had never faced or assessed, theoretically, a corruption risk before, and determining the right measures seemed, for example, a logical consequence.

Sixth, the IP was significantly well accepted by the "centralized" IP producers or state authorities but much less by the "decentralized" IP producers, i.e., municipalities, (public) agencies, institutions, funds, public economic institutions, centers, schools, etc., but we did not find the reasons why.

Seventh, the IP were not internalized, especially by those IP producers who have a small number of employees and elementary schools. Here, once more, we did not manage to obtain any direct answers to determine why, as the latter most strongly refused to participate in our research.

Eight, when elaborating their IP, IP producers said that they had already assessed risks three times i.e., according to the Integrity and Prevention of Corruption Act (Zakon o integriteti in preprečevanju korupcije, 2011), the Public Finance Act (Zakon o javnih financah, 2011), and the Occupational Health and Safety Act (Zakon o varnosti in zdravju pri delu, 2011); therefore, nearly two thirds of respondents called for consideration to merge the issue of risks. The participants pointed out that they have to assess risks, although different, three times per year. Therefore, they suggested combining all legally binding risk assessments under one regulation/law.

Further, more than half of the respondents emphasized that it would be necessary to establish the IP in the private sector as well, especially in banks.

Moreover, it was found that the task requires considerable recognition of the diligence, commitment, effort, contribution, support and assistance by the CPC's employees responsible for the scope of integrity, especially where there are few

such employees with regard to an extremely large number of the IP producers: only three CPC employees and almost 2,000 IP producers. In fact, the respondents appraised engagement and support of the CPC as appropriate and satisfactory, some even assessed the functioning of the CPC as more than satisfactory, but most of them assessed it as professional and accurate.

Finally, in the next phase (i.e., after examining all of the IPs), communication or a contact between the CPC and IP producers is expected (e.g., organization and acomplishment of seminars, trainings, exposure to examples of good practices where the IP producers could discuss the issues resulting from the IP, discussions about the modification and upgrading of the existing integrity utility, etc.).

As regards the IP planners' findings, we can summarize that it is the CPC's standpoint that it is crucial that every employee in the public sector is engaged in elaborating the IP, and what's more, this right and duty has arisen from the law. The CPC also considers that the IP could be partially upgraded.

6 DISCUSSION

When dealing with corruption, we should pay attention to choose appropriate measures, as the literature review (Komisija za preprečevanje korupcije, 2014; Resolucija o preprečevanju korupcije v Republiki Sloveniji, 2004; *UNODC,* 2004) on corruption showed that the most effective and comprehensive ones are those aimed at its prevention. For instance, the 3rd chapter of the the aforementioned resolution states that just repressive response to corruption leads only to the removal of harmful consequences in individual cases, while the causes, motives and circumstances determining the occurrence of corruption remain intact. Not only because of explicit global trends, but also due to greater efficiency and effectiveness of preventive action, the basic premise for the content and implementation of Slovenian anti-corruption measures are prevention, detection causes and conditions for corruption and […], while repressive function continues to be a corrective, useful for sanctioning illegal practices.

This paper has covered a considerable scope of anti-corruption measures concerned with the Slovenian case, or more precisely, with the IP project. As a matter of fact, the IP is one of the modern preventive anti-corruption measures or tool which aims at strenghtening integrity, and our country recently adopted it. In other words, it is actually called a successful national breakthrough in the area of prevention of corruption, for Slovenia is the first in the European Union to have implemented it.

As Dobovšek (2006) claims, the essence of every strengthening of integrity should not stem in bureaucratisation, but in awareness, intellectual awakening or genuine understanding of positive impacts and effects of integrity on the organization, as well as in strong opposition to corrupt, unethical, and unlawful behaviour or risks, and this especially applies to leadership.

Due to the fact that our research involved a relatively low number of participants, it can be observed that findings cannot be generalized to the whole population or to all the IP producers obliged to elaborete the IP. According to the foregoing, the results of the research have shown that Slovenia did accept the

IP, but, on the other hand, the respondents already suggested its upgrading, or more precisely, they proposed its automation and simplification of thereto related procedures for its elaboration, and the CPC partly agrees with the proposal. The research has also revealed that leadership did not participate in elaborating the IP, which is particularly worrying, as the CPC experts (Komisija za preprečevanje korupcije, 2012b) stressed that integrity of organization should be built from "top to bottom". Therefore, organizing and executing seminars, trainings, discussions, workshops, round tables, public forums, etc., where the leadership of Slovenian public sector and the CPC (as well as the IP producers or the custodians, if necessary) could discuss the content with regard to the IP and where examples of good practices would be exchanged, are highly recommended. The IP producers also suggested unifying the job title/description for the IP custodians (e.g., "The custodian of the IP and quality management"), which would actually imply the same payment for the task for all IP custodians, as well. This is definitely a proposal worthy of consideration at the national level, referring to the entire Slovenian public sector.

In conclusion, we could say the Slovenian IP project is, in principle, an important step in the direction of strengthening the integrity of our public sector, but the solution for its efficiency lies in upgrading the current phase or/and the concept that actually relates to simplification, automation, and changing mentality of leadership.

Notwithstanding the foregoing, Slovenia should continue with the IP project, for our national integrity in recent years is not exactly where we would want it; therefore, one of the objectives of the current government is to advocate for preventive measures in fighting corruption, even if it fails to bring immediate financial yields.

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