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Editorial

The articles in this issue of the Journal of Criminal Justice and Security are different in their nature but all explore very relevant contemporary criminal justice and broader security issues. This issue features six articles focusing on investigating war crimes, anti-corruption management, the interaction of risk, feeling of safety and international traveling, the issue of police management competences, the questions regarding video surveillance, and studying legitimacy in the prison environment.

Aleksandar R. Ivanović and **Lars Petter Soltvedt** analyse the work on detecting and prosecuting war crimes in attempting to provide evidence for use in criminal war crimes proceedings in the Western Balkans. They describe it is a daunting task. The authors point to the many challenges making the detection and prosecution of these crimes both difficult and complicated. They examine the problems and, on the basis of analysis, propose more effective legal and criminal investigation methods for detecting and prosecuting war crime offenders in the Western Balkans.

Eduardo Viegas Ferreira assumes that political systems, institutions and social groups, and the variety of forms in which individuals interact with them, play a major role in corruption behaviours. Existing data suggest that the corruption risk management plans had no impact on international perceptions of corruption in Portugal, or on the detection and court conviction of corruption cases.

Sophia Yakhlef, **Goran Basic**, and **Malin** Åkerström presented the qualitative study on risk, safety and freedom of movement, based on data gathered with field interviews and fieldwork observations on Stockholm's Arlanda airport in Sweden, and a Tallink Silja Line ferry running between Stockholm and Riga in Latvia. The findings suggest that many passengers at the airport and on the ferries hold positive views about the idea of the freedom of movement in Europe, but are scared of threats coming from outside Europe. The travellers created and re-created the phenomenon of safety that is maintained in contrast to others, in this case the threats from outside Europe.

The question how Croatian police officers perceive certain characteristics of police management was posted by **Ksenija Butorac, Ante Orlović**, and **Mislav Stjepan Žebec**. Authors explore the importance and existence of relevant characteristics from the perspective of police officers, and in relation to several police officers' demographic and professional characteristics. A dominant perception of the highest level of importance of technical/expert, social and strategic knowledge/skills was detected, and there were no significant and systematic effects of demographic and professional factors on the perceived importance and perceived possession of any of the three knowledge/skills categories.

Milan Žarković, Zvonimir Ivanović, and **Ivan Žarković** examines the status of and practical problems in the use of public video surveillance for police and criminal procedural purposes. The paper consists of comparative legal analysis of the Serbian system with regard to public video surveillance and the use of

recorded material as evidence in different procedures. The results provide different perspectives on changes made in Serbian law.

Finally, **Rok Hacin** and **Charles B. Fields** present a new theoretical approach for studying legitimacy in the prison environment, which we call the dual model of legitimacy in prisons. Authors argue that both groups in prison (prisoners and prison staff) should be studied simultaneously because legitimacy, which is based on the interpersonal relations formed between prisoners and prison staff, is not a fixed phenomenon.

At the Journal of Criminal Justice and Security, we hope you find the articles interesting and a good source of new ideas for further research and hopefully new papers.

Branko Lobnikar
Editor of English Issues

Uvodnik

Članki v tokratni številki revije Varstvoslovje so raznoliki, vendar se vsi osredotočajo na aktualne teme sodobnega kazenskega pravosodja in širša varnostna vprašanja. Številka prinaša šest člankov, in sicer s področij preiskovanja vojnih zločinov, upravljanja boja proti korupciji, povezav med tveganjem in občutkom varnosti pri potovanjih v tujino, kompetenc policijskih vodij, video nadzora in legitimnosti v zaporskem okolju.

Aleksandar R. Ivanović in **Lars Petter Soltvedt** v prvem članku analizirata preiskovanje in pregon vojnih zločinov z zbiranjem dokaznega gradiva za sodne postopke zoper osumljene osebe na Zahodnem Balkanu. Pri tem prikažeta različne težave, ki vplivajo na to, da je preiskovanje vojnih zločinov težko in zapleteno. Na podlagi analize predlagata učinkovitejše pravne in kriminalistične metode za preiskovanje in pregon vojnih zločinov na Zahodnem Balkanu.

Eduardo Viegas Ferreira predpostavlja, da igrajo politični sistemi, institucije in družbene skupine ter različni načini posameznikove interakcije z njimi pomembno vlogo pri pojavu koruptivnega vedenja. Obstoječi podatki kažejo, da načrti za obvladovanje tveganja korupcije niso imeli nobenega vpliva na mednarodno dojemanje korupcije na Portugalskem ter na odkrivanje in obsodbe primerov korupcije.

Sophia Yakhlef, Goran Basic in **Malin Åkerström** predstavljajo kvalitativno raziskavo o tveganjih, varnosti in svobodi gibanja, ki je temeljila na zbiranju podatkov s terenskim opazovanjem in intervjuvanjem potnikov na švedskem letališču Arlanda (Stockholm) in trajektni liniji Tallink Silja Line med Stockholmom, Rigo in Latvijo. Rezultati kažejo, da je veliko potnikov v raziskavi naklonjenih evropski ideji svobodnega gibanja, vendar jih je pri tem strah groženj, ki izvirajo iz zunanjega okolja Evropske unije. Potniki namreč varnost doživljajo in ocenjujejo v razmerju do drugih ljudi, njihova stališča pa so odvisna od dogajanja v zunanjem okolju – v konkretnem primeru so to grožnje, ki se pojavljajo za evropskimi mejami (npr. terorizem).

Ksenija Butorac, Ante Orlović in **Mislav Stjepan Žebec** so si zastavili vprašanje, kako hrvaški policisti dojemajo določene značilnosti policijskih menedžerjev. Avtorji analizirajo pomen in prisotnost relevantnih osebnostnih značilnosti in veščin/kompetenc policijskih menedžerjev v hrvaški policiji in ugotavljajo, ali socialne in demografske značilnosti policistov vplivajo no to oceno. Anketiranci so kot zelo pomembne ocenili tehnične oz. strokovne, socialne in strateške kompetence, medtem ko so pomembnost osebnostnih značilnosti menedžerjev za njihovo uspešnost ocenili kot srednje pomembne. Avtorji med socialnimi in demografskimi značilnostmi anketirancev in ocenjevanimi kompetencami niso ugotovili statistično značilnih povezav.

Milan Žarković, Zvonimir Ivanović in **Ivan Žarković** obravnavajo stanje in praktične težave pri uporabi javnega videonadzora za policijske in kazensko procesne namene. Prispevek prinaša primerjalno-pravno analizo srbskega sistema javnega video nadzora in uporabe posnetega materiala kot dokaza v različnih postopkih. Rezultati predstavljajo različne perspektive uvajanja sprememb v srbsko zakonodajo.

V zaključku številke **Rok Hacin** in **Charles B. Fields** predstavljata nov teoretični pristop k raziskovanju legitimnosti v zaporskem okolju, ki smo ga poimenovali dualni model legitimnosti v zaporih. Avtorja trdita, da bi bilo treba obe skupini (obsojence in zaporsko osebje) v zaporu preučevati istočasno, saj legitimnost, ki temelji na medosebnih odnosih, ni nespremenljiv pojav.

V uredništvu revije Varstvoslovje želimo, da bi vam tokratna številka vzbudila zanimanje in nove ideje za nadaljnje raziskovanje ter pripravo novih prispevkov.

Branko Lobnikar
Urednik številk v angleškem jeziku

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Investigating and Prosecuting War Crimes in the Western Balkans

Aleksandar R. Ivanović, Lars Petter Soltvedt

Purpose:

The aim of this paper is to present the situation regarding the detection and prosecution of war crimes in the Western Balkans, as well as to point out the main specifics or, better said, problems encountered by judicial authorities while dealing with these crimes.

Design/Methods/Approach:

The article is based on the current work of the judiciary and the prosecutor of the republics of Serbia, Bosnia and Herzegovina, as well as Croatia. We chose these three countries as the spatial framework for our research because during the civil wars in the Western Balkans most war crimes were committed on their territories. Through content analysis of existing domestic literature and our own survey research, the findings were comparatively analysed. In order to obtain further empirical and relevant information regarding the investigation and prosecution of war criminals in the Western Balkans, the methods of direct observation and analysis of the content of the judicial proceedings were applied.

Findings:

The work on detecting and prosecuting war crimes in attempting to provide evidence for use in criminal war crimes proceedings in the Western Balkans is a daunting task. This is because these crimes are both factually and legally of the most complicated sort, not the least in terms of their severity. Therefore, the research started by presenting the structure of the responsible governmental bodies conducting proceedings against war crime perpetrators in Bosnia and Herzegovina, Croatia, and Serbia. Special attention was paid to legal and practical problems in this field. The authors point to the many challenges making the detection and prosecution of these crimes both difficult and complicated. Thus, the aim of this article is to examine the aforementioned problems and, on the basis of analysis, contribute to building more effective legal and criminalistics methods for detecting and prosecuting war crime offenders in the Western Balkans.

Research Limitations/Implications:

The research results for the analysis of the investigative procedure and prosecution of war criminals in the Republic of Serbia, Bosnia and Herzegovina, and Croatia focus specifically on material collected regarding crimes committed in the period 1991 to 1999 only.

Practical Implications:

The research results can be used to develop a strategy for detecting and prosecuting war crimes by suggesting improved methods for gathering quality personal and material evidence in the Western Balkans. In addition, the paper provides information for practitioners and theorists outside of the Western Balkans currently dealing with issues related to such crimes. By familiarising themselves with the research findings herein, they will be able to expand their knowledge and use it as a basis for new research in this field. Lawmakers can also benefit from the results and make necessary amendments to the legislation and regulations of criminal procedures in the Republic of Serbia, Bosnia and Herzegovina, and Croatia to enhance the efforts in the area of countering war crimes. Further, by identifying the problems of conducting and processing investigations in the region, and by stressing the restricted prosecutorial resources, including the limited number of specialised prosecutors of war crimes, crimes against humanity and genocide, the shortage of prosecutors and support staff, as well as the lack of specialisation and expertise among defence counsel the findings of this research can contribute to the curriculum for the education of future lawyers (prosecutors, investigators, judges etc.) in this field.

Originality/Value:

The originality of this paper is reflected in the empirical study of procedures related to investigating and prosecuting war criminals in the Western Balkans. This approach explores the challenges associated with a variety of issues. As such, it may also provide valuable information to be used in creating new methodologies for detecting and gathering evidence in legal and criminalistics practice. Lastly, it can serve as a basis for other research in the field.

UDC: 341.322.5

Keywords: war crimes, investigation, prosecution, proving, legal and practical problems

Preiskovanje in pregon vojnih zločinov na Zahodnem Balkanu

Namen prispevka:

Namen tega prispevka je predstaviti stanje na področju odkrivanja in pregona vojnih zločinov na Zahodnem Balkanu. V članku želimo poudariti temeljne posebnosti oz. težave, s katerimi se pravosodni organi soočajo pri obravnavi tovrstnih zločinov.

Metode:

Članek temelji na ugotovitvah o sedanjem delu sodišč in tožilstev v republikah Srbija, Bosna in Hercegovina ter Hrvaška. Te tri države smo izbrali v raziskovalno mrežo, ker so se največji vojni zločini zgodili na njihovih območjih. Z analizo in pregledom vsebine domače literature in svojega raziskovanja so bile ugotovitve primerjalno analizirane. V duhu nadaljnjih empiričnih raziskav in zbiranja relevantnih informacij o preiskavah in pregonu vojnih zločinov na Zahodnem Balkanu smo uporabili metodo neposrednega opazovanja in analize sodnih postopkov.

Ugotovitve:

Preiskovanje in pregon vojnih zločinov z zbiranjem dokaznega gradiva za sodne postopke zoper osumljene osebe na Zahodnem Balkanu je posebej težka naloga. Razlog za to je sama narava vojnih zločinov, ki so dejansko in pravno najzahtevnejša oblika zločinov, ne nazadnje tudi zaradi svoje krutosti. V raziskavi je najprej predstavljena struktura državnih organov, ki so na območjih Srbije, Bosne in Hercegovine (BiH) ter Hrvaške pristojni za pravne in preiskovalne postopke ter pregon. Posebna pozornost je v članku posvečena pravnim in praktičnim težavam na tem področju. Avtorja prikažeta različne izzive, ki vplivajo na to, da je preiskovanje vojnih zločinov težko in zapleteno. Namen prispevka je raziskati prej navedena vprašanja na podlagi analize, ki bo prispevala k razvoju učinkovitejših pravnih in kriminalističnih metod za preiskovanje in pregon vojnih zločincev na Zahodnem Balkanu.

Omejitve/uporabnost raziskave:

Raziskovalni rezultati vsebujejo zbrano gradivo o preiskavah in pregonu vojnih zločinov, storjenih v Srbiji, BiH in Hrvaški, za dejanja, ki so bila storjena v osredotočenem obdobju od leta 1991 do leta 1999.

Praktična uporabnost:

Rezultati raziskave, ki so bili prikazani v članku, bodo prispevali tako k razvoju strategij preiskovanja in pregona vojnih zločinov kot tudi k izboljšanju preiskovalnih metod zbiranja osebnih ter materialnih dokazov na območju Zahodnega Balkana. Poleg tega bo članek koristen tudi za strokovnjake izven območja Zahodnega Balkana, ki se ukvarjajo z naslovno problematiko. S seznanitvijo dognanj, prikazanih v članku, bodo ti strokovnjaki razširili svoje vedenje in ga lahko uporabili za nadaljnje raziskave, usmerjene v vojne zločine. Zakonodajne institucije v državah Srbije, BiH in Hrvaške bodo lahko na podlagi spoznanj iz članka izboljšale in dopolnile svoje pravne postopke, povezane z odkrivanjem in pregonom vojnih zločinov. Zaradi prepoznavanja težav, pomanjkanja znanja na obravnavanem področju in omejenega števila specializiranih strokovnjakov je članek ne nazadnje namenjen tudi izobraževanju prihodnjih pravnikov (tožilcev, preiskovalcev, sodnikov ipd.).

Izvirnost/pomembnost prispevka

Izvirnost prispevka se kaže v empirični raziskavi, usmerjeni v preiskovanje in pregon vojnih zločinov na Zahodnem Balkanu. Ta raziskovalni pristop odraža izzive, povezane z raznovrstnostjo predmetov obravnave. Kot tak v nadaljevanju zagotavlja pomembne informacije, ki se lahko uporabijo pri oblikovanju novih metodologij odkrivanja in zbiranja dokazov v pravni in preiskovalni praksi. Tak raziskovalni pristop lahko služi tudi kot osnova za druge raziskave na tem področju.

UDK: 341.322.5

Ključne besede: vojni zločini, preiskovanje, pregon, dokazovanje, pravne in praktične težave

1 INTRODUCTION

War crimes are the most serious violations of international humanitarian law and their perpetrators are subject to prosecution both domestically, as well as internationally by the International Criminal Court, ad hoc criminal tribunals such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). The most important legal issue that defines war crimes is contained in the provisions of the four 'Geneva Conventions' pertaining to ''serious violation''. Besides the Geneva Conventions there are the Hague Conventions of 1899 and 1907 which were among the first formal statements of the laws of war and war crimes in the body of secular international law. These consist of a wide range of acts in all forms committed during armed conflict (Jović, 2011).[1] Prosecuting those responsible for these crimes in former Yugoslavia is one of the most crucial and civilising goals in the process of dealing with the horrific past events in this region.

Notwithstanding the fact that traumatised states are offered alternative ways to deal with horrors of the past, retributive mechanisms in the distribution of justice seem to prevail. This may be due to the relatively short time span that such mechanisms have been in operation at the international system level. There has always been an apparent reluctance to deal effectively with domestic horrors imposed by one's own. Lately, however, in an attempt to find alternative ways to domestically arrive at reconciliation and eventually sustainable peace, restorative justice mechanisms have been introduced as alternative or complementary means of distributing justice. The most important and a recently widely used mechanism in this respect is the 'truth commission'. In the countries of former Yugoslavia, however, such a means of arriving at reconstituted social relations has so far not been applied. It may be exactly because of this that the wars seem to still be going on, fought with different means. In this paper, we will make explicit some problems associated with investigating and prosecuting war crimes in the countries of former Yugoslavia, eventually suggesting that what we may call retributive justice should be combined with efforts more directed at reconciliation than revenge. This is, of course, not to divert attention away from the important legal processes of the ICTY or domestic courts in the region that – wholeheartedly or not– are involved in the fight against impunity. Instead, it is our view that, due to the imperfect distribution of justice by such institutions, complementary processes should be initiated and facilitated if one is to finally leave the traumas of the past behind. By no means do we bestow a restorative or reconciliatory function on the ICTY or the domestic courts. Our motive is simply to suggest that their role in distributing justice is less than perfect.

Before addressing issues related to the investigation and prosecution of crimes committed in the region during the 1990s, it is first necessary to mention the nature of the armed conflicts of the former state of Yugoslavia. There are several. First of all, there are the armed conflicts which took place between people

1 *While "serious violations", as defined by the 'Geneva Conventions', mainly relate to crimes committed in international armed conflicts, the Protocol and the Statute of the International Criminal Court expand the category of war crimes to crimes committed in national liberation wars and internal armed conflicts.*

who had until recently been living together in a unified state. Second, there are the armed conflicts characterised by interethnic and interreligious intolerance. In addition, there are inter-religious and inter-ethnic armed conflicts between the Catholic-Croats, Orthodox Christians-Serbs, and Muslim-Bosniaks which took place between 1991 and 1995 – not to mention other conflicts between Serbs and Kosovo Albanians in 1999, resulting in the intervention of NATO forces in March of that year. Due to the combination of the national, chauvinistic and clerical chauvinist ideologies of political leaders of the warring parties, these conflicts took on the cruellest of forms, resulting in the suffering of large populations and an equally large number of war crimes committed.

The prosecution of these crimes may perhaps be the most important civilizational challenge in dealing with the past not only for the countries in the region, but perhaps for Europe, as such. We will therefore point out some characteristics of this process and the challenges faced by criminal justice authorities as they attempt to detect the perpetrators and prove their guilt. An implied question to be asked and kept in mind throughout is whether or not these attempts are futile, leaving us with an impunity gap that seems to be ever growing, as the horrors of the past only gradually reveal themselves.

2 INVESTIGATING AND PROSECUTING WAR CRIMES OCCURRING IN COUNTRIES OF THE FORMER YUGOSLAVIA

War crimes that occurred in the former Yugoslavia are investigated and processed by the International Criminal Tribunal for the Former Yugoslavia (ICTY) and by the domestic courts of the former Yugoslav countries. These domestic courts may be located at the level of the entities (Republic Srpska and the Federation) or at the cantonal level in the Federation.

2.1 Investigating and Prosecuting War Crimes at the ICTY

The war in Croatia and Bosnia and Herzegovina following the disintegration of the former Yugoslavia was marked by grave violations of international humanitarian law such as crimes against humanity and genocide. In response, the United Nations (UN) Security Council established the ICTY in May 1993. The ICTY was set up as the international tribunal for the prosecution of war crimes committed in the territory of the former Yugoslavia since 1991. The court was established by Resolution number 827 of the United Nations Security Council passed on 25 May1993 (Mitić, 2006). The resolution came after numerous statements and reports that spoke of the terrors which had occurred during the war in the former Yugoslavia. It was the first international criminal tribunal established since the Tokyo and Nurnberg tribunals after the Second World War. The plan was for the ICTY to adjudicate only a relatively small number of cases involving the most serious of crimes before the body would cease and stop working. The Tribunal has accordingly tried to concentrate its investigations on the gravest of crimes and the highest-ranking persons responsible for them.

This tribunal has three independent bodies: the Chambers, that is to say, the judges; the Office of the Prosecutor (OTP); and the Registry. The OTP has two main branches, namely the Investigations Division which performs the functions normally carried out by the police in most states, and the Prosecutions Division which does the job of the prosecutors in national systems.

Proceedings at the Tribunal begin when the Prosecutor decides there is a *prima facie* case against an individual (that is, when he is satisfied there is enough evidence to suggest the suspect perpetrated the crimes). He may then draw up an indictment which he is then required to submit to one of the Tribunal's judges for confirmation. The judge responsible for the confirmation has nothing to do whatsoever with the investigation. He or she will review the indictment and the supporting evidence before deciding to either reject or confirm the indictment. The judge may only confirm the indictment if they are satisfied there is a *prima facie* case to answer. This means the OTP cannot indict people arbitrarily. Before a trial can begin, the accused has to voluntarily surrender or be arrested. He is then transferred to the ICTY detention unit in The Hague. Shortly afterwards, he is brought to court for the first appearance where they have the opportunity to plead "guilty" or "not guilty". If the accused pleads guilty, then there is no trial; there is simply a hearing to fix the sentence. Such a plea can also result from a plea agreement. If the accused pleads not guilty a trial follows. The trial is held in English or French and always accompanied by interpretation into the language of the accused, whether that be Bosnian, Serbian, Croatian, Albanian or Macedonian.

The main protagonists in the courtroom are the three judges who form the Trial Chamber, along with the Prosecutors, and the Defence Counsel. Unlike the system that existed previously in all of the former Yugoslavia, the roles played by these parties in the Tribunal are similar to those of their counterparts in the United States or the United Kingdom. The trial then begins with the Prosecution presenting its case, in which it seeks to demonstrate that the crimes did indeed happen and that the accused is criminally responsible for them. Thereafter, the Defence have their turn. It is important to note that the Defence does not have to prove anything as that burden lies on the Prosecutor. The Defence is given an opportunity to refute or cast doubt on the Prosecution's case. The Defence can then call witnesses and present evidence to this end. Every witness is first examined by the party that called him, the Prosecution or the Defence, and is then cross-examined by the other party. During cross-examination, the cross-examining party tries to cast doubt on the evidence given by the witness. The judges are also able to ask questions during this phase. The trials are open to the public, and the media can use the video and audio material available from the trial. However, the judges can order protective measures for certain witnesses, as long as they do not prejudice the rights of the accused. In some cases, witnesses have good reason to fear they will suffer negative consequences by giving testimony. Those consequences may vary depending on the situation and the evidence given by the witness. For example, in the case of a rape victim it is to be expected that the woman does not wish to speak about her suffering in front of the public. Or someone who witnessed crimes committed by members of his military unit may be afraid of retaliation by his former comrades. The reasons for this may vary, but

the principle is the same. If there is good reason, the Trial Chamber can approve protective measures.

The burden of proof is on the Prosecution and it must prove the accused party's guilt beyond reasonable doubt. The accused receives documents in their own language while they are in the courtroom in addition to receiving simultaneous interpretation services into Bosnian, Croatian or Serbian, English, French and, as required, also in Albanian or Macedonian. Trials *in absentia* are not practised in the ICTY, meaning a trial can only begin if and when the accused is brought to court. This principle was seen at work in the cases of Radovan Karadžić and Ratko Mladić. Both were indicted 14 years ago, but their trials did not begin until they had been arrested. Radovan Karadžić was arrested in October 2009 and Ratko Mladić in May 2012.

Every Defence Counsel must meet certain set requirements. They must all be members of their national bar association, have enough experience in criminal and international law and must also speak one of the Tribunal's official languages: English or French. Every defence team includes at least two lawyers, and they can engage their own investigators and assistants.. The accused can also represent himself, as was the case with Slobodan Milošević.

After the trial, the judges must make a judgement. They will only convict an accused if they are satisfied that his culpability has been proven beyond reasonable doubt. If the Trial Chamber is not satisfied of this, the accused will be acquitted and released. Quite often, an accused is convicted of some counts but acquitted of others. The judges then give the accused a prison sentence, which can be up to life imprisonment. The death penalty is not within the scope of the Tribunal's powers and such a sentence is never given. Both the Prosecution and the Defence can appeal either the judgement, the sentence or both. It is common for at least one party to appeal. In this case, the judgement does not take effect until the Appeals Chamber of the Tribunal has reviewed the appeal and made its own judgement. This, of course, is all in line with human rights requirements for a fair trial, as prescribed in both the UN Convention on Civil and Political Rights, as well as the European Convention on Human Rights and Fundamental Freedoms.

The ICTY has now finished with bringing fresh indictments and, due to this, there are no new investigations which can be initiated at The Hague. All other cases related to war crimes, regardless of whether initiated domestically or provided by the ICTY, must now be resolved by the national courts of the former Yugoslav states. Overall, the ICTY has indicted 161 persons, but until now has only convicted less than half of them with a final judgement, precisely 45.96% (see Table 1). So far, final proceedings have been made against 141 individuals, while 20 defendants are still in proceedings. In cases in which the proceedings were finished, 74 people were convicted with a final judgement, 18 were acquitted, and 13 had procedures referred to national courts. Moreover, 36 indictments against accused were withdrawn or the accused died. Of the 20 individual cases in which proceedings were still active in 2015, 16 of these were still pending to appear in the Appeals Chamber, while four defendants' proceedings are being conducted in the trial chamber.

Table 1: Status of proceedings

Description	Proceedings underway	Acquitted	Convicted with final judgement	Forwarded to the national courts	Withdrawn indictments or the accused died	Total
No. of persons	20	18	74	13	36	161
Percentage	12.42%	11.18%	45.96%	8.07%	22.36%	100%

Status of proceedings at the ICTY (source: International Tribunal for the Former Yugoslavia, 2015)

2.2 Investigating and Prosecuting War Crimes by Domestic Courts of Former Yugoslav Countries

New criminal procedure codes have been adopted in the various countries of former Yugoslavia since 2000. They have introduced a criminal justice system model that has more elements of an adversarial system, including abolishing the investigative judge function and transferring most of the investigation responsibility to the police and the prosecutors. Further, the trial is adversarial by nature, meaning that it is now the task of the prosecutor and defence counsel to present arguments, introduce evidence, cross-examine witnesses and actively raise objections. Most of the responsibility associated with promoting the right to a fair trial to the accused has been transferred to the defence counsel. These new codes have also introduced new instruments into the criminal justice systems, such as plea bargaining (which is applied by the ICTY) as well as opportunities for prosecutors to award immunity in exchange for testimony. As for the prosecution of war crimes by domestic courts, there are several variations depending on the country.

2.2.1 State-Level Investigation and Prosecution of War Crimes in Bosnia and Herzegovina

For a limited number of trials that were held by domestic courts during the war, most cases were referred to the prosecution, with convictions of accused most often belonging to opposing sides in the conflict, often in their absence. During the war and the first few years after the war in Bosnia and Herzegovina, a relatively small number of trials was conducted for crimes committed during the war. Many of these early trials took place at the Cantonal Courts (in the Federation) and before the district courts in the Serbian Republic (RS: Known as the Serb Republic, Republika Srpska or the Bosnian Serb Republic). These trials unfortunately progressed very slowly in the years after the end of the war. The problem was largely due to the lack of political will to address sensitive subjects such as war crimes, crimes against humanity and genocide, particularly in cases where the perpetrators were members of the majority ethnic or religious group of the area. In response to this situation, the government of Bosnia and Herzegovina established the "Rules of the Road Cases" in 1996. In accordance with these rules, Bosnian authorities committed themselves to all cases in which there was valid suspicion. War crime cases, however, were submitted to the ICTY. The ICTY prosecutors would then preside over them and assess whether these

cases contained sufficient evidence to warrant further investigation and possible indictment. Upon completion of the audit, the cases were returned to the local authorities with a tag labelling them with the letters "A" through "C"; the letters indicating which cases merited further investigation or trial.
Letter interpretations:

"A": Sufficient evidence regarding the defendant and the alleged crime;
"B": Insufficient evidence; and
"C": Unable to determine the sufficiency of the evidence.

Bosnia and Herzegovina is made up of the Federation of Bosnia and Herzegovina (Known as the Federation), the Serbian Republic (RS: Known as the Serb Republic, Republika Srpska or the Bosnian Serb Republic), and the Brčko District which is an independent region of local self-governance. At the end of 2004, war crimes trials in Bosnia and Herzegovina were exclusively supervised by the cantonal courts in the Federation, the district courts of the Serbian Republic, and the Court of the Brčko District. The appeals procedures in these cases were offered by the Supreme Courts of the entities (Republika Srpska and the Federation) or the Court of Appeals of the Brčko District.

In line with the strategy for terminating the ICTY's work, it is envisaged that cases classified as of small and/or medium complexity will be forwarded to a specialised War Crimes section of the State Court. This Section for War Crimes within the State Court is accountable for three types of cases:

- cases ceded by the ICTY under Rule 11 bis of the Rules of Procedure and Evidence of the Tribunal;
- cases referred by the ICTY and in which there is no present indictment; and
- highly sensitive cases which are reviewed in accordance with the "Rules of the Road".

It is important to emphasise that the Section for War Crimes within the State Court of Bosnia and Herzegovina has an international component, and that the judicial chambers at trial and on appeal are made up of two international judges and one local judge; the latter presiding over the council as its president.

At the state level, and within the B&H Prosecutor's office, in 2004 a dedicated war crimes department was established (Law on Transfer of Cases from the International Criminal Tribunal for the former Yugoslavia Prosecutor's Office of Bosnia and Herzegovina and the use of evidence obtained by the International Criminal Tribunal for the former Yugoslavia in proceedings in front of the courts in Bosnia and Herzegovina, 2004). This entity manages four categories of cases:

- cases referred to the national jurisdiction by the ICTY, pursuant to Rule 11 bis of its Book of Rules on Procedure and Evidence. In these cases, the indictments are confirmed by the ICTY;
- cases reviewed by the ICTY Rules of the Road Unit. These are cases in which the national institutions of Bosnia and Herzegovina conducted their investigations, and then referred the cases on to the Rules of the Road Unit to obtain its opinion. This is done in order to determine whether there is evidence indicating the existence of grounds of suspicion sufficient for a person to be put in custody;

- cases of the ICTY Office of the Prosecutor in which investigation was conducted by the ICTY, but no indictment was filed; and
- all cases commenced after the expiry of the Rules of the Road Unit's mandate in October 2004.

The Special Department for War Crimes began its work with seven international prosecutors. Although it is considered that this department's work is essential, the fact is that most war crimes cases are conducted by the Federation's cantonal courts in addition to the district courts of the Serbian Republic and the Brčko District court. This means that entity prosecutors continue to have the authority to research and process a large number of existing cases.

2.2.2 Challenges Associated with Investigating and Prosecuting War Crimes in the Cantonal and District Court System of Bosnia and Herzegovina

The work of the cantonal and district court system of B&H has encountered many difficulties in its first years of operation. These include:

- limited prosecutorial resources such as a limited number of specialised prosecutors to prosecute war crimes, crimes against humanity and genocide, and a shortage of prosecutors and support staff;
- lack of specialisation and expertise among the defence counsel;
- absence of witness protection and witness support;
- problems arising from a lack of ability or willingness of the police to investigate war crimes;
- poor cooperation between the police and prosecutors;
- courts across the country applying varying criminal codes;
- the failure to arrest and detain suspects;
- lack of a legal framework in neighbouring countries for the extradition of suspects;
- prosecutors not using all available sources for evidence;
- prosecutors and courts not referring to relevant international precedents, including the judgements of the ICTY and not applying them;
- low confidence among some prosecutors and victims, further exacerbated by a lack of initiative to reach out to witnesses;
- the need for increased cooperation and communication between state and entity authorities; and
- the large number of unresolved cases.

In addition to this long list of problems, there are challenges regarding the validity of the evidence collected during the war upon which an indictment can be based. Moreover, important evidence of war crimes has in some cases been destroyed by the local police. Problems with war crime evidence from this period exist in both entities. Evidence of crimes in violation of international law taken during the war was often based on national or ethnic identity, with the purpose of transferring political responsibility for the conflict onto the opposing side. The evidence from this period is so politicised that it is of little value. Complaints

lodged at the time may accuse an entire military unit as the perpetrator and contain little specific information, such as ballistic or autopsy information. Even evidence from military records cannot provide the basis for an indictment.

In post-conflict societies such as Bosnia and Herzegovina, political tensions remain high and many victims still suffer from the trauma they experienced during the war. Witnesses belonging to a minority group who were returned to their homes continue to be fearful, and are often unwilling to testify. Many of these people do not trust the local police belonging to judicial entities and authorities that may not provide adequate protection if the witnesses agree to testify. They are often suspected of sympathising with the war criminals or having even been be hired by one of them. After the war, the courts in B&H did not have the modern equipment needed to protect the identity of witnesses. For instance, there were cases in which testifying witnesses at war crime trials were housed in the same waiting room as families of the accused. For a witness who is prepared to testify about a traumatic event, this is an extremely problematic arrangement. In addition, witnesses appearing and testifying at trial must often travel on the same bus as the friends and family of the accused, not to mention the absence of a separate entrance for victims in the cantonal courts to shield them from unwanted exposure. Sadly these people are obliged to enter through the main entrance of the cantonal courthouse.

Due to the number of committed violations of international humanitarian law, the inconsistencies of case law for pending cases of war crimes in the courts of Brčko District and the state court of B&H, the unsatisfactory cooperation at regional levels to deal with cases of war crimes, the lack of support and protection of victims and witnesses in the courts and in the prosecutors' offices and other problems, there is an emerging view opposing the use of different courts regarding the same legal issues. Added to these challenges is the accumulation of pending cases, as well as the fact that many criminals remain unprosecuted. Moreover, during all this time no unique, exact and qualitative statistical database specific to the number and nature of these war crime cases has been established. Needless to say, this could serve as an indicator of the effectiveness of the investigations and prosecutions. Because of this, the Ministry of Justice for this region adopted a national strategy for processing such crimes in December 2008. The objectives of the strategy are (National Strategy for Processing War Crimes Cases, 2008):

- to have the judiciary in Bosnia and Herzegovina solve the most complex and highest priority pending cases within a period of seven years, as well as other pending cases within the next 15 years from the time of implementing this strategy;
- that at the state court and prosecutor's office levels there be centralisation and the updating of all war crime records and cases pending processing by the judiciary of said country;
- to provide a functional mechanism for managing war crimes cases and their placement in the state judiciary and in the judicial entities of the Brčko District, thus enabling efficient processing within a given period of time;
- for the B&H State Court to process the most responsible perpetrators with the help of agreed criteria for case selection and prioritisation;

- to equalise the jurisprudence in war crimes cases so that legal certainty and equality of citizens is ensured by law;
- to strengthen the capacity of the judiciary and the police in all of B&H so that they are better able to deal with these crimes;
- to establish effective cooperation with countries in the region on these cases so that these countries may also progress in terms of reconciliation or friendly relations;
- to provide protection, support and equal treatment to all victims and witnesses in these proceedings in all of courts of B&H; and
- to establish an appropriate legal framework for implementing newly adopted measures in the strategy and the achievement of their objectives.

2.2.3 Investigating and Prosecuting War Crimes in the Republic of Serbia

By the end of 2004, the Republic of Serbia's war crimes trials were conducted by Serbia's primary and high courts. Used for the appeals procedures in these cases were the Court of Appeal and the Supreme Court of the Republic of Serbia; both competent legal bodies. However, on 1 July 2003 the National Assembly of the Republic of Serbia adopted the Law on Organisation and Jurisdiction of Government Authorities in Prosecuting Perpetrators of War Crimes (OJGAPPWC, 2003). This law was later amended on 21 December 2004 and governs the establishment, organisation, jurisdiction and powers of governmental bodies and their organisational units in the detection, prosecution and trying of criminal offences (Derenčinović, 2012).

OJGAPPWC (2003) shall apply in the detection, prosecution and trial in the following manner:

- in crimes against humanity and international law as prescribed in Chapter XVI of the Basic Criminal Code of the Republic of Serbia (2001); and
- in serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991 as stipulated in the Statute of the International Criminal Tribunal for the former Yugoslavia (1993).

The governmental authorities of the Republic of Serbia under OJGAPPWC (2003) shall have jurisdiction in proceedings for crimes against humanity and of international law committed in the territory of the former Socialist Federative Republic of Yugoslavia. Of significance is the law's applicability to these crimes regardless of the citizenship of the perpetrator or victim.

Based on its provisions, a special judicial authority to prosecute crimes against humanity, war crimes and violations of international law in the former Yugoslavia will be established and activated. The War Crimes Prosecutor's Office for the Republic of Serbia will be seated in Belgrade, established to prosecute offences of crimes against humanity and international law. The law will also establish the War Crimes Panel of the District Court of Belgrade, which will have the jurisdiction for criminal offences of crimes against humanity and international law. This panel will be known as the "Special Court". In fact, OJGAPPWC (2003)

will establish the War Crimes Investigative Service which will exist within the ministry of internal affairs. Its purpose will be to investigate the same serious offences. At the District Court level, another legal entity will be created in Belgrade to be called the Special Department for the Support and Aid of the Victims and Witnesses of the War. This department will perform both administrative and technical tasks concerning the protection of victims and witnesses in addition to ensuring the necessary conditions for correct application of the law's procedural provisions.

OJGAPPWC (2003) provides for two very important and novel processes. The first is the opportunity for victims and witnesses who cannot be physically present to be examined by video conference link or with an international assistance in criminal cases. Another novelty is that the entire trial can be audio and visually recorded.

Amendments made to the Law on Organisation and Jurisdiction of Government Authorities in Prosecuting Perpetrators of War Crimes (2003) on 21 December 2004 provide the possibility that in a trial at a domestic court the prosecutor can use evidence collected and presented by the ICTY.

2.2.4 Investigating and Prosecuting War Crimes in Croatia

In Croatia, all district courts had jurisdiction over war crimes until 2003. In October 2003, the Law on the Application of the Statute of the International Criminal Court and Prosecution of Crimes against International Humanitarian Law (2003) was adopted. The law permitted the transfer of war crimes out of the territorial jurisdiction of the district courts of the four largest cities in Croatia – Zagreb, Osijek, Rijeka and Split. In order to justify the transfer of a case in concurrence with the law, the state prosecutor has to demonstrate that "the circumstances under which the crime was committed and the needs for conducting the proceedings" justify the transfer. In these cases, the president of the Supreme Court of Croatia must also consent to the transfer.

The Law on Amendments to the Law on the Application of the Statute of the International Criminal Court and the Prosecution of Crimes against International Humanitarian Law (2003) effective as of 26 May 2011 prescribed exclusive jurisdiction for processing war crimes for the four specialised courts of Osijek, Rijeka, Split and Zagreb. This change enabled the domestic courts to use the evidence accumulated in international criminal courts.

The law also provides for the establishment in each county court a judicial council of war crimes, composed of three judges with experience in particularly complex cases. As in Serbia, there is no international involvement in the Croatian special judicial panels. The law stipulates that the investigative department and the special panels which adjudicate on the most serious crimes must engage the most qualified judges; judges with the experience and distinctive skills to work on the most complex cases, and who have the same qualifications sought by others in the state attorney's office, including the policemen working on the investigation and the prosecution of the most serious crimes.

The law stipulates that the General State Attorney, with the prior opinion of the Collegium of the State Attorney, will appoint one of his deputies to the Office

of the State Attorney in order to prosecute the said crimes. He or she will then have the power to take any and all measures to detect, investigate and prosecute cases prescribed by the criminal procedure code. In the case a General State Attorney has not yet been assigned, one of the deputies at the office of the State Attorney will temporarily occupy the position.

3 CHARACTERISTICS OF THE INVESTIGATION, PROSECUTION AND TRIAL OF WAR CRIMES IN THE WESTERN BALKANS

When one discusses the features and specifics of the investigation, prosecution and trial of war crimes in the Western Balkans, one primarily refers to the particular problems that arise as far as these crimes are concerned.

The detection, prosecution and retrieval of evidence in criminal proceedings is extremely difficult because they are factually and legally the most complicated of crimes. Numerous challenges arise, such as the following:

- a lack of political will to prosecute the crimes;
- limited prosecutorial resources, including a limited number of specialised prosecutors and a shortage of prosecutors and support staff;
- the shocking fact that the majority of the perpetrators of war crimes belonged or continue to belong to legal structures that are performing the detection and prosecution of war crimes;
- the enormous lapse of time from the moment the crime was committed to the moment of starting an investigation;
- the circumstances in which the crimes were committed;
- the deliberate destruction and removal of evidence;
- the fact the crimes were committed in territories outside the jurisdiction of the state authorities;
- the lack of physical evidence and the unreliability of personal evidence;
- the negative influence of the media;
- complications from the great number of victims, offenders and accomplices in specific war crime cases;
- difficulties pertaining to the availability of evidence;
- problems with the intimidation of potential witnesses and the opportunities for their protection; and
- problems with victims' testimonies.

3.1 Lack of Political Will to Prosecute

All countries of the former Yugoslavia have amended their criminal legislation in an effort to create mechanisms for the effective investigation and prosecution of war crimes. They have built modern courtrooms equipped with the latest audio/visual technology so that the trials are now all recorded, significantly facilitating the work of all participants in the process. The security measures are now of the highest calibre as well. In addition, employees' salaries have improved, which

has in turn increased the quality of their work. Special prosecution assistance has been provided by international bodies and the NGOs. However, even when the justice system works relatively well, the serious ethnic and religious tensions still existing in the Western Balkans and can negatively influence the judiciary, thus contaminating the judicial process in war crime cases.

In almost all countries of the former Yugoslavia, there exists some lack of political support for prosecuting these crimes, as can be seen in the campaign attacks on judicial institutions, interference in procedures, attempts to undermine the existing reforms of the judiciary and the legislature, and in the denial of crimes as determined by final judgements. Mistrust is present despite the important judicial reforms and the lack of evidence of bias in the conducting of proceedings. This indicates a concern that adverse conditions make it difficult to defend against deliberate attempts at disinformation of the public and to carry out appropriate actions for dealing with it.

In fact, high-ranking war crimes suspects of the former Yugoslavia who are members of the police or government are considered heroes by a large share of citizens. This leads to a problem where the processing of such persons can cause resentment among the public, which then results in the authorities losing popularity or perhaps even legitimacy among the citizens. The political opposition, of course, uses this resentment for what it is worth. Accordingly, politicians in power avoid giving support to the authorities tasked with prosecuting criminals because they run the risk of losing votes.

Further, some of those suspected of war crimes made profits during the war so, by the end of the war, they had become very influential businessmen. In fact, they became so influential that they financed the campaigns of some political parties, or even formed their own political parties with great voter support. Finally, after the war some of these individuals became very influential in the field of organised crime, with a huge amount of capital at their disposal and a number of connections in the legislative, executive and judicial branches of government. Due to all of this, in certain periods there has neither been the will or courage of the leading political structures to process these persons nor to investigate their possible crimes.

3.2 Limited Prosecutorial Resources, including a Limited Number of Specialised Prosecutors of War Crimes, Crimes against Humanity and Genocide, and a Shortage of Prosecutors and Staff

A major task of prosecutors when investigating war crimes is to organise the collection of physical evidence and witness testimonies in order to remove the possibility of any suspicion of doubt before seeking an indictment. They are then to prepare an indictment for trial.

All former Yugoslav countries had have problems, especially in the initial years after the armed conflict with a shortage of prosecutors. In the war crimes context, they have a very small number of prosecutors specialising in these crimes and almost none who work exclusively on cases like these. Trials in such

cases require expertise in international law, including the Geneva Conventions, customary international law, the human rights conventions and the jurisprudence of international and hybrid courts.

Further, investigating these crimes, especially those committed years ago, requires specialist qualifications and knowledge. In the former Yugoslav countries, there is no specialisation of prosecutors by type of crime; all prosecutors involved process all types of crime. Solving this problem started with the establishment of special departments for prosecuting war crimes whose staff were trained in the field of crimes under international law. The problem of an inadequate number of prosecutors is also reflected in a universal lack of support personnel in the Office. The result of this shortage is that prosecutors are forced to do almost all aspects of work related to a case, working alone on witness interviews, the development of criminal charges and other routine administrative tasks.

3.3 The Majority of War Crime Perpetrators Belonged or Still Belong to Legal Structures Detecting and Prosecuting War Crimes

Responsibility for detecting, prosecuting and gathering war crimes evidence lies primarily in the hands of the police. However, it is difficult to expect this type of help from the police when many members of the police force are themselves perpetrators of war crimes who have either destroyed or concealed the evidence of their crimes. In fact, a significant number of individuals suspected of committing the said crimes following the former Yugoslav conflict still belong to the police, the military or the security services. Certainly some of them have retired, but they remain in contact with former colleagues and friends who exert a significant influence on the functioning of these institutions. This has all led to enormous challenges in carrying out and efficiently processing war crimes investigations. There is a reasonable suspicion that some people still in the police, the military or the security forces deliberately obstructed investigations and misdirected them. Also, it is reasonable to believe that members of these services have sabotaged the locating and arresting of war crimes suspects. These persons are tipped off in advance about suspicions and orders to arrest suspects. Further, there are reasonable grounds to suspect that members of the police, military and security services directly participate in concealing persons suspected of war crimes by providing them with shelter, transport, logistical support, false identification documents, funds, and more.

However, despite the above, it must be noted that many members of the War Crimes Investigation Service have revealed a high degree of efficiency and professionalism when acting according to the requirements of the War Crimes Prosecutor.

3.4 Large Time Lapse from the Moment of Crime Perpetration to the Initiation of Investigation

War crimes in this region took place in the period between 1991 and 1999, whereas the actual investigation of these crimes and their perpetrators is happening only

at the present time. The great lapse in time between the crimes committed and the start of the investigating these crimes provides another complication. In the detection and prosecution of crimes in former Yugoslavia time has not been a good ally because the high-ranking perpetrators at the time the crimes took place were in aged their fifties or older. In other words, many of them have died. The situation is similar with older witnesses or victims who have also died or whose paths in life have taken them on different parts around the world. Unfortunately, judicial authorities find it difficult to track the latter.

Younger perpetrators between 17 and 30 years and who were lower ranking members of the police, the military, the security or the paramilitary may have gone to South Africa and to Latin America where for work they protect narcotics bosses. Some are even mercenaries fighting in armed conflicts in Asia and Africa, making them subsequently unavailable to the state police and prosecuting authorities.

3.5 The Circumstances in Which Crimes Were Committed

War crimes committed during the armed conflict prevented the collection of physical evidence such as written reports, crime scene examinations, ballistics and other forensic reports. This caused valuable material evidence to be lost forever because the duration of the war inhibited authorised services from making it to the crime scene and taking investigative measures.

3.6 The Deliberate Destruction and Removal of War Crimes Evidence

The perpetrators of war crimes have systematically covered up evidence of their crimes, of the murder of war prisoners, civilians, the wounded and the war-time sick. Basically the perpetrators have done this by removing bodies, relocating bodies from mass graves to individual graves, burning bodies and by removing and replacing clothing and personal belongings in order to impede the identification process (Manual for investigations of war crimes, crimes against humanity and genocide in Bosnia and Herzegovina, 2013).

For example, there are testimonies of the police and the military stating that the Yugoslav People's Army systematically transported the bodies of Albanians killed during the armed conflict in Kosovo to the Trepca mining complex near Kosovska Mitrovica, where they were burned. According to some estimates by the secret services, between 1,200 and 1,500 bodies were destroyed in this way. However, post-war investigations by the Organization for Security and Co-operation in Europe (OSCE) failed to find evidence of this on the ground. In May 2001, the Serbian government announced that a truck full of Albanian corpses (86 bodies) had been thrown into the Danube River in Serbia during the Kosovo war. In July 2001, Serbian authorities announced they had found four graves in Serbia containing a total of 1,000 Kosovo Albanian bodies. As a witness at the trial of eight police officers for crimes against Albanian civilians during the Suva Reka massacre, Dragan Karleuša, a retired inspector from the Ministry of Internal Affairs of the Republic of Serbia, testified that there are graves containing

the remains of ethnic Albanians in Lake Perućac (Republic of Serbia). So far, about 800 of the remains of Albanians in Serbian mass graves have been exhumed and returned to their families.

Covering up war crimes also occurs by transferring bodies from mass graves to several secondary mass graves, as well as by the systematic destruction of documents describing the involvement in these crimes of certain individuals from the military, the police forces or the political establishment.

3.7 Crimes Committed in Territories outside the Jurisdiction of State Authorities

The collection of evidence is especially difficult because the crimes were committed in territories actually outside the jurisdiction of the state authorities. While it would be normal for the state to exercise criminal jurisdiction for acts committed inside its territory, or for acts committed by its citizens, international humanitarian law provides universal jurisdiction for grave breaches of the notion of war crimes. Thus, this law requires all states to prosecute war criminals regardless of their citizenship, the citizenship of the victim or of where the war crimes were committed does not have its own citizenship. In this region (former Yugoslavia) war crimes occurred, as a rule, inside an area not presently under the jurisdiction of the state authorities; these authorities having the responsibility to conduct proceedings against the perpetrators of these crimes. The witnesses, on the other hand, are usually located outside the state in which the crimes are investigated. These facts point to the need for regional cooperation which would be in addition to the above, and consist of the possibility and the right of a state to carry out certain investigations in the territory of other states in the region. In this way, national authorities competent in the prosecution of war crimes would have free access to the scene, the victims and the witnesses which would be of great value for the effectively resolving these cases.

Regarding war crimes in the former Yugoslavia there is a problem of witnesses' willingness to participate in the process if it takes place in another country. There is also lack of professional support teams for such witnesses. Some countries, however, have entered into an agreement to exchange information and cooperate in the investigation of such crimes. For example, such an agreement was signed by representatives of the Republic of Croatia and the Republic of Serbia. With this agreement, they have committed themselves to exchange information, reports, documents and information assisting in the investigation of war crimes.

The largest obstacle to regional cooperation in these cases is the ban on the extradition of states' citizens between countries in the region. Hence, extradition is prohibited by the laws of Bosnia and Herzegovina, of Serbia and of Croatia. As the suspects often have dual nationality or are foreign, it is frequently impossible to ensure their presence at trial. Therefore, 'a space for impunity' has been created, which of course poses a serious obstacle to justice for many victims.

3.8 Lack of Physical Evidence and the Unreliability of Personal Evidence

The war crimes in former Yugoslavia happened 15 or 20 years ago, and the detection and prosecution of the offenders is only now underway. This has resulted in a scarcity of physical evidence. Given the passage of time, in most cases there is not enough physical evidence showing a connection between a specific person and a specific crime. Corpses are frequently found in an advanced state of decay so that it may be difficult to conclude whether a person died in legal battle or they died as a civilian or a prisoner. Yet a very small amount of physical evidence presents itself in the following forms. Various objects are found in mass graves, such as personal documents, blindfolds and wires used to bind a person's arms, personal items, canned food, and more. Also, there are certain documents that may indicate the identity of the people who were in the camp before they were killed. Then there is evidence that may appear in certain written correspondence between military leaders, as well as transcripts of intercepted conversations between military and police officers. In addition, there are sources of material evidence which can serve as images and photos. In the majority of cases, the most important pieces of evidence are eyewitness testimonies, other witnesses and witnesses who are also victims. However, it should be noted that their view of past events may be unreliable, given the passage of time and the fact that the witnesses of war crimes are often traumatised.

3.9 The Negative Influence of the Media

Many people in the countries of former Yugoslavia are against the trials by the ICTY. In addition, some believe that the suspects from their own countries are heroes or patriots; people who were simply following orders to defend their homeland and their people. They believe that judging these people makes no sense anywhere.

This sentiment is present every day, be it in print, on television, on the Internet, the radio or in other forms. Members of the media may go so far during a trial as to often express their own views and draw their own conclusions on important facts from the legal proceedings. The media may conceal or openly root for its 'candidates' and underestimate the court and the judicial organs. Very often, the media publishes biographies of suspects, depicting the honourable origins of the person's family, the difficulties he or she has had to face in life, or interviews with close relatives in which they praise the suspect as a good and honest person. These pressures and circumstances usually have a negative impact on participants in the legal process; they must resist, remain cool-headed and clear of mind, and strictly keep to the law and the relevant facts. There have also been cases in which the identity of protected witnesses has been revealed by the media. These situations have, of course, a negative influence on the acquisition of new witnesses for the legal process. Other challenges related to the detection, prosecution and trial of war crimes in the Western Balkans involve complications due to the large numbers of victims, offenders and accomplices in specific cases, difficulties pertaining to the

availability of evidence, problems related to intimidation of potential witnesses and, finally, problems with the testimony of victims themselves.

In many cases, witnesses of war crimes from former Yugoslav countries received inadequate protection and, due to intimidation, were reluctant to give their testimony in court. In fact, there have been cases where they changed previously given testimony. Naturally, victims play a crucial role in war crimes proceedings. In interviews with the investigator and by giving their testimony in court, victims contribute to the process of establishing the truth regarding war crimes. This requires considerable courage on the part of the witnesses.

Fifteen years after the war, witnesses are simply less willing to testify, and that is the main problem – many have returned to their homes and are again friendly with neighbours from the other ethnic group. Many victims are reluctant to talk about their war experiences under any circumstances and prefer to move on with their lives. More than a decade since the end of the conflict, many have died or left the country, and the testimony of the remaining witnesses is less detailed and, thus, less useful for the prosecutors. If witnesses are elderly, many have forgotten many details of their experiences; especially if the period from crime to trial is more than 20 years. In the meantime, much has happened in their lives and they choose to forget what they saw. However, it has been noted that some witnesses simply refuse to speak about what they know. Perhaps, this is one form of psychological defence mechanism. Certainly, these people do not want to remember a trauma they experienced 20 years ago and which they no longer wish to be a part of.

4 ALTERNATIVE PATHS TOWARDS JUSTICE

Dealing with a legacy of war crimes and human rights violations is a common challenge in post-conflict societies, perhaps particularly so in the countries of former Yugoslavia. The violent conflicts referred to above, the terrible legacy of human losses and material destruction have contributed to a widespread and across-the-board sense of victimhood on all sides of the different conflicts. In the aftermath of the wars, the trauma seems to live on, cemented in such institutional mechanisms that seek to render justice to the bereaved.

As we have seen, these attempts at providing justice though traditional retributive mechanisms are fraught with several problems – particularly since the ICTY's mandate is about to expire. Additional restorative mechanisms have to be sought and applied if reconciliation and the reconstituted severed relations are to provide the basis for a sustainable peace both inside as well as between countries in the region. A number of restorative justice scholars have argued that criminal justice proceedings are inherently problematic for the victims of the most serious crimes (Zacklin, 2004). They demonstrate the lack of concern in judicial proceedings for the trauma suffered by these victims. "Proceedings are deliberately and strictly centred on someone else: the alleged perpetrator – and not on those who have taken the brunt of the wrong done" (Savage, 2011: 10). Trials are often designed to establish guilt in deliberations between the prosecutor's office, the defence and a judge. In such environments, traumatised victims may find the process as such

unbearable, and perhaps resist an aggressive confrontation with a violent past. However, it should be acknowledged that the application of restorative justice mechanisms may only be possible where a confession is already established (Savage, 2011) or "documents of proven authenticity and testimony vigorously cross-examined and judicially and impartially analysed" (Robertson, 2006: 621).

Since there is no consensus on the causes and nature of the violence committed on the territory of former Yugoslav countries, it should be no surprise that agreement is difficult to find on how to best arrive at a consensus on how to build a common future. Whereas retributive justice is concerned with the past or what has already transpired, restorative justice is mostly concerned with the future. Adopting a 'bottom up' approach, civil society both domestically in the different countries as well as internationally via the efforts of NGOs such as Human Rights Watch and the Helsinki Federation has attempted to address the problem of impunity, both in cooperation with as well as complementary to traditional retributive mechanisms. As we have seen above, the increasing number of domestic prosecutions, including the transfer of cases from the ICTY, has been accompanied by several challenges: politicisation and political interference, selectivity based on the ethnicity of those indicted, together with capacity-related problems, unfair media representations and inadequate protection of witnesses. According to Kostovicova (2013: 104), "civil society has stepped in where the institutional capacity of states have been lacking while continuing to perform a watchdog function in relation to policies awarding impunity, avoiding accountability and marginalizing the victims of mass atrocities".

There is no lack of international involvement in trying to establish democracy, respect for human rights, and the rule of law in Western Balkan countries. The UN, the OSCE, the Council of Europe, and the European Union (EU) have consistently involved themselves in trying to stimulate a peaceful path towards the future. A recent change in EU policy towards the region seems to suggest a combination of 'top-down' and 'bottom-up' approaches to transitional justice and reconciliation in the Western Balkans. The EU may have come to appreciate the relevance of the restorative mechanisms of transitional justice, which prioritise reconciliation and recognition of the suffering of victims, as opposed to retributive judicial mechanisms that have been criticised for their top-down and technocratic approach to post-conflict justice. Ten years after the Thessaloniki Declaration, the debate about war crimes that was initially prompted by the ICTY has been internalised in the Western Balkans, albeit without any consensus on the causes, nature and consequences of the violence, or the redress for past wrongs within or between the states of the former Yugoslavia. This is despite a call made in 2006 by the United Nations General Assembly for verification of the facts and the full and public disclosure of the truth regarding violations of international human rights law and international humanitarian law (United Nations, 2005).

It has been said that the wars in the Western Balkans started at the universities. Nationalist propaganda in both the classroom and the libraries encouraged stigmatisation of 'the other'. All being well, new generations of hopefuls – students and non-students alike– will not inherit the hate of their parents. A combination of means to avoid that is necessary. The shortcomings of the courtroom have to

be complemented by transparent policies and a civil society empowered with the ability to move on – to create a common and inclusive future rather than perhaps dwelling too much on the horrors of the past.

5 CONCLUSION

Based on the foregoing, we may conclude that investigating and prosecuting war crimes in the Western Balkans is a complex job; work that will continue over generations in order to deal with the many war crimes cases that have occurred in the area. To avoid the infamous impunity gap, they should all be thoroughly investigated and their perpetrators adequately punished.

Even though the first investigations started more than 15 years ago, a large number of unexplored and unresolved cases remain. The reason for this is that research of this type of crime is more complicated and difficult than traditional crime investigations. Based on an analysis of the specificity of the armed conflicts in former Yugoslavia, we can conclude that none of the countries involved in the conflict has sufficient technical and human resources to effectively investigate and prosecute war crimes. As evidenced and argued elsewhere, an analysis of statistical data on prosecuted and adjudicated cases of war crimes suggests that the effective investigation and prosecution of these most serious crimes require mutual cooperation between the police and the judicial authorities of the countries of former Yugoslavia.

Considering the existence of armed conflict around the world including the Arab Spring, the conflict in Afghanistan, in Syria, Israel's recent invasion of the Gaza Strip and now the conflict currently taking place in the Ukraine, it is evident that research in the field of war crimes prosecution will continue to be of immense importance. In this regard, the experience of the former Yugoslav countries can be valuable to both domestic and international judicial bodies dealing with such investigations, and for the prosecution of possible war crimes that happened during these conflicts.

Based on the analysed problems judicial authorities face when detecting and prosecuting war crimes in the former Yugoslavia presented in this article, we can draw certain proposals and suggestions that could be underpin strategies for detecting and processing war crimes in future armed conflicts anywhere in the world. These proposals and suggestions would help reduce these factors' impact in hindering the detection and processing of war crimes and thereby make the work of judicial authorities more efficient.

The first and main aspect concerns the existence of institutional mechanisms to work on such a complex type of crimes. This includes the determination of the prosecutor's offices and courts which will be in charge of conducting investigations and proceedings in war crimes cases. Based on the experience from former Yugoslavia, we believe it is justified that for detecting and prosecuting war crimes an international *ad hoc* tribunal should be established, as happened in the case of former Yugoslavia. This is primarily because societies in armed conflict and post-conflict societies, at least in the initial period after the cessation of armed conflict, are unable to adequately respond to the problem of solving war crimes.

Therefore, we believe that in any case it is appropriate that the prosecution of persons at the highest levels of responsibility should be performed in front of an international *ad hoc* tribunal and only for as long as a stable justice system has not been established at the national level in countries where the conflict occurred, and then all the processes should be transferred to the national judiciary. We believe that the countries that were in conflict thereby demonstrate their strength and determination to punish those who committed war crimes, which is a*conditio sine qua non* for establishing reconciliation among peoples who were in conflict, and confidence in the state judiciary, which will be discussed in the second part of the conclusion. When we speak of the organisation of the judiciary dealing with the detection and prosecution of war crimes at the national level, in this paper we can see three different types: In Bosnia, where only 'sensitive' crimes are within the jurisdiction of the special court and the prosecutor's office, while the other cases of war crimes would be prosecuted at the district level. Then in Croatia where this is placed under the jurisdiction of the ordinary district courts in four cities, and in Serbia where a special court and special prosecutor's office are established whose jurisdiction relates to investigating and prosecuting all war crimes that were committed in these regions.

Each of these options has its own advantages and disadvantages. However, we consider that work on these types of crimes in post-conflict societies should in no circumstances be in the jurisdiction of the ordinary courts and prosecutor's offices; instead, a special law should establish a special prosecution office and a special court for investigating and prosecuting these crimes at the national level. This is because work on this type of crime is very demanding and requires the mobilisation of all resources, and regular courts and prosecutors are overburdened by other cases that do not fall within the scope of war crimes, and are therefore unable to engage fully in these cases. Also, we believe that the concept whereby several courts in the same country are in charge of resolving war crimes is wrong because it allows for variation in implementing the provisions of substantive criminal law on war crimes. Therefore, we suggest as the most effective solution, which is implemented in the Republic of Serbia, the adoption of a *lex specialis* law on establishing a so-called Special Prosecutor's Office and a Special Court for war crimes.

Moreover, these institutions should be technically well-equipped for such trials, especially for the protection of witnesses. In addition, the headquarters of these institutions should in no circumstances be in an area that was affected by the armed conflict, but should be located outside. In the case the entire territory of a country was affected by the armed conflict, the headquarters of these institutions should not be situated in areas where the crimes were committed, but in areas where conflicts and therefore the crimes were minor. We believe the practice of locating special courts and prosecutors' offices in the capital, as was done in Bosnia or Serbia, is wrong. We think that the seat of such specialised judicial bodies should be somewhere in the province, mostly in cities characterised by a high degree of multiculturalism and interculturalism. This is because in such places the prosecutor's office and the court should be under less public pressure and negative media influence, while in the capitals they cannot avoid that.

Specifically, the capital cities in the Balkans, as a rule, are places that carry the most votes, and all political options are competing for influence over voters in capital cities. And one of the ways is to stir up the public and incite protests and riots whenever proceedings for war crimes are initiated against someone which they are trying to present as a 'patriot' and protector of their people. We think that in smaller and more peaceful political environments the functioning of special prosecutor's offices and courts would be under less public pressure.

Another problem for the judicial systems of these states has been the lack of staff. We think that it is crucial that, even when conflicts persist, through international cooperation foreign experts with experience in investigating these types of crimes should be engaged. In this way, their direct participation in the investigations represents important expert help for domestic investigators or prosecutors. In addition, we believe that so-called special courts, especially in the case of civil armed conflicts, as happened in the former Yugoslavia, at the national level at least in first period should have an international component, or that Chambers at trial and on appeal consists of two international judges and one local judge, who is also the president of the council. This would thereby overcome the problem of the lack of judges specialising in this type of crime on the one hand, and ensuring the principle of objectivity, when the accused is a person belonging to a minority ethnic group, on the other hand.

Further, a necessary condition for the effective detection and prosecution of war crimes is the existence of a witness protection programme. Witnesses provide crucial evidence and this paper has outlined what kinds of problems can make witnesses of war crimes refuse to cooperate with domestic criminal justice authorities. In this sense, it is necessary to develop a stable system of witness protection, chiefly including secure physical protection. This means strict rules for selecting persons to work in a special unit for providing protection to witnesses should be laid down. In such units, only those persons without any involvement in the armed conflicts should be selected. Moreover, through legislation and international cooperation agreements conditions should be created for engaging members of foreign security service to provide witness protection. In addition, the necessary international cooperation would be reflected in facilitating the placement of witnesses in the territory of another country pending trial. It should also be taken into account that most witnesses of war crimes come from a small community where it is not difficult to notice someone's absence for several days, which may affect that person's labelling among the public as a protected witness. Therefore, in such cases it would be most appropriate to obtain testimony by a video link. Also, we can see there is a serious problem in connection with disclosing the identity of protected witnesses. We consider that countries *de lege ferenda* should strengthen witness protection by codifying a particular criminal offence of disclosing the identity of a protected witness and related punishment. We believe that where such an act and harsh penal policy have been prescribed, witness protection has been more effective.

In this article, we have described attempts at the post-conflict administration of justice related to the most serious violations of international humanitarian law in Bosnia and Herzegovina, Serbia and Croatia since 1992 until today. After broadly

outlining the different judicial mechanisms at play before both the ICTY and the domestic courts of former Yugoslav countries, we suggested that if reconciliation and reconstituting the severed social relations between different ethnic or religious communities are important goals, then the retributive mechanisms of administrating justice will not suffice.

Punishment and reconciliation are closely linked. As Arendt (1958: 241) put it, "men are unable to forgive what they cannot punish and are unable to punish what turns out to be unforgivable". More recently, one has come to recognise that the purposes of trials should go beyond simple retribution and vengeance (Minow, 1998).

Although essential to combat the tendency of denial, legal proceedings are, as we argued above, are insufficient. This is not least due to the identified judicial process shortcomings such as limited prosecutorial resources, deliberate destruction and removal of evidence, the negative influence of the media and, finally, perhaps the problems related to potential witness intimidation and opportunities to protect them.

In a recent policy brief note, Stahn (2015) attempts to move beyond the retributive vs. restorative divide, suggesting that a more appropriate emphasis on reconciliation by way of argument in legal discourse should depend on the context. He seems to suggest that such an emphasis should be more pronounced after identity-based conflicts of the nature we have focused on here. In such cases, the victim's suffering should be brought forward at the expense of more formal forms of accountability. By focusing more on the suffering of the victim rather on the harm done by the offender, positive community relations may be restored more easily – not on the basis of vengeance but on a platform of empathy.

Stahn (2015) demonstrates how the acknowledgement of guilt through guilty pleas has been used as means for reconciling punishment with acknowledgement of wrong as an apology to both the victim and society as such. However, as he states, such admissions should not be taken at face value: "… Mrs Plavsic's guilty plea in 2003 was initially heralded as a significant move towards the advancement of reconciliation" (Stahn, 2015: 3). However, after sentencing, she changed her mind, retracted her guilty plea and her expression of remorse. This experience demonstrates, according to Stahn (2015:3), the fragility of negotiated justice. "If an apology is offered in return for sentence leniency, it might not benefit reconciliation".

Clearly, if one is to go beyond recent practice in international criminal prosecutions, not only should the retributive vs. restorative divide be addressed, but so too should the ideological divide between 'the West and the Rest'. One should move beyond the symbolic nature of an internationalised criminal tribunal and face real challenges such as those presented, for example, by the African Union, as far as both case selection and exceptionalism are concerned.

An increasingly sophisticated application of international criminal law needs to address – like it or not– both the societal and political consequences of its administration. If not, we may see the demise of the new and still emerging international criminal order.

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The Genesis and Impact of Anti-corruption Policies in Portugal: A Preliminary Assessment of Corruption Risk Management Plans

Eduardo Viegas Ferreira

Purpose:

The purpose of this paper is to assess the impact of public services and corporations' corruption risk management plans on international perceptions of corruption in Portugal and on the detection and court conviction of corruption behaviours.

Design/Methods/Approach:

This research assumed that political systems, institutions and social groups, and the variety of forms in which individuals interact with them play a major role in corruption behaviours. Corruption risk management plans have formed part of the Portuguese anti-corruption strategy since 2009 and their design and implementation has been politically and socially contextualised. Official data on corruption provided by governmental and non-governmental agencies and covering the period between 2001 and 2014 were used to identify corruption trends before and after implementation of the plans.

Findings:

Existing data suggest that, at least until 2014, the corruption risk management plans had no impact on international perceptions of corruption in Portugal, or on the detection and court conviction of corruption cases.

Research Limitations/Implications:

The outcome of a single anti-corruption measure, such as the plans, is difficult to identify and isolate since several other measures are activated or remain active during the same time period, as do several social, political, economic or cultural factors. This first and preliminary assessment will have to be followed by a more in-depth, qualitative analysis.

Originality/Value:

This paper highlights the need to assess the outcomes of every anti-corruption measure. The corruption risk management plans are a time- and resource-consuming measure that must be further tested with regard to its social and political benefits.

UDC: 343.352

Keywords: corruption, corruption risk management plans, crime prevention

Razvoj in vpliv protikorupcijske politike na Portugalskem: preliminarna ocena načrtov za obvladovanje tveganja korupcije

Namen prispevka:

Namen prispevka je oceniti vpliv načrtov za obvladovanje tveganja korupcije, ki jih uporabljajo v javni upravi in korporacijah, na mednarodno dojemanje korupcije na Portugalskem ter na odkrivanje in obsodbe koruptivnega vedenja.

Metode:

Pričujoča raziskava predpostavlja, da igrajo politični sistemi, institucije in družbene skupine ter različni načini posameznikove interakcije z njimi pomembno vlogo pri pojavu koruptivnega vedenja. Načrti za obvladovanje tveganja korupcije so od leta 2009 del portugalske protikorupcijske strategije. Njihovo oblikovanje in izvedba sta bila tako politično kot tudi družbeno kontekstualizirana. Za ugotavljanje trendov korupcije pred in po izvedbi načrtov smo uporabili uradne podatke vladnih in nevladnih agencij o korupciji med letoma 2001 in 2014.

Ugotovitve:

Obstoječi podatki kažejo, da vsaj do leta 2014 načrti za obvladovanje tveganja korupcije niso imeli nobenega vpliva na mednarodno dojemanje korupcije na Portugalskem ter na odkrivanje in obsodbe primerov korupcije.

Omejitve/uporabnost raziskave:

Izide enega ukrepa za boj proti korupciji, kot so načrti, je težko prepoznati in izolirati, saj so v istem časovnem obdobju potekali ali bili aktivirani številni drugi ukrepi, prav tako pa številni socialni, politični, gospodarski in kulturni dejavniki. Prvi in preliminarni oceni bodo morale slediti bolj poglobljene, kvalitativne analize.

Izvirnost/pomembnost prispevka:

Ta članek poudarja potrebo po ocenjevanju rezultatov vseh protikorupcijskih ukrepov. Načrti za obvladovanje tveganja korupcije so dolgotrajni ukrep, ki potrebuje tudi določena sredstva in vire, zato jih je treba še dodatno preskusiti glede na socialne in politične koristi.

UDK: 343.352

Ključne besede: korupcija, načrti za obvladovanje tveganja korupcije, preprečevanje kriminalitete

1 INTRODUCTION

Corruption reduces economic and social efficiency and results in distortions. Generally speaking, corruption causes harm. It damages the potential for sustained

growth or other aspects of the economy and society, even when corruption seems to be a more efficient way of bypassing abusive government regulations, or to bring about other benefits. As Klitgaard (1988) clearly stated a long time ago, the harmful effects of corruption greatly outweigh its (occasional) social or economic benefits and, although the effects of corruption are still disputed, it can be generally assumed that corruption has a deleterious, often devastating effect on governance and on economic and political development.

Corruption behaviours are linked to a wide array of political, social, economic and cultural factors. One single factor is usually not sufficient or necessary to explain or predict corruption. Limited or occasional corruption behaviours can be explained by individual factors, ranging from persistent or occasional financial strain to revenge or long-term general unlawful rent-seeking behaviour. However, more or less widespread corruption behaviours can be better explained by complex social structures and networks that in an organised manner and systematically drive individuals, or allow them to be driven into corruption (Scott, 1972). Different political systems facilitate different types, levels and effects of corruption in each system, so corruption "must be understood as a regular, repetitive, integral part of the operation of most political systems" (Scott, 1972: 26).

Political systems, institutions and social groups, and the variety of forms in which individuals interact with them, play a major role in corruption behaviours. The abuse of public and public-related office for individual or group gain is unethical or criminal individual behaviour only in as far as it cannot be linked to societies that are structured according to specific social groups' interactions – either cooperative or conflicting – and interests. In such a case, corruption should be regarded as a social phenomenon going beyond the sum of individual unlawful rent-seeking behaviours.

Democratic systems, like the one existing today in Portugal, tend to be relatively well equipped to prevent all forms of corruption. The election systems allow for almost universal participation at national and regional political levels. Barriers to the political participation of the vast majority of the population are virtually non-existent and the democratic political system can handle almost all demands being made on it, regardless of their scale and nature. Through regular elections voters can hold politicians and public officeholders accountable and citizens, who feel disenfranchised from formal political power and are potentially drawn to corruption as an informal way of influencing it, are generally a minority (Lambsdorff, 2006).

The rule of democratic law is in force and regular checks and balances of political institutions and actors, as well as of public and public-related office holders, are done by specialised and stable auditing and judicial institutions. The capture of political power and of government by national elites, trying to violate existing rules against the exercise of certain types of private-related influence and aim at private-related (personal, close or enlarged family, interest group) pecuniary or status gains, is not impossible but reasonably prevented by institutionalised accountability or, as a last resource, by whistle-blowing processes that are assured by a fairly extensive and protected freedom of writing and speech.

Democratic countries, like Portugal, are nevertheless still affected by corruption, be it in the form of bribery, kickbacks, extortion, 'speed money', collusion, fraud and an immense variety of other actions of individuals, groups or corporations, in both the public and private sectors, aiming to influence the formation of laws, regulations, decrees and other government policies to their own advantage.

Several factors have been found to be linked to a higher prevalence of corruption in democratic regimes: low governance transparency and accountability, usually associated to a recent or unstable democratic regime; high government control of the economy and of society in general; complex and difficult-to-understand administrative and business regulations; complex and low-scale progressive taxation systems; low payment levels of public or public-related officials; socio-political and cultural leniency towards unlawful rent-seeking strategies, compensating for the underpayment of officials; or high income inequalities (Gupta, Verhoeven, & Tiongson, 2002; Lambsdorff, 2006; Lambsdorff & Cornelius, 2000; Wittemyer, Bailur, Anand, Park, & Gigler, 2014).

2 CORRUPTION IN PORTUGAL – A BRIEF EXCURSION INTO THE RECENT PAST

Portugal has a relatively recent democratic regime. During the former regime (lasting from 1928 to 1974), political power was almost entirely centralised in a single person (Rosas, 2012). The effectiveness and continuity of this power centralisation was assured by all available means, going from persuasive mass propaganda to strict obedience based in widespread physical and psychological repression. The former regime was clearly authoritarian in nature, following the definition mentioned by Linz (2000).

The regime rested on emergency decrees that were enforced through violence or the threat of violence in the first stage, but was later disguised under the cover of apparently democratic constitution and laws that assured that government rested on the people. Elections were held regularly, but everything was set to ensure that only candidates loyal to the regime were elected. The rule of democratic law seemed to be in force, although law enforcement agencies and courts were in fact forced to primarily engage in the incrimination of political dissidents – as well as to be lenient on criminals loyal or instrumental to the regime. Freedom of speech and assembly, as well as freedom of the press, were also formally legally granted, although fierce censorship was in fact brutally imposed or even self-imposed due to the fear of consequences. Overall, the level of protection of fundamental individual human rights, as they were internationally agreed upon since 1948, was very low or simply non-existent.

The former Portuguese regime can be described as autocratic benevolent in the sense such regimes are described, for example, by Dixit (2006). Instead of fiercely controlling and exploiting all resources for the sole benefit of one person or family, as usually happens in predatory autocracies, the regime shared the available resources with a limited number of elite families and distributed the

remains in order to provide for the most basic needs of the majority of citizens. However, this was only done to the extent needed to ensure the power monopoly was not seriously challenged.

Despite this benevolent characteristic, political decision processes were inherently non-transparent. They were not intended for and did not allow public discussion on the criteria used or on the objectives or expected outcomes of each decision. Who benefited from a given decision was a sort of open secret that was neither supposed to be publically discussed nor challenged, only very carefully gossiped about. Political dissidents and the mass media were not supposed to question any type of political decision and inevitably they became brutally obliged or self-imposed non-reliable or non-trusted whistle-blowers. Political accountability was simply not needed.

Resembling what was described, for example, by Gerring and Thacker (2004) or by Aidt, Dutta, and Sena (2007), how to counter-resist or avoid the regime's abusive interference in business and everyday life became part of a socialisation process crucial for the majority of Portuguese citizens – and it seems to have had long-lasting effects. A widespread and deeply-rooted belief slowly developed that corruptly engaging with the ruling autocratic rulers and public officers, or exchanging favours with them, were the most successful tools for avoiding the abusive governance norms or rules, or for getting something from the autocratic government. Well-placed relatives or friends in the regime political or economic structure became valuable assets and the exchange of personal favours a social norm and rule. For regime outsiders, the chances of getting some share of the available resources depended on being or not being able to pay disproportionally for it – and paying to avoid regulations in practice, not theoretically, is what corruption is about in a broad sense. Governance was not expected to make sure that all citizens had similar competing opportunities – and certainly not to take the values or needs of those with little or no power or opposed the regime into much consideration. Although theoretically protected by constitutional or other types of laws, women or religious, ethnic, national or gender minorities were, for example and in practice, prevented from entering competing processes aiming at sharing the most valuable resources.

The shadow economy flourished in order to counter the abusive, privilege-oriented, administrative business regulations, as did tax evasion or fraud, simply because regulations and taxation were not perceived to be instruments intended to benefit the majority. Senior, middle and low public officers slowly learned that everything could be tailored according to the regime's most powerful players' needs and interests, especially laws and norms and rules of conduct. Transferring these learning outcomes to relations with other less powerful players was only a matter of time. Political and public service ethics slowly became a synonym for 'whatever serves a mutual interest and does not challenge the regime is right'.

Although it is still difficult to assert objectively on account of the existing brutal censorship (Madeira, Pimentel, & Farinha, 2007) and the lack of official data, corruption and trafficking in influence on all political and public service levels and ranks seem to have flourished and been generally tolerated at the

top as the price for having blind-eye loyalty. The questioning of the abusive privileges held by the regime´s elites was simply avoided by rewarding the most loyal bottom-supporters with a shadow income arising from holding offices with greater corruption opportunities – most likely in customs, public procurement, public corporations or the police. The cost of this strategy was negligible, as explained by Wintrobe (1998) and Besley and McLaren (1993) since the shadow income was paid by the end-users as some sort of shadow tax.

Similarly to other cases described by Darden (2008), Sun (2001, 2004) or Urban (1985), corruption or trafficking in influence was normally dealt with by caution by law enforcement agencies, especially when they involved top players of the ruling elites. Occasional harsh sentences were applied just to show that corruption and political dissidence should both be seen as morally unacceptable. But it goes almost without saying that whistle-blowing by the mass media, political or public officer dissidents or ordinary citizens was not encouraged at all and could have very unpleasant consequences whenever the accused party was an extremely loyal regime-politician or public office holder.

3 ANTI-CORRUPTION STRATEGIES AND FRAMEWORKS IN DEMOCRATIC PORTUGAL

By April 1974, when the autocratic regime had been overthrown by a *coup-d'état*, Portugal ranked high in almost all factors usually associated with a higher prevalence of corruption. Soon after the *coup-d'état*, government control of the economy even increased substantially following an extensive nationalisation process. However, the ensuing democratic regime stabilised by Portugal joining the European Union in 1986 brought substantial social and economic development. Salaries and labour rights increased, as did the overall living conditions. Income inequalities diminished; payment levels of public or public-related officials increased; new and more transparent and progressive taxation systems were implemented, as were less complex and more transparent administrative and business regulations. Starting from the last decade of the 20th century and still ongoing, further reprivatisation processes were carried out and government weight on the economy decreased (Barreto, 2002).

Governance transparency and accountability increased, notably through extensive administrative reforms and the implementation of e-governance processes. Since 2006, an extensive reform of central government has been designed and implemented, aiming at the modernisation and rationalisation of services and at the increased transparency, accountability and quality of the services rendered to citizens, corporations and communities (Council of Ministers Resolution no. 124 of 2005, 2005).

Almost all Portuguese democratic governments have committed themselves to the fight against corruption. Almost all have pursued legislative and institutional anti-corruption measures and some have even created anti-corruption specialised agencies. Amendments to penal legislation, party-funding laws, the recruitment system for senior and middle-management levels in public administration,

auditing procedures, banking supervision and accountability standards within the public administration and state-owned corporations happened in the last decades of the 20th century (Ferreira & Baptista, 1993).

Despite all the social and economic developments and political commitments and practical efforts to curb corruption, with the latter involving the invaluable assistance of the Council of Europe Group of States against Corruption, by the end of the 20th century Portugal was still scoring below most European Union member states in Transparency International's Corruption Perceptions Index (Table 1). Only Italy and Greece were perceived as even more 'corrupt' than Portugal. It seemed that the deeply embedded values and behaviours that had flourished during the autocratic regime simply did not vanish overnight with democracy.

Table 1: Transparency International's Corruption Perception Index (inverted score: 0 – high corruption; 10 – low corruption) (Source: Transparency International Corruption Perceptions Index, 2001–2014)

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	*Average*
Greece	4.2	4.2	4.3	4.3	4.3	4.4	4.6	4.7	3.8	3.5	3.4	3.6	4.0	4.3	4.1
Italy	5.5	5.2	5.3	4.8	5.0	4.9	5.2	4.8	4.3	3.9	3.9	4.2	4.3	4.3	*4.7*
Portugal	6.3	6.3	6.6	6.3	6.5	6.6	6.5	6.1	5.8	6.0	6.1	6.3	6.2	6.3	*6.3*
Spain	7.0	7.1	6.9	7.1	7.0	6.8	6.7	6.5	6.1	6.1	6.2	6.5	5.9	6.0	*6.6*
France	6.7	6.3	6.9	7.1	7.5	7.4	7.3	6.9	6.9	6.8	7.0	7.1	7.1	6.9	*7.0*
Belgium	6.6	7.1	7.6	7.5	7.4	7.3	7.1	7.3	7.1	7.1	7.5	7.5	7.5	7.6	7.3
Ireland	7.5	6.9	7.5	7.5	7.4	7.4	7.5	7.7	8.0	8.0	7.5	6.9	7.2	7.4	*7.5*
Germany	7.4	7.3	7.7	8.2	8.2	8.0	7.8	7.9	8.0	7.9	8.0	7.9	7.8	7.9	*7.9*
Austria	7.8	7.8	8.0	8.4	8.7	8.6	8.1	8.1	7.9	7.9	7.8	6.9	6.9	7.2	*7.9*
UK	8.3	8.7	8.7	8.6	8.6	8.6	8.4	7.7	7.7	7.6	7.8	7.4	7.6	7.8	*8.1*
Luxembourg	8.7	9.0	8.7	8.4	8.5	8.6	8.4	8.3	8.2	8.5	8.5	8.0	8.0	8.2	8.4
Netherlands	8.8	9.0	8.9	8.7	8.6	8.7	9.0	8.9	8.9	8.8	8.9	8.4	8.3	8.3	*8.7*
Sweden	9.0	9.3	9.3	9.2	9.2	9.2	9.3	9.3	9.2	9.2	9.3	8.8	8.9	8.7	*9.1*
Finland	9.9	9.7	9.7	9.7	9.6	9.6	9.4	9.0	8.9	9.2	9.4	9.0	8.9	8.9	*9.4*
Denmark	9.5	9.5	9.5	9.5	9.5	9.5	9.4	9.3	9.3	9.3	9.4	9.0	9.1	9.2	*9.4*

The anti-corruption political commitments and implementation of practical anti-corruption measures continued during the first decade of the 21st century and, in 2006, the gap between the Portuguese Perceptions of Corruption Index scores and the average scores for the European Union had clearly diminished. However, the Portuguese scores deteriorated after 2006 and, in 2008 following growing suspicions of increasing corruption behaviours, the Council for the Prevention of Corruption (CPC) was set up within the Portuguese Court of Auditors and tasked with coordinating and analysing prevention policies (Law no. 54 of 2008). The following year, the Council recommended that all central and local public services, including state-owned or controlled corporations, should prepare and implement plans for managing the risks of corruption and related-offences (Conselho de Prevenção da Corrupção, 2009).

The management plans started being implemented and, at almost at the same time, in 2010, the Portuguese National Assembly (Parliament) adopted a

new anti-corruption legislative package, including adding the violation of urban planning rules as a new type of crime, an extension of prison prescription terms for corruption offences, the setting up of a central register of bank accounts and a new amendment to the law on funding political parties (Laws no. 26, no. 32 and no. 55 of 2010).

An assessment made in 2013 by the Council of Europe Group of States against Corruption (GRECO, 2013) singled Portugal out for having satisfactorily implemented or dealt with six of thirteen previous recommendations on incriminations and party funding. The assessment also noted that six other recommendations had been partly implemented and only one had not been implemented.

New amendments to the penal code were adopted in early 2013, including greater sanctions for offences committed by holders of political office or senior public officials (Law no. 4 of 2013). Changes in the penal sanctions for corruption offences in the private sector, for trafficking in influence and for offences by foreign officials were implemented according to the GRECO recommendations. Finally, specialised units from the national prosecutor's office (the Central Department of Investigation and Penal Action) and the national judiciary police (the National Unit for Combating Corruption) were designated to investigate corruption cases (European Commission, 2014).

It is also worth mentioning that in May 2011, following the 2008 global financial crisis and the subsequent European sovereign debt crisis, Portugal started to be financially assisted by the 'troika' (European Central Bank, European Commission and International Monetary Fund). Officials from the 'troika' started closely monitoring the Portuguese national, regional and local governments' management strategies and instruments, as well as any mismanagement practices, including those possibly involving corruption.

3.1 Corruption risk management plans

The Council for the Prevention of Corruption (CPC), set up within the National Court of Auditors in 2008, was tasked with the coordination and analysis of prevention policies. As mentioned, in 2009 the Council recommended that all central, regional and local public services, including state-owned or controlled corporations, should prepare plans for the management of the risks of corruption and related offences.

The recommendation stated that the top-level management of each public service or corporation should draw up an internal plan taking into consideration: a) the existing corruption risk in each department, unit, sector or function; b) measures to prevent or counteract the identified risk, like internal control mechanisms or processes, separation of functions and tasks, prior criteria to be applied, for example, to the concession of public benefits, the recruitment of external experts, the nomination of juries, or appropriate training; c) the nomination of those in charge of implementing the plan. An annual report on the plan's implementation and main outcomes was also recommended to be sent to the Council for the Prevention of Corruption and to all applicable supervision, control

and auditing services or agencies. For the sensitive areas of public procurement and the concession of public benefits, the use of special guidelines and checklists, made available by the Portuguese Court of Auditors, was also recommended.

Supervision, control and auditing services or agencies were recommended to verify the existence and implementation of the plans and the Council for the Prevention of Corruption tasked itself with randomly visiting the different services and corporations in order to assess the existence of a management plan. It has to be noted, however, that the CPC was not granted verification or sanctioning powers concerning, for example, the degree of implementation of a plan.

Overall, the plans were intended as an internal tool for each public service or corporation to identify risks, to ensure greater internal and external awareness of such risks and their prevention and, whenever possible, for the early detection of possible corruption schemes and behaviours, leading to more successful investigations, prosecutions and proceedings. A typical plan includes a brief characterisation of the service or institution: the main mission, values, internal structure and available human, financial and logistic resources; the existing current management plans and instruments; a corruption risk diagnosis describing the core identified risk areas and factors and the functions and responsibilities of the different internal officials in charge of the plan; a description of the designed and to be implemented prevention measures; and a description of the designed monitoring, evaluation and updating processes and instruments.

By the end of 2013, 643 Portuguese public institutions and services, employing around 400,000 civil servants (roughly 70% of the total employed by central, regional and local governments) had implemented corruption risk management plans. The majority of these plans were available on each institution's or service's website for the sake of public consultation and internal awareness. Most plans were designed by middle and senior management staff and officially approved at the highest level. However, the quality and extensiveness of the risk assessments and corresponding prevention measures were uneven, as recognised by at least half the Portuguese public services that implemented the plans (Conselho de Prevenção da Corrupção, 2014).

4 THE MEANINGS AND METRICS OF CORRUPTION

The meanings of corruption and the behaviours embraced by its definition are constantly changing. The most common understanding of corruption today, as defined by the World Bank in 1997, is that it constitutes an "abuse of public office for private gain" (Johnston, 2005). Such abuse can assume several forms: speeding up or omitting steps or requirements in a governmental licence or permit process, in accessing a public sector service or good or in another type of governance decision-making process; setting up public procurements for unnecessary or useless goods or services; tailor-made specifications; collusive bidding; unclear selection or evaluation criteria; abuse of negotiated procedures; abuse of emergency grounds and amending contract terms after concluding a contract in public procurements; or the actions of individuals, groups or firms in

both the public and private sectors aimed at influencing the formation of laws, regulations, decrees and, in general, government policies.

The measurement of corruption is still far from being uncontroversial. Like almost all other deviant or criminal behaviours, corruption is supposed to remain a secret shared by those who corrupt and those who are corrupted. Whistle-blowing by harmed third parties or by well-intentioned politicians, public officers, citizens or the media is not an entirely reliable source of data because it depends strongly on who has something to gain from the whistle-blowing. Detections made by supervising or auditing services or agencies are a more reliable data source provided they are relatively free from corruption – but they are also a less extensive data source. The same can be said about cases reported to and registered by judicial and law enforcement agencies. Finally, cases reaching a law court and ending in a conviction could indeed be considered the most reliable data source if they were not so dependent on why and by whom the case was initially detected and reported – not to mention the power or status of who was under investigation, and possible corruption behaviours in the courts themselves (Golden & Picci, 2005; Heywood & Rose, 2014).

Measuring corruption through subjective perceptions of the prevalence of corruption behaviours or schemes is an alternative method. The idea that corruption within an entire country can be accurately quantified, and compared and ranked, to facilitate cross-country comparisons emerged in the 1990s. The Corruption Perceptions Index, sponsored by the non-governmental organisation Transparency International (TI) started measuring corruption in countries around the world as perceived by experts and business people (Lambsdorff, 2006). This Index does not assess the true prevalence of corruption but only the level at which corruption is perceived by, for example, business people and people working for multinational companies and institutions. Although the index does not reflect the complex social, political, economic and cultural realities that underlie corruption, it nevertheless allows for a different view on corruption. The Index tends to measure different things from country to country and often lacks rigour or is misused (Thomas, 2010) but certainly is an alternative measure of corruption.

Such an alternative is important because official data tend to reflect mostly 'low-level' corruption, typically involving individual actors who rarely operate in collusion with others, while international perceptions tend to also reflect 'institutional' corruption, which operates at higher levels and entails networks that can have a decisive influence on the running of public services, as well as on institutional and legislative designs and frameworks (Lessig, 2014; Pardo, 2004).

Determining how corruption risk management plans have contributed to the greater prevention and detection of corruption in Portugal was the main aim of this study. It was assumed that an increased prevention capacity would be reflected in international perceptions of corruption (Corruption Perceptions Index), and that an enhanced early detection capacity would be reflected in the number of registered corruption cases and number of convictions for corruption.

5 SOME INDICATORS AND TRENDS CONCERNING CORRUPTION IN PORTUGAL

International perceptions of corruption in Portugal grew with the 2008 crisis and clearly regressed after 2009. This trend is interesting because corruption risk management plans started being implemented in 2010 and, by the end of 2013, were active in more than two-thirds of Portuguese public institutions, services and corporations (Figure 1).

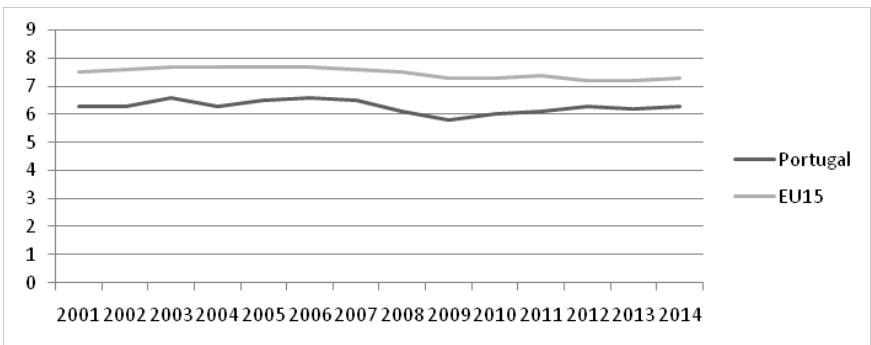

Figure 1: Transparency International's Corruption Index (inverted scores: 0 – high corruption; 10 – low corruption) (Source: Transparency International's Corruption Perceptions Index, 2001–2014)

However, the 'recovery' of international perceptions started before a significant number of plans were implemented. Data on the year of implementation are not available, but a qualitative report prepared in 2014 by the Council for the Prevention of Corruption mentioned the steady but also slow implementation process. This means that other factors and other anti-corruption policies must have been instrumental for the international perceptions that corruption was again diminishing in Portugal. On the other side, international perceptions of corruption increased on average in the European Union member states with the 2008 crisis, and declined afterwards, including in Portugal. A contamination effect therefore cannot be discounted since the 2008 crisis was accompanied by widespread suspicions about the role played by politicians and senior public servants before and during the crisis, in particular in member states that, like Portugal, went bankrupt. The 2009–2014 recovery can thus simply be attributed to this social phenomenon.

The only evidence supporting the plans' preventive impact is that Portugal 'recovered' after the 2008 crisis at a much faster and steadier pace than the average EU member state. By 2014, Portugal was scoring as highly in Transparency International's Corruption Index as it did in 2001. The problem here is that such 'recovery' can also be attributed to the wide range of the factors mentioned previously that were activated after 2009 – namely, the extensive anti-corruption legislative packages approved in 2010 and 2013; the closer monitoring by officials from institutions financially assisting the Portuguese government since 2011; or the sharp drops in public investment and intermediate consumption of goods and services, as well as in private investment, that followed the 2008 crisis, with an unknown impact by way of fewer corruption schemes or opportunities.

The data on corruption cases recorded by Portuguese judicial and law enforcement agencies and on individuals convicted for corruption also do not

give any evidence supporting the corruption risk management plans' positive impact on prevention or early detection capacity. The decline in the number of recorded corruption cases started before the plans were implemented and increases happened in 2011 and after 2012 (Figure 2).

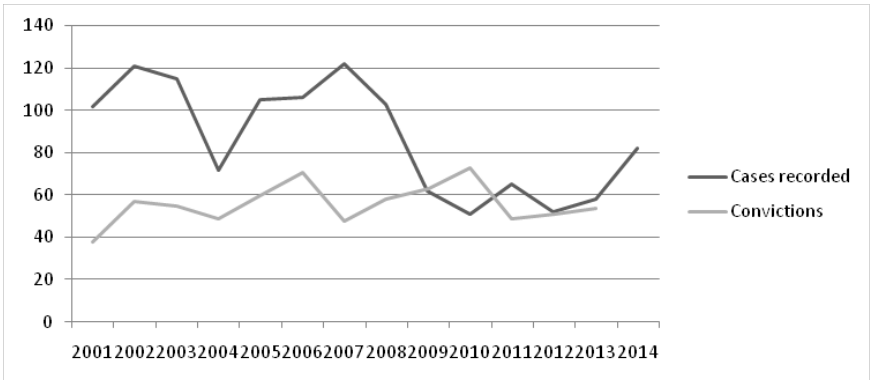

Figure 2: Corruption cases recorded by judicial and law enforcement agencies, and individuals convicted for corruption (Source: Portuguese Justice Statistics Database, 2001–2014)

The number of corruption cases recorded after 2012 contradict a prevention effect but indicate a better detection capacity. The extent to which the increase can be attributed to the plans or the other mentioned anti-corruption measures is unfortunately something that still cannot be objectively assessed.

The plans' non-significant impact becomes clearer when the figures on convictions for corruption are considered. They show a regular pattern of ups and downs that persisted until 2013. The figures for 2014 were unavailable at the time this paper was being prepared but, if they ranged between 60 and 80 convictions, the only possible conclusion would be that the plans simply did not have a significant impact on the trend of convictions.

6 CONCLUSION

The available evidence suggests that, at least until 2014, the corruption risk management plans had no evident impact on the prevention, detection, persecution and proceedings of corruption. However, regarding this type of anti-corruption measure, it must be remembered that by the end of 2014 the plans were still not implemented in all Portuguese public institutions and services, nor in all publicly-owned or controlled corporations; and that an incomplete diagnosis of the existing corruption risk and the lack of effective implementation of internal anti-corruption measures were regularly mentioned weaknesses in official reports.

The following years will certainly shed more light on the impact of this type of anti-corruption measure, even considering that an objective assessment will remain difficult. Portugal is still implementing a comprehensive anti-corruption national strategy and this will clearly mean the activation of factors like, for example, more practical measures to assure effective transparency and accountability of governance and the more effective protection of whistle-blowers. As ever more anti-corruption measures are introduced to counteract the peculiar

historical heritage of the Portuguese autocratic regime, Portugal will certainly reduce the gap existing with the majority of more socially and economically advanced European Union member states. The ways in which the corruption risk management plans will contribute to this process clearly need to be further assessed.

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Risk, Safety and Freedom of Movement: In Airplane and Ferry Passenger Stories in the Northern Baltic Sea Region

Sophia Yakhlef, Goran Basic, Malin Åkerström

Purpose:

The purpose of this study is to map and analyse how travellers at an airport and on ferries experience, interpret and define the risk, safety and freedom of movement in the northern part of the Baltic Sea region with regard to the border agencies.

Design/Methods/Approach:

This qualitative study is based on empirically gathered material such as field interviews and fieldwork observations on Stockholm's Arlanda airport in Sweden, and a Tallink Silja Line ferry running between Stockholm and Riga in Latvia. The study's general starting point was an ethno-methodologically inspired perspective on verbal descriptions along with an interactionist perspective which considers interactions expressed through language and gestures. Apart from this starting point, this study focused on the construction of safety as particularly relevant components of the collected empirical material.

Findings:

The study findings suggest that many passengers at the airport and on the ferries hold positive views about the idea of the freedom of movement in Europe, but are scared of threats coming from outside Europe. The travellers created and re-created the phenomenon of safety which is maintained in contrast to others, in this case the threats from outside Europe.

Originality/Value:

The passengers in this study construct safety by distinguishing against the others outside Europe but also through interaction with them. The passengers emphasise that the freedom of movement is personally beneficial because it is easier for EU citizens to travel within Europe but, at the same time, it is regarded as facilitating the entry of potential threats into the European Union.

UDC: 005.934:[627.21+656.71]

Keywords: passengers, identity control, construction of safety, field interview, construction of risk, fieldwork

Tveganja, varnost in svoboda gibanja: perspektive potnikov letalskega in trajektnega prometa severnega predela regije Baltskega morja

Namen:

Namen prispevka je predstaviti raziskavo, v kateri so avtorji analizirali izkušnje potnikov letalskega in trajektnega prometa severnega predela Baltskega morja. Cilj je ugotoviti in analizirati, kako potniki z vidika mejnega nadzora definirajo in interpretirajo tveganja, varnost ter svobodo gibanja.

Metode:

Izvedena je bila kvalitativna metoda zbiranja podatkov, in sicer v obliki terenskega opazovanja in intervjuvanja potnikov na švedskem letališču Arlanda (Stockholm) in trajektni liniji Tallink Silja Line med Stockholmom, Rigo in Latvijo. V interakciji s potniki je bila kot izhodišče uporabljena etnografska metoda, ki se osredotoča na proučevanje verbalne in neverbalne komunikacije. Pri analizi zbranih podatkov so se avtorji primarno osredotočili na razumevanje zaznavanj potnikov glede varnosti.

Ugotovitve:

Rezultati kažejo, da je veliko potnikov v raziskavi naklonjenih evropski ideji svobodnega gibanja, vendar jih je pri tem strah groženj, ki izvirajo iz zunanjega okolja Evropske unije. Avtorji ugotavljajo, da potniki varnost doživljajo in ocenjujejo v razmerju do drugih ljudi, njihova stališča pa so odvisna od dogajanja v zunanjem okolju – v konkretnem primeru so to grožnje, ki se pojavljajo za evropskimi mejami (npr. terorizem).

Izvirnost/pomembnost prispevka:

Raziskava v prispevku pojasnjuje, kako potniki dojemajo varnost v potniškem prometu in kako oblikujejo oz. razvijejo to zaznavanje. Med analizo njihovih stališč se je pokazalo, da druge ljudi ocenjujejo glede na izvorno državo in jih kategorizirajo na "zunanje in notranje". Stališča glede varnosti oblikujejo tudi skozi izkušnje v tujem potniškem prometu. Potniki sicer poročajo, da imajo zaradi politike svobodnega gibanja veliko osebnih koristi, vendar pa menijo, da se s tem ustvarjajo nove ranljivosti in povečuje verjetnost varnostnih tveganj za Evropsko unijo.

UDK: 005.934:[627.21+656.71]

Ključne besede: potniki, ugotavljanje identitete, zaznavanje varnosti, intervju, percepcija tveganj, terenska raziskava

1 INTRODUCTION

The Schengen regime implies the guaranteed free movement of passengers without document controls at national borders in all Schengen member states[1]. The

1 *Some parts of this text were published already in the book Project Turnstone: Freedom of Movement and Passenger Experiences with Safety and Border Control in the Baltic Sea Area.*

Schengen regime (as constituted today) was applied in 2007/2008 and currently includes all EU member states together with Iceland, Norway and Switzerland. EU nations that are not included are Bulgaria, Ireland, Cyprus, Romania, Great Britain and extended overseas territories[2] belonging to the member states (Yakhlef, Basic, & Åkerström, 2015a).

Citizens from several countries outside the Schengen area must have a visa to enter the EU and the Schengen area. Non-EU citizens, so-called third-country citizens, who have a residence permit in one of the Schengen countries may circulate freely in other Schengen countries for 3 months. However, they may need to register with the country's authorities upon entry and must have their passport and residence permit with them. Third-country nationals who do not need a visa to enter the Schengen area may move freely within the area for up to 3 months for each period of 6 months (Yakhlef et al., 2015a).

Freedom of movement aims to provide mobility rights within the EU and the Schengen area for its citizens, as well as to facilitate travel and border crossing. In addition, the EU is an example of a "network state" in which border control can occur within societies and not just at regional borders (Castells, 2000; Guiraudon & Lahav, 2000; Rumford, 2006). The main purpose of eliminating borders within the Schengen area in 2007 was to abolish encounters with physical barriers and border guards. Although passport controls are no longer used in the Schengen territory for EU citizens, border checks are still practised at three levels: 1) mobile police controls; 2) joint patrols and border police cooperation; and 3) administrative requirements enforced on European citizens and third-country nationals. Identity checks are permitted in border zones connected to the border. National legislative frameworks regulate the sizes of the border areas in which identity checks can be performed. These bodies of legislation vary between countries; in some cases, checks can only be carried out within the border area and in others within the entire territory (Faure Atger, 2008).

Temporary border controls may be imposed in the Schengen area or at its borders with other member states during certain types of events: expected events (e.g., major sporting events), unpredictable events (e.g., terrorist attacks) or when a lack of control of external borders is anticipated[3]. Although Schengen states have abolished internal borders, external borders are controlled to ensure the security of citizens and travellers. Challenges faced by border authorities in the Schengen area concern differences in legalisation, restrictions regarding providing other organisations with information, and each organisation having different authorities or working methods. These obstacles can be eased and overcome through closer day-to-day work, education, and interpersonal exchange (Yakhlef, Basic, &

2 *Overseas territories belonging to member states not included in the Schengen regime are the Portuguese Azores Islands, Canary Islands, the Spanish exclaves of Ceuta and Melilla in Africa, the overseas territories of France, Norway's Svalbard, the Danish autonomous territory Greenland, the Faroe Islands (not part of the EU), and overseas Dutch autonomous regions of Aruba, Curacao, Saint Maarten, Bonaire, Saba, and Saint Eustatius.*

3 *Following the large influx of migrants, refugees and asylum seekers into Europe in 2015, Germany decided to start temporary border controls along its borders with Austria to regain control. During the same period, also Sweden and several other European countries decided to start temporary border controls along their borders with neighbouring countries.*

Åkerström, 2015b, 2015c). Several border authorities in the Schengen area have cooperation agreements allowing some border officers to conduct surveillance and follow suspected criminals across the border to another Schengen country in certain circumstances.

2 GLOBALISATION, RISK AND FREEDOM OF MOVEMENT

In recent decades, the social sciences have been interested in re-conceptualising and re-interpreting the meaning of border crossing and the social and political dimensions of border management. Borders are no longer seen as lines on a map dividing nations, but as dynamic spaces and networks of importance to culture, politics and security (Pickering & Weber, 2006). Much scholarly work by sociologists, anthropologists and political scientists has focused on the experience of border crossing with regard to restrictions, passport controls and security limitations (Rumford, 2006), but also on the increasing global flow and movement of people, goods and ideas (Wonders, 2006).

2.1 Globalisation

One of the key features of globalisation is mobility (Wonders, 2006), and migration is one of the most important consequences of globalisation (Tirman, 2004). Globalisation is characterised by 'flows', a growing awareness of units and scales, and the boundaries of regions. Globalisation is also defined as a package of transnational flows of people, production, investment, information, ideas and authority (Tsing, 2000). As exchange between people and nations intensifies across borders, the nature and meaning of citizenship have also changed (Brysk & Shafir, 2004). Although borders and passports are not 20th century inventions, the firm division of borders and worldwide regulation of migration as we know them did not exist before the early 20th century (Dauvergne, 2004). Increased mobility between nation states in a globalised society requires new border regulations that old territorial borders cannot achieve (Rumford, 2006). As borders are multiplied and reduced, their function is diminished or increased and the quantitative relationship between border and territory is overturned (Balibar, 1998). Some borders are encountered as non-boundaries and for some people, such as those within the EU, they are now easier to cross (Rumford, 2006).

2.2 EU Enlargement and the Freedom of Movement

According to the researcher Scott (2005), the EU can be understood in terms of a shift from nation-state-centred modernity to a new multivocal and multiscaled world, a world that has many different meanings. This is due to the EU's complex geopolitical project and transnational cooperation, allowing interdependence and multipolarity. In theory, the EU allows for a political community based on several exemplifications of citizenship and a sense of multiple identities (Diez, 2002). Dating back to the end of the Second World War, the idea of the EU emerged as

a vision of a peaceful, united and prosperous Europe. According to the official EU website, the end of the Soviet Union in Europe made the Europeans close neighbours. The *Single Market* with 'the four freedoms' was created in 1993, causing the free movement of goods, services, people and money. The 1990s also saw increased awareness of security issues and consciousness of how 'Europeans can act together when it comes to security and defence matters'.

Contemporary sociological research of border politics focuses on notions such as social networks instead of societies, and border zones instead of borders (Nederveen Pieterse, 2004). Mobility (Urry, 1999), scapes (Appadurai, 1990), flow and fluids (Rumford, 2006) are key metaphors for understanding modern life in a "world in motion" (Rumford, 2006). In some cases, the diffusion and networking of borders have, in Rumford's (2006) opinion, led to the renewed importance of land borders. The border areas and border spaces, especially regarding the EU, have seen an increased need for protection and defence (Pickering & Weber, 2006). The concept of EU borderlands has been promoted in the last decade due to the creation of the EU's neighbourhood policy. The purpose of this neighbourhood policy is to develop friendly relationships with countries to the east and south of Europe that are unlikely to become candidates for formal agreements (Delanty & Rumford, 2005). A good relationship with neighbouring countries is beneficial in economic and social terms, increasing opportunities for networking and cooperation (Rumford, 2006). This is also an issue in which the rigid borders between the EU and surrounding countries are not as clear-cut because cooperation occurs despite the external border. The sociologist Bauman (2002) argued that, in global space, borders are transformed into "extraterritorial frontier lands". Similarly, the philosopher Balibar (1998) regarded the contemporary view of borders as diffuse as one in which countries can become borderlands. Therefore, entire nations and the EU itself can be interpreted as borderlands and zones of mobility and transition without territorial fixity (Balibar, 2004).

2.3 Risk in a Globalised Society

The global age has seen a rise in global mobility (Dauvergne, 2004), but also restrictions, laws and regulations to monitor this mobility (Wonders, 2006). Several scholars, including Bauman (2002), see the 9/11 terrorist attack as the symbolic end of an era followed by the increased dominance of territorial power and border security. Since the EU's enlargement in the early 1990s, the aim has been to facilitate cross-border and transnational cooperation. The EU security policy aims to avoid political confrontation, environmental threats and destabilisation of regional conflicts. This can be achieved through intense cooperation in the areas of justice and home affairs, security and defence. Cooperation in these areas involves controlling illegal migration flows and the trafficking of human beings, combating terrorism and preventing organised crime (Scott, 2005).

The social construction of risk has dominated social and political consciousness in the 21st century and ideas of global insecurity have developed through terrorism, epidemics and pollution (Denney, 2005). Risk has also become a major part of everyday life in relation to food, sunlight, travel and everyday

objects that have become potential health risks. The word "risk" could easily be changed to "danger" in political debate. Historically, the word danger has been associated with the concepts of nature and culture, dangers from which society must be protected (Denney, 2005). A well-known approach to risk in sociological theory is the perspective of the "risk society" (Beck, 1992; Zinn, 2006), focusing on technical and environmental risks as unforeseen consequences of industrialisation. Approaches to risk within cultural studies often refer to the work of the anthropologist Douglas (1966) who argues that risk is a culturally given way of responding to threats to the boundaries of a society, group or organisation. Douglas claims that a society that is threatened will respond by regulating its boundaries and increasing social control regulating those boundaries. Thus, risk is understood as a way of maintaining social order (Douglas, 1966) linked to group formation and identity construction by distinguishing between self and other (Zinn, 2006). This perspective has been criticised for being an oversimplification, and scholars have tried to overcome the functionalistic view of risk by focusing on the complex processes in everyday life (Lash, 2000; Tulloch & Lupton, 2003). Foucault's (1991) approach to governmental risk is seen as a way of shaping and controlling populations and governing societies. Risk is characterised by an uncertainty about the outcome, and risk-taking can have both a positive and negative impact. Uncertainty is a product of existing knowledge and new information (Zinn, 2006). Contemporary notions of risk are characterised by the urge to conquer uncertainty and, therefore, "security in all aspects" is a marketable and desirable commodity (Denney, 2005).

3 RESEARCH DESIGN AND RESEARCH METHODS

Project Turnstone is a European collaborative project partly funded by the European Commission. The project's main objective is to increase control in the Baltic Sea area by reducing cross-border crime (Swedish Police, 2014)[4]. The background of the project is EU and Schengen enlargement, the abolition of

4 *Project Turnstone is a transnational European project receiving grants from the EU Commission. Co-beneficiaries of the grant (in addition to the Stockholm Country Police, Border Division) are Helsinki Police (F), The Gulf of Finland Coast Guard District (F), Police and Border Guard Board (EE), Riga Board of the State Border Guard of the Republic of Latvia (LV), State Border Guard Service at the Ministry of the Interior of the Republic of Lithuania, Coast Guard District (LT), the Swedish Coast Guard District (SE), and Lund University, Department of Sociology (SE). The duration of the project is 24 months, starting in January 2014 and terminating in December 2015. The project's purpose is to enhance law enforcement cooperation between border agencies (police, border police, border guard, and coast guard organisations) in the participating countries following enlargement of the Schengen area in 2007/2008. The enlargement resulted in changes concerning international cooperation and created a greater need for new models of cooperation between border agencies. The initiators also stated the growing mobility of organised mobile criminal groups and illegal immigration as prime reasons for further developing law enforcement cooperation. The objectives of Project Turnstone, as stated in the grant application, are to: 1) increase mutual trust between the border agencies and their officials on all levels; 2) increase and streamline day-to-day cross-border cooperation between the border agencies; 3) increase interaction between law enforcement agencies and the academic community; 4) create effective and adaptable work methods while safeguarding the right to freedom of movement; and 5) improve social and cultural knowledge between and within the border agencies (Yakhlef et al., 2015a, 2015b).*

internal border checks, and the implementation of freedom of movement. The abolition of borders is argued to serve as a possible security risk, and the absence of borders makes it more challenging to detect and stop criminals during border controls (Faure Atger, 2008). Borders previously governed and monitored by passport controls must now rely on cooperation between border officers, who need to adapt to new methods of working. The nations participating in Project Turnstone are Sweden, Finland, Estonia, Latvia and Lithuania. In addition, a research group from the Department of Sociology at Lund University, Sweden, is participating in the project. Within the framework of Project Turnstone, the research group is tasked with implementing two related studies. The first focuses on cooperation between the police, coast guard and border officers, whereas the second study focuses on airplane and ferry passengers' experiences with border crossings and freedom of movement (Yakhlef et al., 2015a, 2015b). The present study is an attempt to provide passengers' perspectives regarding the border crossings of the collaborating partners. Based on mainly qualitatively, but also quantitatively, gathered interview material, the purpose of this study is to map and analyse how travellers, such as airline passengers and ferry passengers in Stockholm, Tallinn and Riga experience, interpret and define safety, risk and the freedom of movement in the northern part of the Baltic Sea region. For the purpose of this study, 200 passengers (100 airline passengers at Stockholm Arlanda airport and 100 passengers on two Tallink Silja Line ferries travelling between Stockholm, Tallinn and Riga) were interviewed between June 2014 and April 2015. The research questions are: (1) How do travellers in the region describe safety and risk in association with the freedom of movement? (2) How do travellers describe freedom of movement in association with border checks carried out by the border police agencies?

Two border settings were used to collect the material: 1) Tallink Silja Line ferry terminals in Stockholm, Riga and Tallinn, and two Tallink Silja Line ferries; and 2) Stockholm Arlanda airport in Sweden. The settings (airport and ferry terminals) comprise examples of different ways of handling and demanding security checks.

At the Tallink Silja Line ferry terminals in Stockholm, Tallinn and Riga, passengers can check in using self-check-in machines or at the check-in counters. Passengers then receive their tickets (which also act as the cabin key). To board a ferry, passengers scan the card/ticket at the security gates where a Tallink Silja Line staff member is available to assist passengers. Before boarding the ship, passengers are greeted at the entrance by a ferry guard and Tallink Silja Line staff members who may ask to see the passengers' tickets. There is no official security check or identity control before travelling with the Tallink Silja Line ferries to Tallink or Riga.

At Arlanda airport, all passengers (including EU and Schengen citizens) must go through airport security, showing their carry-on luggage and boarding cards. The aim of this procedure is to find objects forbidden on board the aircraft. The Arlanda airport website states that the process is fast and smooth as long as the passengers are prepared. The website also lists a few suggestions for going through airport security efficiently, such as having your boarding card easily accessible and placing loose objects in the plastic bins provided. Since passport-free travel

has been expanded, EU citizens travelling to other EU countries do not go through a border check upon arrival. However, airlines still require a valid passport or ID card before a flight because they are only responsible for boarding passengers with valid information regarding their identities. Therefore, passengers are recommended to always bring a valid passport or ID card when travelling. Passengers travelling outside the EU must go through border and passport controls.

The methods adopted for this study were semi-structured interviews and fieldwork observations at Stockholm Arlanda airport in Sweden, a Tallink Silja Line ferry between Stockholm and Riga, Latvia, and a Tallink Silja Line ferry between Stockholm and Tallinn, Estonia. The choice to use interviews and observations was based on the research questions' focus on the passengers' personal opinions and experiences. An advantage of doing long-term fieldwork among the people being studied is that trust can be built and interviewees can tell researchers about their experiences in a more open and honest way than they might in a structured interview. For the present study, extensive fieldwork and close, repeated interactions with passengers were not a viable option or inappropriate for the purpose of the study. However, personal interactions with the people being studied gives the opportunity to closely look at what they say, do and how they create meaning (Emerson, Fretz, & Shaw, 1995).

For the current study, 100 ferry passengers and 100 airport passengers were interviewed. The ferry passengers were interviewed on five occasions during two different journeys on two different Tallink Silja Line ferries between Stockholm and Riga, and Stockholm and Tallinn in 2014 and 2015. Airline passengers were interviewed on five occasions at Arlanda airport in Stockholm, Sweden in 2014 and 2015. Each interview lasted approximately 5 to 15 minutes, and all interviewees were randomly chosen. Passengers were only asked to participate if they did not appear to be very busy or, for example, were eating, reading or engaging in conversation with companions. At Arlanda airport, passengers waiting for connecting flights or who seemed unoccupied in waiting areas were asked to participate. At the Tallink Silja Line ferries, passengers were more prone to be engaging in activities such as visiting restaurants or nightclubs, shopping, or having drinks at some of the available bars or pubs. Therefore, ferry passengers walking on the deck or waiting for friends or family at various meetings points were asked to participate. The respondents varied in age and nationality. For the present study, we did not interview children or people under the age of 18 years; when in doubt about a person's age we did not conduct the interview. The interviews were conducted in Swedish or English. The researchers constructed a list of questions regarding safety and freedom of movement in the Baltic Sea area. An interview guide was designed in which different topics the interviewer wanted to address during the interview were noted. The questions were designed to be appropriate while interviewing airline travellers and ferry passengers and encouraged the interviewees to articulate their answer rather than answering "yes" or "no". The interviews were initiated by a short introduction to the study and the researcher asking for permission to interview the selected passenger. A dictation microphone was not used during any interviews. Instead, the researchers

took notes and subsequently noted important impressions from the interview and from the answers provided. The researchers also noted what language the interviewee spoke and if he or she revealed or indicated their nationality.

A list of similar interview questions was used at both Arlanda airport and the Tallink Silja line ferries. The questions were slightly modified to fit the different security checks at the airport and ferry terminals. The interview questions were:

1. Is this a business trip, leisure trip, or are you visiting friends or family?
2. Have you been asked to show your passport during this trip?
3. If yes, how did you experience this?
4. Have you passed through the security gate during this trip?
5. If yes, how did you experience this?
6. Do you think there should be more security and more control of travelling passengers?
7. Can you describe your experience with freedom of movement?
8. Do you feel safe on this journey?
9. Have you experienced anything suspicious that might interest the authorities?
10. Would you like to add something more to our conversation that you find important?

At Arlanda airport, 18 people who were asked to participate declined for various reasons, such as not having the time, being tired, or needing to rest after a long journey. On the Tallink Silja Line ferries, all 10 passengers who declined to participate in the study expressed language difficulties as the reason for not wanting to participate.

The material was documented in the Swedish and English languages. We did this on the same day to ensure the qualitative documentation of details and comments in the field notes/transcription. By making comments in the field notes/transcription, we created a categorisation of data (Silverman, 1993). When encoding the statements, we identified markers of risk, safety and freedom of movement in the empirical material. Empirical sequences presented in this study were categorised in the material as "risk in society", "safety in society" and "freedom of movement". Our choice of empirical examples was guided by the study's purpose, i.e., to analyse how travellers at an airport and on a ferry experience, interpret and define risk, safety and freedom of movement in the northern Baltic Sea region with regard to the border agencies.

4 RISK AND SAFETY

The perception of risk has to be managed case-by-case, and the phenomenon of risk is both actual and socially constructed (Zinn, 2006). Researchers argue that risk is entwined in processes of identity formation and group construction (Tulloch & Lupton, 2003; Zinn, 2006). Therefore, people's associations with power, adjustments and emotions should be considered when making sense of how people manage and understand risk (Zinn, 2006). In this study, there was no opportunity to collect such contextual or complex data from the passengers, but it is important to bear in mind that risks are not experienced or talked about

in a vacuum. The purpose of this chapter is to analyse how travellers in the Baltic Sea region describe safety and risk regarding border checks carried out by border authorities at Stockholm Arlanda airport and for Tallink Silja Line ferries travelling between Stockholm, Riga and Tallinn.

According to the ferry passengers, the lack of security checks before boarding a ferry is convenient for personal comfort and makes travelling quick and easy. On the other hand, some passengers felt uneasy that it is possible for people to travel on the ferries unnoticed by the authorities, and that safety might be compromised because of the lack of security checks. Passengers who requested more control mainly highlighted threats to society, such as terrorism, criminality and illegal migration, rather than ferry accidents, encountering violent persons or thefts. Similarly, passengers at Arlanda airport focused on security issues damaging society and did not mention airplane accidents. The airport passengers regard security control as an annoying but necessary part of travelling, and most had positive experiences of passing through security checks and in encounters with airport staff. Ferry and airline passengers shared the view that the risk or threat when travelling in Sweden and other northern European countries is generally low. Many emphasised the great trust in Swedish and European authorities regarding safety regulations. Simultaneously, safety measures were considered to be stricter in countries outside of Europe. Passengers frequently compared the safety measures with those in other countries they had visited, such as the United States, Australia, Mexico and Spain. Passengers explain this by arguing that there must be a bigger need for amplified security measures in those areas, whereas others claim that the security procedures at Arlanda airport do not measure up.

4.1 Passengers at Arlanda Airport

All but one of the 100 passengers interviewed at Arlanda airport estimated that they were safe during their travels. Sixty-four of the passengers travelled for pleasure and 35 for business. When asked if they had noticed anything suspicious during their travels, only four people claimed to have seen anything out of the ordinary. In those cases, the travellers had detected unattended luggage or notified airport staff about unattended bags. At Arlanda airport, all passengers travelling out of Europe must show their passports. Schengen travellers do not need to go through passport controls. At Arlanda airport, 52 interviewees had shown their passports by the time of the interview and 48 interviewees had not been asked to show their passports. Experienced travellers regarded passport control as routine and 50 interviewees were ambivalent, unsure about the positive or negative aspects of passport controls or did not see any problem with showing their passports. Thirty-five interviewees had a positive experience with passport controls and deemed it a necessary or useful procedure. However, 15 interviewees emphasised the importance of passport controls; some thought it is necessary for all travellers to show their passports and regarded a high level of airport security as vital.

At Arlanda airport, security checks of personal belongings and carry-on luggage are mandatory for all travelling passengers. Therefore, all interviewed

passengers experienced this process. Twenty-one of the interviewed passengers found the security checks necessary and 16 found them to be exaggerated, but 65 of the interviewed passengers had no opinion about this or saw it as a 'necessary problem that you just have to go through'. However, most passengers were positive about the experience and the efficiency of the airport staff. A few passengers raised the issue of balancing security and personal integrity. Two passengers stated that it was necessary to balance the individual's right to personal integrity with maintaining a high level of security. "Considering the way the world looks today", one passenger said, "we must have strict controls even if it affects individuals". Too much surveillance made the passengers feel uneasy, questioning the benefit of it in the long run. An important issue raised by the passengers was how security could be increased without violating personal integrity. "Out of fear I am pro more security" one passenger stated, "but considering personal integrity I also say no [to more security]".

Sixty-three interviewees at Arlanda airport experienced the level of security checks as sufficient and 13 passengers did not offer a positive or negative answer regarding the security level. Many interviewees were experienced travellers and saw airport security as a necessary part of their travel routine, although several mentioned it was sometimes "uncomfortable" and "unpleasant".

Twenty-four interviewees at Arlanda airport wanted greater security and safety control. One passenger mentioned that safety was more important than anything else, even more important than personal integrity. Several interviewees discussed security controls in symbolic terms, claiming that it provided them "with the sense of safety". Others argued that the abolition of passport controls would result in chaos and that it is necessary to know who is travelling. This necessity stems from "threats that get more visible all the time" according to one passenger. Several interviewees talked about ambiguous threats from outside Europe but rarely specified what these threats are. Others mentioned terrorism, illegal immigration and cross-border criminality as potential risks.

Previous acts of violence performed by terrorist organisations, such as the IS[5], or the 9/11 terrorist attacks in the United States, were mentioned or emphasised by eight passengers as evidence of the need for increased security measures. However, a few passengers did not see security checks as sufficient enough for preventing terrorist attacks, with one interviewee stating: "Security checks are not logical since anyone can perform an attack in the underground or anywhere else where there are no security checks". Passengers identified threats targeting society, such as terrorism and illegal activity, placing risk into a larger societal context. No passengers mentioned the possibility of personal accidents when asked about safety or risk in the context of travelling, although some might connect accidents as a result of terrorism.[6]

Further, five passengers stated they felt uneasy about the increased use of technology and machines at airports. These passengers placed less trust in

5 *IS (a group referred to as the Islamic State) seized territory in Syria and Iraq in 2014 and is notorious for its brutal actions (including mass killings, abductions and beheadings).*

6 *No passengers mentioned recent airplane accidents, such as the two Malaysia Airlines flights crashing or disappearing in 2014, or the Germanwings plane crashing in the Alps in 2015.*

technological safety equipment than in human security officers. In the passengers' experience, machines often malfunctioned and there were not enough staff present to assist and guide passengers through security checks. Passengers requested more information about procedures and more explicit signs about what is expected from passengers. Insecurity made the passengers feel uncomfortable and uneasy.

4.2 Tallink Silja Line Passengers

A vast majority of the ferry passengers interviewed found it convenient and comfortable not to have to go through security checks or passport controls before boarding a ferry. All but two of the 100 ferry passengers felt safe on the ferries. The interviewees who expressed doubt did so because they "did not know who was travelling on the ferries" and had sometimes encountered "strange people" on the ferries. However, even passengers who felt safe often expressed opinions regarding safety and "the risk of not knowing who is travelling". Even though passengers felt safe, some confessed they might feel "even safer" if they knew that the authorities had more knowledge about the passengers who were travelling. No ferry passengers mentioned any objections regarding checking in individually at the self-check-in counters or passing through an automated ticket barrier when boarding a ferry.

Only two interviewees had seen anything suspicious during their journey on the ferries, such as people acting strangely or people exchanging a sum of cash. Eight passengers wanted more security on the ferries, whereas 88 passengers regarded the security as sufficient. Four passengers did not provide a definite answer. Similar to the Arlanda airport interviewees, the potential risks mentioned by ferry passengers were cross-border criminality and illegal immigration; however, terrorism was not explicitly mentioned as a threat. Seventeen passengers indicated threats or risks but did not specify what kind of risks frightened them. One passenger mentioned that she "did not know who her neighbours were" and that anything could happen if there is no control. Five passengers had heard that many criminals travelled across European borders. The interviewees did not mention ferry accidents as a potential risk[7].

4.3 Comparing Nations and Security

When asked about safety procedures, a total of 31 passengers at Arlanda airport and the Tallink Silja Line ferries compared the security measures in Sweden to those in their home countries or places they had previously or recently visited. Arlanda airport and Tallink Silja Line passengers wanting more security saw the safety measures in Sweden as insecure and inadequate. One passenger claimed that staff working at Oslo airport in Norway regarded Arlanda as an insecure airport and that passengers travelling from Arlanda to Oslo had to be checked

7 *The Baltic Sea ferry Estonia disaster in 1994 that killed 852 people was not mentioned by any interviewed passenger.*

again more thoroughly. Other passengers claimed there was much better security in Russia, Australia and Mexico because of the harsher procedures and stricter control of both luggage as well as passengers.

Passengers with a negative view of security checks and passport controls saw the security measures in Sweden and Scandinavia as relaxed and non-threatening. Security checks in the United States, Great Britain, Germany, Australia, Afghanistan, Mexico, Spain and countries in Africa and Asia in general were mentioned as being harsh and uncomfortable for travellers. Interviewees who mentioned these nations saw their security measures as violations of passengers and argued that the "fear" of terrorists and attacks in these countries justifies the strict security measures. However, several passengers explained they did not see security measures and strict control as a guarantee of safety: "people will commit terrorist attacks or commit crimes despite the controls", one Arlanda airline passenger said. Passengers argued that there was "less risk involved when travelling in Europe" than when travelling outside Europe. Another aspect of these findings is passengers' alleged trust in Swedish or Northern European authorities. Nineteen passengers at Arlanda airport and the Tallink Silja Line ferries explicitly mentioned they felt safe in Sweden and neighbouring countries. Sweden and other countries around the Baltic Sea area were generally regarded as safe, and passengers did not experience any uneasiness or fear while travelling. As mentioned by Zinn (2006), uncertainty regarding the future is used to create opportunities for action, but strategies that do not lead to definite solutions may cause uncertainty instead. Passengers echoed this argument, claiming they felt safer travelling in the northern parts of Europe than in the previously mentioned countries with intensified security measures. Thus, increased action regarding security measures may cause insecurity and vagueness instead of a greater feeling of trust and safety according to passengers.

5 FREEDOM OF MOVEMENT

When asked about their opinions regarding freedom of movement, 17 ferry passengers and 15 airline passengers mentioned the risk of "external threats" or "the wrong people" entering the EU or their home countries due to the freedom of movement. Classifying people and creating stereotypes implies a bureaucratic management of identity (Herzfeld, 1993). The classical sociologist Weber (1964) suggested that bureaucracy is the outcome of modernity and, as a rational system, it is the most effective way of organising. Nation states must establish a set of national categories in order to define who belongs and who does not belong, who is inside and who is outside. Similarly, interviewees at both Arlanda airport and at the Tallink Silja Line ferries expressed concerns that unwanted persons could travel freely because of the freedom of movement. Thus, passport controls are seen as tools for detecting those who do not belong and are considered to pose threats to the EU. However, none of the passengers mentioned the intensified control at EU external borders as a possible solution to this threat. In their opinion, even people included in the EU may pose a threat to their countries if they have

a criminal background or illegal reasons for travelling. Four airport passengers and five ferry passengers identified travelling criminals or cross-border crime as potential threats to their home countries. Only two airport passengers mentioned illegal migration as a risk factor and potential harmful threat. A few interviewees mentioned the potential risk of the creation of "fortress Europe"[8] excluding some people from travelling to the EU.

Drawing on the work of the anthropologist Douglas (1966), Herzfeld (1993), who is also an anthropologist, claimed that the production of bureaucratic indifference is based on the notion that outsiders who are ambiguous and "matter out of place" must either be incorporated into or rejected from the system. Citizenship is a classificatory device, and the creation of the European identity entails both inclusion and exclusion of the other (Shore, 2000). In Shore's (2000) argument, the European identity is carefully designed around ideas of a shared European culture and a progressive future. Passengers were generally positive regarding the freedom of movement concerning neighbouring countries. Swedish passengers mentioned that it seemed to work fine in Sweden and with the neighbouring Nordic countries but were doubtful that it should include additional countries, European or otherwise. In passengers' perspectives, the risk was increased further away from their home countries, especially outside of Europe.

Concepts such as self, neighbours, family and kinship are powerful symbols used to include and exclude people and to establish who belongs and who does not belong (Douglas, 1970; Herzfeld, 1993). Symbolic concepts such as family and kinship have played roles in the creation of the EU according to Shore (2000), who sees the emphasis on culture in EU politics as proof that culture in this case is inseparable from the questions of power. Nevertheless, 66 airport passengers and 63 ferry passengers[9] had a positive attitude to the freedom of movement. Passengers who were positive about the freedom of movement mentioned security in, for example, the United States as a "nightmare" and "too much". A majority of passengers were positive regarding the freedom of movement because it facilitates travel within the EU for EU nationals. A few people also emphasised that the freedom implies responsibility. "It is important that everyone cherishes this freedom and takes responsibility for it", one passenger claimed. Several European passengers acknowledged that freedom of movement is a privilege for those who can enjoy it. Otherwise, few passengers mentioned injustice or the fortification of Europe regarding the freedom of movement.

A number of passengers who generally expressed a positive attitude to the freedom of movement also added comments about the complexity of the system. They stated several benefits of EU members living, working and travelling freely in Europe, but also highlighted security issues as a cost. Twenty-one ferry passengers and seven airport passengers saw the freedom as a problem or a potential

8 *Chris Shore discusses the concept of "Fortress Europe" in Building Europe: the Cultural Politics of European Integration, 2000, pp. 79–80.*

9 *Sixteen of the 100 ferry passengers interviewed and 27 of the airline passengers interviewed had no opinion or did not provide a positive or negative answer regarding freedom of movement.*

threat. Both airline and ferry passengers opposed to the freedom of movement claimed that political instability and "the current situation in the world", as one ferry passenger explained it, could disturb the freedom of movement, making it a potential threat. One passenger at Arlanda airport highlighted the need to sacrifice personal integrity for security reasons. Another interviewee argued that dishonest people could exploit the freedom of movement and engage in cross-border criminality. Several Tallink Silja Line passengers mentioned increased cross-border criminality as a potential outcome of the freedom of movement. The lack of security checks concerned passengers, claiming that "everyone and everything can come in without anyone knowing about it". An interviewee on the Tallink Silja Line ferry to Riga described how "it might not be comfortable for some people to have control and check passports".

Common issues described by the airline and ferry passengers were uncertainty regarding EU and Schengen border crossing and security checks. In sociological research, risk is often associated with uncertainty (Zinn, 2006), and a lack of knowledge regarding border regulations, laws and the rights that passengers enjoy causes insecurity and confusion for travellers. During the interviews with the passengers, it was clear that few had extensive knowledge about freedom of movement or the rights they have as EU citizens. Although information about security checks, passport regulations and the freedom of movement can be obtained online, many passengers were unsure of what the freedom of movement actually means. Several passengers denied its existence because they always brought their passports while travelling and were often asked to show them. Thirteen of the 100 ferry passengers interviewed had been asked to show their passport at the ferry terminals in Stockholm, Riga or Tallinn, or on the ferries. Eighty-seven passengers had not been asked to show their passports, but some had been asked to show their tickets. A majority of those who had been asked to show their passport did not find this annoying because they saw it as a common practice associated with travel.

Three ferry passengers who were selected to show their passport expressed confusion as to why they had been chosen and felt they were being targeted. Not knowing the reason for this made them feel uneasy and wonder if they looked suspicious. Passengers did not seem to have knowledge regarding exception rules for passport checks at border areas in EU territory. The seemingly random control of passports was confusing according to the interviewees, and some requested more systematic procedures instead of ad-hoc controls. Passengers wanted to know when they might be asked to show their passport. Some believed that either everyone or no one should be asked to show their passport. However, the EU and Schengen agreement regarding the freedom of movement does not support systematic passport controls. On the other hand, Arlanda airline passengers were more positive or indifferent regarding passport controls. In general, passengers did not appear to be well informed about the rules and regulations regarding the freedom of movement and would benefit from more information.

6 CONCLUSION

The purpose of this article is to analyse airline and ferry passengers' experiences, interpretations and definitions of safety, risk and the freedom of movement in the northern Baltic Sea region. Based on empirically, and partly qualitatively, gathered material, including field observations and interviews with passengers at Arlanda airport and at Tallink Silja Line ferries, we have described: 1) how travellers in the region describe safety and risk connected to the freedom of movement; and 2) how passengers describe the freedom of movement in connection with border checks carried out by the border police agencies.

The findings suggest the interviewed passengers are positive regarding the idea of freedom of movement in Europe but scared of threats from outside Europe. Many claim that freedom of movement in the Schengen area is a safe practice regarding Europe and the Nordic countries. Passengers identified political and collective threats, such as terrorism and cross-border criminality, but did not mention airplane or ferry accidents as possible risks. Freedom of movement is generally described as a potential risk for society instead of for the individual person; for example, terrorism is not talked about as a personal risk but more as a general phenomenon. All but three interviewed passengers claimed they felt safe during their travels, but many also added they might feel safer if there were passport controls for all travellers. The interviewees in this study seem to construct safety by distinguishing others outside of Europe, establishing categories of insiders and outsiders. Many passengers in the study emphasised that the freedom of movement is personally beneficial because it is easier for EU citizens to travel within Europe. Passengers also experience insecurity regarding the rules and regulations on border crossing and concerning the freedom of movement.

The vast majority of the interviewed passengers (197 out of 200 interviewees) claimed they felt safe during their travels. Only two ferry passengers interviewed had seen anything suspicious on their journey, mostly people acting in a strange manner. Ten ferry passengers wanted greater security at the ferries, whereas 90 passengers regarded security as sufficient. Despite the high level of security experienced by passengers, many added comments about how they would feel safer if there were more control, especially on the ferries. Potential risks mentioned by ferry passengers were cross-border criminality and illegal immigration. Ferry passengers did not explicitly mention terrorism as a potential threat. An important issue raised by the passengers at Arlanda airport is the balance between passengers' personal integrity and maintaining a high level of safety. The reason for maintaining a high security level, according to the passengers, is because of threats from outside Europe. Some passengers had trouble categorising these ambiguous threats, whereas others mentioned terrorism, illegal immigration and cross-border criminality as potential risks. A few passengers did not see security checks as sufficient enough to prevent terrorist attacks and generally identified threats targeting society, such as terrorism and illegal activity, placing risk into a larger social context.

The majority of passengers were positive regarding the freedom of movement because it facilitates travel within the EU for EU nationals. Sixty-six airport passengers and 63 ferry passengers saw it as a great benefit, facilitating travel and socioeconomic relations among European countries. Several passengers stressed that freedom of movement comes with responsibility and saw the opportunity to live, work and travel freely in Europe as a privilege. However, the interviewees also mentioned the lack of security and the risk of terrorism or travelling criminals taking advantage of open internal borders. Twenty-one ferry passengers and seven airline passengers saw the freedom as a problem or a potential threat, enabling people who "do not belong" to travel more easily. Passengers use classificatory devices (Douglas, 1966) to distinguish between those who belong (European citizens) from the outsiders who do not belong and who may be threats to Europe. Sweden and the other Northern European countries are considered safe compared to the rest of Europe and nations outside of Europe. Thus, a European identity, or a sense of inclusion, seems to be inscribed in the passengers' consciousness. Passengers' discussions of risk and safety imitate the social and political consciousness in the 21st century (Denney, 2005) and is influenced by previous events, such as terrorist attacks, news regarding illegal migration to Europe, and cross-border criminality. Passengers focus on political, criminal or ambiguous threats, ignoring accidents or malfunctions for reasons other than terrorism.

Despite the risks mentioned, the majority of interviewed ferry passengers found it convenient not to have to go through security checks, and only three interviewees wanted more ferry security. All passengers interviewed at Arlanda airport had passed through the security check, and many airport travellers generally regarded passport control as an everyday routine. Sixty-three interviewees at Arlanda airport experienced the security checks as sufficient, 24 wanted more security, and 13 had no opinion or did not offer a positive or negative answer regarding the security level. Several passengers had positive experiences with the effectiveness of airport staff. Five passengers mentioned uneasiness about the increased use of technology and their trust in technological safety equipment at airports being less than their trust in human security officers.

Despite the generally positive attitudes to the freedom of movement, several passengers highlighted the ambiguity and inconsistency of passport regulations. Risk is characterised by an uncertainty regarding an outcome, which in itself is a product of existing knowledge and new information (Zinn, 2006). Uncertainty about procedures and rules caused insecurity among travellers. Passengers requested more information about procedures and more explicit signs about what is expected from passengers at border crossings. In addition, few passengers had extensive knowledge regarding the freedom of movement and the different rules and regulations applied by the EU. Since one of Project Turnstone's objectives is to increase public experience with security without compromising the freedom of movement and efficient measures against cross-border criminals, passengers' construction and understanding of safety requires further study.

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How do Croatian Police Officers Perceive Certain Characteristics of Police Management?

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Purpose:

To explore the importance and existence of Croatian police managers' relevant characteristics from the perspective of police officers, and in relation to several police officers' demographic and professional characteristics.

Design/Methods/Approach:

A convenience sample of 132 Croatian police officers (104 males) who attended a study programme in criminal investigation (average age 31.5 years) was examined by means of a questionnaire that – within Katz's skill theory of successful management – assesses the perceived importance and the perceived existence of technical/expert, social and strategic knowledge/skills, as well as the most representative characteristics of current police managers.

Findings:

A dominant perception of the highest level of importance for all three categories of managerial knowledge/skills was detected, while possession of the said skills was mainly assessed to be at the medium level. The largest difference was found between the perceived importance and the perceived possession of social skills. Social skills were also perceived to be significantly more important than the other ones, while police managers were perceived to most frequently possess expert skills. Out of 12 offered police manager characteristics, the most frequently selected were negative ones. Finally, there were no significant and systematic effects of demographic and professional factors on the perceived importance and perceived possession of any of the three knowledge/skills categories.

Research Limitations/Implications:

A larger and more representative sample would ensure the study's greater external validity and statistical power. Additional management skill items are needed in the questionnaire to improve the construct validity (besides including other relevant factors and questions useful for interpreting the trends detected).

Practical Implications:

Within the research limitations, the findings suggest possible changes to the education system, staff assessment and police officers' promotion.

Originality/Value:

This is the first police management research in Croatia and probably the first generally within the framework of Katz's skill theory of successful management.

UDC: 351.74(497.5)

Keywords: police officers, perception, police management, categories of knowledge or skills

Kako hrvaški policisti dojemajo določene značilnosti policijskih menedžerjev?

Namen:

Namen prispevka je analizirati pomen in prisotnost relevantnih osebnostnih značilnosti in veščin/kompetenc policijskih menedžerjev v hrvaški policiji in ugotoviti, ali socialne in demografske značilnosti policistov vplivajo no to oceno.

Metoda:

Raziskava je bila izvedena na priložnostnem vzorcu 132 hrvaških policistov (104 moških) – študentov študijskega programa kriminalistike. Uporabljen je bil vprašalnik, ki je v skladu s Katzovo teorijo uspešnega menedžmenta meril oceno pomembnosti in prisotnosti določenih osebnostnih kompetenc pri hrvaških policijskih menedžerjih – tehničnih oz. strokovnih kompetenc, socialnih kompetenc ter strateških kompetenc. Anketiranci so ocenjevali tudi najbolj značilne osebnostne značilnosti hrvaških policijskih menedžerjev.

Ugotovitve:

Anketiranci so vse tri vrste kompetenc ocenili kot zelo pomembne, medtem ko so pomembnost osebnostnih značilnosti menedžerjev za njihovo uspešnost ocenili kot srednje pomembno. Največji razkorak je bil zaznan med pomembnostjo in dejansko prisotnostjo socialnih veščin/kompetenc pri policijskih menedžerjih. Socialne veščine so bile ocenjene kot pomembnejše kot drugi dve vrsti ocenjevanih veščin/kompetenc, medtem ko so bile tehnične/ekspertne veščine označene kot najbolj pogosto prisotne pri ocenjevanih menedžerjih. Od skupno 12 ocenjevanih osebnostnih značilnosti policijskih menedžerjev so bile najpogosteje izpostavljene tiste, ki jih lahko ocenimo kot negativne. Med socialnimi in demografskimi značilnostmi anketirancev in ocenjevanimi kompetencami avtorji niso ugotovili statistično značilnih povezav.

Omejitve/uporabnost raziskave:

Večji in bolj reprezentativni vzorec anketiranih policistov bi dal tudi bolj relevantne rezultate za hrvaško policijo. Za večjo veljavnost rezultatov bi bilo treba v vprašalnik vključiti tudi druge osebnostne značilnosti in kompetence, tako da bi lahko analizirane vsebine bolj celovito ocenili.

Praktična uporabnost:

Upoštevaje omejitve raziskave so lahko rezultati študije uporabni pri prihodnjem izobraževanju in selekciji policijskih vodij.

Izvirnost/pomembnost prispevka:

Gre za prvo raziskavo o policijskem menedžmentu na Hrvaškem in verjetno eno prvih z uporabo Katzove teorije veščin v povezavi z uspešnostjo vodenja.

UDK: 351.74(497.5)

Ključne besede: policisti, policijski vodje, menedžment, kompetence, veščine, Hrvaška

1 INTRODUCTION

The important, complex and delicate nature of police work presupposes the perfect or at least optimal functionality of the police organisation within a challenging social and political environment. The nature and character of police work, the volume and complexity of the legal framework that governs the work, size and complexity of the police organisation and the number of employees in the police force all play important parts. In principle, the chief element in the functioning of all organisations irrespective of their type, size and nature is the so-called human factor. Human resources encompass the totality of the formal knowledge, practical skills, abilities, behaviours, social characteristics, psychological traits and realised and/or latent creative potential of the people in a society, organisation or community (Marčetić, 2007).

In this regard, police managers and police officers ('frontline executives') are key factors of the functionality of the police organisation and the most important predictor of whether police organisations can operate effectively in complex environments (Peterson, Walumbwa, Byron, & Myrowitz, 2009). Police efficiency depends on the quality of both factors as well as the quality of their interaction. In general, responsibility is not even; it is more on the side of management and less on the officers. Responsibility is proportional to the position and role of the specified factors in the organisation and, in principle, stems from the scope and content of their tasks and powers. The interaction of police management and police officers is based on a hierarchy which is formalised through legislation and manifested in police practice through subordination and coordination[1].

In addition to the formal hierarchy among organisational units at different levels (external hierarchy), the hierarchical interpersonal relations among staff within individual organisational units (internal hierarchy) are important.[2]

1 *"Hierarchy is a set of legitimate relations on one hand and actual interpersonal relations on the other within the system and process of management. ... Subordination is a form of hierarchic relations that may be regarded as a strictly pyramidal-linear and where communication is always initiated from the top of the pyramid downwards. Coordination, as a concept in hierarchic relations in management, includes even in the preserved organisational pyramid, a two-way feedback and horizontal connections (between services, organisational units, etc.)" (Jurina, 2008: 123–124).*

2 *"There are three interpersonal roles of the manager: the role of representative, meaning conducting ceremonial and symbolic activities … in which the manager appears as the 'head of the house'. The role of leader comprises relations with subordinates and includes motivation, communication and influence. The role of liason comprises maintaining information channels within the organisation and outside of it" (Buble, 2006: 19).*

Interpersonal relations between managers and police officers are based on authority stemming from the managerial position. 'Formal' authority is gained by a manager through the very act of their appointment to a managerial post in the organisation, and continues for the actual term of their appointment as regulated by a written legal decision. The manager's 'actual' authority directly corresponds to their real knowledge and skills (technical, social, strategic) and the mode and scope of implementing them in the performance of managerial duties. A balance between formal and actual authority is expected as a self-understood fact, but a smaller or greater discrepancy is possible. Therefore, the system of choosing managerial staff is extremely important for the organisation since it is up to the managers to encourage, mobilise and motivate their subordinates, make best use of their potential, improve their effectiveness and raise the success rate of the entire unit.

A good proportion of research in this area is based on perceptions of police leaders' traits, abilities and behaviours in the eyes of subordinates. Pearson-Goff and Herrington (2014) concluded that most of what we know about police management leadership stems from research concentrating on 'perceptions' of police leadership rather than on objective measures (52 of 57 studies). In the literature, seven characteristics have regularly been perceived as attributes of effective police leaders. The first is being 'ethical', generally defined as exhibiting a sense of integrity and honesty and, in doing so, being able to generate a sense of trustworthiness among one's subordinates (O'Leary, Resnick-Luetke, & Monk-Turner, 2011; Schafer, 2008, 2010; Vito, Suresh, & Richards, 2011). The literature suggests that trust works in both ways, with leaders needing to be trusting of their staff as well (Wheatcroft, Laurence, & McGrory, 2012). Effective police leaders are also perceived to understand their responsibility as a 'role model' (Andreescu & Vito, 2010; Johnson, 2006; Murphy & Drodge, 2004; O'Leary et al., 2011) in leading by example. 'Communication' is another key characteristic, and the literature has conceptualised this in terms of communication within the police organisation as well as communication with one's subordinates (O'Leary et al., 2011; Schafer, 2008, 2010; Steinheider & Wuestewald, 2008) and being able to communicate across organisations and be an active voice in government and stakeholder policy development (Butterfield, Edwards, & Woodall, 2005; Meaklim & Sims, 2011). Effective police leaders are perceived to be competent 'decision makers' and able to make decisions that lead to the achievement of goals (Andreescu & Vito, 2010; Dick, 2011; Schafer, 2010). Further, the way leaders make their decisions plays an important role in them securing legitimacy and respect from their subordinates (Murphy & Drodge, 2004), with the involvement of subordinates in decision-making perceived to hold positive benefits for organisational commitment. Relatedly, effective 'thinking ability' is important with critical, strategic and creative thinking regarded as key attributes of successful leaders (Meaklim & Sims, 2011; O'Leary et al., 2011).

The relevance of how police officers perceive their leaders' attributes manifests at the level of cognitive knowledge and evaluation, and at the level of development and direction. A variety of elements – subjective and objective – affect the operationalisation of police performance management. In relation to

this, managers' individual characteristics (knowledge, skills, personality traits) along with the police system's organisational and legal characteristics are vitally important.

The research reported in the literature explores a variety of relevant police management characteristics and skills, but without some coherent theoretical framework. Therefore, we found it important to look at the properties of police management in terms of the theory of management, which emphasises three basic groups of knowledge and skills relevant to successful management in general: technical/expert, social and strategic skills (Katz, 1974):

Technical/expert skills – a domain expert with special knowledge and skills in a particular area or field, analytical skills of a certain specialty, the ability to use special knowledge of the profession, or skills in applying specific methods and techniques in the performance of activities and tasks.

Social skills (dealing with people) – the ability of managers to communicate effectively, motivate and guide individuals and groups, build relationships of cooperation and teamwork, create an atmosphere of support and safety, and ensure the participation of all employees in decision-making.

Strategic skills – the ability to perceive the organisation as a whole, entailing understanding of the strong interdependence of the organisation's various functions and activities, and of the impact of changes in the immediate and broader organisational environment that determine strategic directions for the organisation's activities and its development.

The main goal of this research is to present the features of Croatian police management as perceived by police officers (POs) and in relation to certain of their demographic and professional characteristics. Since most of the perceived Croatian police management features in this research refer to managers' technical/expert, social and strategic skills, the specific goals and related hypotheses are as follows:

- to present the state and congruency of the POs' *perception of the importance* and their *perception of the actual existence* of expert, social and strategic skills in the Croatian police management system. The related hypotheses presume there are no differences: (i) between the assessment of the perceived importance and perceived existence of the three types of police managers' skills (expert, social and strategic); (ii) in the perception of *importance* among the three types of police managers' skills; and (iii) in perceptions of the *existence* of the three types of police managers' skills;
- to analyse POs' perception of the *importance* of technical/expert, social and strategic skills for police managers (PMs) relative to three characteristics of POs: sex, age group and police administration category. The related hypotheses presume there are no differences in the perceived *importance* of the three types of PM skills according to the POs' gender, age and police administration category;
- to analyse POs' perception of the *existence* of technical, social and strategic skills of actual PMs relative to the POs' three characteristics. The related hypotheses presume there are no differences in the perceived *existence* of

the three types of PM skills according to the POs' gender, age and police administration category; and
- to present POs' perception of the most representative individual characteristics of actual Croatian PMs.

2 METHOD

2.1 Sample description

The convenience sample is composed of 132 police officers who attended a study programme of criminal investigation courses at the Police College of the Ministry of the Interior (MoI), Croatia, during the 2014/2015 academic year. *The gender structure* of the participants in this research generally reflects the actual gender ratio of the MoI employees (1:4). As for the participants' *age structure*, the predominant age is 25–34 years (average 31.5; *SD* = 4.47), which we divided into five age groups (see Table 1). The participants include all four categories of police administrations, which are equally represented. With regard to the complexity of security and crime issues, police administrations are also categorised according to area size, population size, geographic position, and crime and security level in a wider sense (Regulation on the police administrations' and police stations' county areas, seats, types and categories, 2011, 2014). The number of participants' years of service in the police is represented by five categories and in this research the prevailing length is 5–9 years, with an average of 11.1 years, which we consider relevant to ensuring the significance of the participants' replies.

Table 1: Demographic and professional characteristics

Variable	Categories	N	Percentage
Gender	M	104	79.4
	F	27	20.6
Age (years)	up to 24	1	.8
	25–29	50	38.2
	30–34	47	35.9
	35–39	27	20.6
	over 40	6	4.6
Police administration category	1st category	33	27.0
	2nd category	26	21.3
	3rd category	36	29.5
	4th category	27	22.1
Length of service (years)	up to 4 years	1	.8
	5–9	69	53.1
	10–14	22	16.9
	15–19	28	21.5
	over 20	10	7.7

Demographic and professional characteristics of the 132 police officers[3] in the sample

As regards the hierarchical level at which participants obtained their work experience, the dominant share of participants (81.8%) had spent their previous years of service working mostly in police stations. This fact directly impacted on their viewpoints on police management as an important component.

3 *Not all participants answered all of the demographic and professional questions in the questionnaire.*

2.2 Questionnaire

Relevant data were gathered with the help of a questionnaire containing 17 items and organised into three sets – (1) demographic and professional characteristics of the examined POs (five items); (2) perceived relevance and actually exhibited technical, social and strategic PM skills (seven items); (3) the police system's organisational-legal characteristics concerning the management (five items). Most questions were in closed form, while the second and third sets of questions were in Likert-scale format (see the categories in Table 2). For the purpose of this study, we only used questions from the first two sets:

- four questions on examinees' (police officers') personal characteristics (nominal and ordinal scale): gender, age group, police administration category, length of service;
- six questions on POs' perception of the relevance of and actually exhibited technical, social and strategic PM skills (ordinal scale); and
- one question on the PMs' most representative individual characteristics relevant to professional functioning (nominal scale).

The introductory part of the questionnaire includes a short description (definition) of the three specified categories of skills (technical/expert, social and strategic) managers must possess for successful management.

2.3 Procedure

The survey was conducted within the teaching process in undergraduate and graduate professional crime investigation studies at the Police College. The questionnaire was administered in three educational groups of police officers with a standard instruction stating that the questionnaire was anonymous and participation was voluntary. Although there was no time limit, the questionnaire was completed during one standard lecture.

2.4 Data analysis

Data were processed using descriptive and nonparametric statistics with SPSS 20 for the Social Sciences (IBM SPSS Statistics Base 20, 2011; Landau & Everitt, 2004). Nonparametric statistics were applied due to the:

(1) ordinal scale measurement of the observed variables (perception of importance and perception of the existence of relevant police management skills);
(2) convenience sample;
(3) the fact mostly non-equal groups were defined by the independent variables; and
(4) the presence of mainly non-normal distributions (Howell, 1997; Siegel & Castellan, 1988).
The related tests are:
The Wilcoxon signed-rank test (testing the difference between the perceived importance and the perceived existence of skills relevant to police management).

The Friedman test (testing the congruency of the skills perceived as relevant).
The Mann Whitney U test (testing gender differences in the observed variables).
The Kruskal-Wallis test (testing the dependence of the observed variables on other personal characteristics of the examinees: age group, police administration category and duration of police employment).

3 RESULTS

3.1 Estimation of the importance and the level of possessing PM technical/expert, social and strategic skills

The police officers in the sample (irrespective of their age, gender, police administration category or length of service) exhibit a considerably high estimation of the importance of expert, social and strategic skills (see Table 2). Nevertheless, the median values on a scale from 1 to 5 show that the police officers regard police managers' social skills as the most important (*Med* = 5, q[4] = 0.5), and police managers' strategic skills as the least important (*Med* = 4, q = 0.5). More subtle differences in the assessed importance of the three skills would be detected if we had treated the data as measured on a pseudo-interval scale and calculated the related means and standard deviations ($M_{ImportSocial}$ = 4.7, $SD_{ImportSocial}$ = 0.58; $M_{ImportStrategic}$ = 4.3, $SD_{ImportStrategic}$ = 0.62). This is understandable because 80% of the participants are frontline POs (operatives), who primarily have high regard for expert or technical knowledge and skills.

In contrast, there is a large discrepancy between the perceived level *of importance* and the perceived level *of possession* of all those knowledge or skills categories in police managers.

4 *q = semi-interquartile range*

Table 2: Estimation of POs'

	Importance of knowledge/skills	*f*	%	*Med*	Level of possession of knowledge/skills	*f*	%	*Med*
Expert skills	1 - completely irrelevant	1	.8	**5**	1 - extremely low	3	**2.3**	**3**
	2 - irrelevant	-	-		2 - low	18	**13.6**	
	3 - neither important nor unimportant	2	1.5		3 - medium	81	**61.4**	
	4 - important	54	**40.9**		4 - high	28	21.2	
	5 - extremely important	75	**56.8**		5 - extremely high	2	1.5	
Social skills	1 - completely irrelevant	1	.8	**5**	1 - extremely low	17	**12.9**	**2**
	2 - irrelevant	-	-		2 - low	59	**44.7**	
	3 - neither important nor unimportant	1	.8		3 - medium	48	**36.4**	
	4 - important	39	**29.5**		4 - high	8	6.1	
	5 - extremely important	91	**68.9**		5 - extremely high	-	-	
Strategic skills	1 - completely irrelevant	-	-	**4**	1 - extremely low	13	9.8	**3**
	2 - irrelevant	1	.8		2 - low	39	**29.5**	
	3 - neither important nor unimportant	8	6.1		3 - medium	69	**52.3**	
	4 - important	71	**53.8**		4 - high	10	7.6	
	5 - extremely important	52	**39.4**		5 - extremely high	1	.8	

Estimation of POs' perceived importance and perceived possession of PMs' expert, social and strategic knowledge or skills: frequencies, percentage and median values (Med)

The perceived level of possessed knowledge or skills is relatively low (all median marks are 3 or 2 – indicating between "low" and "medium" level). It is evident that the POs believe their present managers lack social skills (*Med* = 2, *q* = 0.5; *M* = 2.4, *SD* = 0.78), while they mostly perceive them as possessing technical/ expert knowledge or skills (*Med* = 3, *q* = 0; *M* = 3.1, *SD* = 0.71).

3.2 Differences between evaluation of the perceived importance and the perceived possession of three types of knowledge or skills relevant to police managers – technical/expert, social and strategic

The large discrepancy between the perceived *level of importance* and the perceived *level of possession* of all those knowledge or skills categories for police managers, as evident from the previous distribution table, was tested using the appropriate non-parametric test (*Wilcoxon Signed-Rank Test*): the differences in ranks of the *perceived level of possessed knowledge or skills* and their *perceived importance* are predominantly negative, meaning the perceived level of relevant knowledge or skills possessed by PMs is significantly lower than their perceived importance (see Table 3).

Table 3: Descriptive statistics

Rank differences		*N*	Mean Rank	Sum of Ranks
(perception of possession of expert knowledge/skills by PMs – perception of importance of expert knowledge/skills for PM's function)	Negative Ranks	116	59.27	6875.00
	Positive Ranks	1	28.00	28.00
	Ties	15		
	Total	132		
(perception of possession of social skills by PMs – perception of importance of social skills for PM's function)	Negative Ranks	127	64.00	8128.00
	Positive Ranks	0	.00	.00
	Ties	5		
	Total	132		
(perception of possession of strategic skills by PMs – perception of importance of strategic skills for PM's function)	Negative Ranks	117	60.66	7097.00
	Positive Ranks	2	21.50	43.00
	Ties	13		
	Total	132		

Descriptive statistics of the Wilcoxon signed-rank test for testing differences in ranks of the perceived level of possessed knowledge or skills by PMs and the perceived importance of that knowledge or skills for PM's function

The differences are clearly statistically significant (*Asymp. Sig*. < 0.001) for all three relevant types of knowledge or skills: (1) technical knowledge *Z* = -9.509, (2) social skills *Z* = -9.897, (3) strategic skills *Z* = -9.488.

3.3 Differences in perceived importance of three types of knowledge or skills relevant to police managers: expert, social and strategic

There are significant differences in perceptions of the importance of the three types of knowledge or skills relevant to PMs: with social being perceived as the most (average score of 4.66), and strategic skills the least (average score of 4.32) important for PMs. This trend is confirmed in the related Friedman test (χ^2 = 27.98, *df* = 2, $p < 0.001$) with its mean ranks (see Table 4) and *post hoc* Wilcoxon Signed-Rank Tests with a Bonferroni correction ($PC[\alpha] = 0.017$), which detected significant differences in perceived importance between strategic and expert skills ($z = -3.248$, $p = 0.001$) and between strategic and social skills ($z = -5.328$, $p < 0.001$).

Rank variable	Mean Rank
Perception of importance of expert skills for PMs	2.03
Perception of importance of social skills for PMs	2.21
Perception of importance of strategic skills for PMs	1.75

Table 4: Mean ranks of perceived importance of three types of knowledge or skills relevant to PMs

3.4 Differences in perceived existence of three types of knowledge or skills relevant to police managers: expert, social and strategic

There are significant differences in perceptions of the existence of three types of knowledge or skills relevant to PMs: expert skills is the most (average score of 3.06) and social skills the least (average score of 2.36) present in actual PMs. This trend is confirmed in the related Friedman test (χ^2 = 77.43, df = 2, p < 0.001) with its mean ranks (see Table 5) and *post hoc* Wilcoxon Signed-Rank Tests with a Bonferroni correction ($PC[\alpha]$ = 0.017), which detected significant differences in perceptions of the existence among all three PM-relevant skills: (1) social and expert (z = -7.751, p < 0.001), strategic and expert (z = -5.711, p < 0.001), strategic and social (z = -3.051, p = 0.002).

Table 5: Mean ranks of perceived existence of three relevant types of knowledge or skills in PMs

Rank variable	Mean Rank
Perception of existence of expert skills for PMs	2.48
Perception of existence of social skills for PMs	1.61
Perception of existence of strategic skills for PMs	1.92

3.5 Gender differences

The Mann Whitney U Test with its *Asymp. Sig.* p > 0.05 clearly shows that in all six observed variables (perceived importance and perceived possession of the 3 PM-relevant types of knowledge or skills) no gender differences were found (see Table 6). This is sharp evidence that male and female police officers do not have different perceptions of the importance of expert, social and strategic knowledge or skills for police managers, nor different estimations of the degree to which their current police managers possess expert, social and strategic knowledge or skills.

Table 6: Results of the Mann Whitney *U* test

	Importance of knowledge/skills			Level of possession of knowledge/skills		
	Gender	*N*	*Mean rank*	*Gender*	*N*	*Mean rank*
Expert skills	Male	104	65.15	Male	104	66.56
	Female	27	69.28	Female	27	63.85
	Test: Z = -0.583, p = .560			**Test: Z = -.379, p = .705**		
Social skills	Male	104	64.10	Male	104	67.81
	Female	27	73.33	Female	27	59.04
	Test: Z = -1.408, p = 0.159			**Test: Z = -1.153, p = .249**		
Strategic skills	Male	104	63.75	Male	104	65.93
	Female	27	74.69	Female	27	66.28
	Test: Z = -1.506, p = 0.132			**Test: Z = -.047, p = .963**		

Results of the Mann Whitney U test concerning gender differences in perceived importance and perceived level of possession of knowledge/skills relevant to PMs

Nevertheless, when observing the mean rank it is clear there is still a tendency for female officers to assess the importance of those three types of knowledge or skills higher than their male counterparts. There is also a visible tendency of male officers to more highly estimate the professional and social skills of the current police managers than their female peers, while there is no difference in estimations of the level of strategic skills.

3.6 Age differences

There is evidently no difference between the four age groups of police officers regarding the *perceived importance* and *perceived level of possession* of expert, social and strategic knowledge/skills relevant to PMs (*Asymp. Sig.* > 0.05, see Table 7). This means the perceived importance of knowledge or skills relevant to police managers is similar for all age groups of police officers.

Table 7: Results of the Kruskal-Wallis Test

	Importance of knowledge/skills			Level of possession of knowledge/skills		
	Age group	*N*	*Mean rank*	*Age group*	*N*	*Mean rank*
Expert skills	25–29 years	50	63.00	25–29 years	50	58.26
	30–34 years	47	69.85	30–34 years	47	75.14
	35–39 years	27	58.81	35–39 years	27	65.06
	40 & more years	6	82.33	40 & more years	6	52.33
	Test: χ^2 = 3.911, *df* = 3, *p* = .271			**Test: χ^2 = 7.503, *df* = 3, *p* = .057**		
Social skills	25–29 years	50	69.34	25–29 years	50	61.17
	30–34 years	47	65.07	30–34 years	47	69.82
	35–39 years	27	61.80	35–39 years	27	67.80
	40 & more years	6	53.50	40 & more years	6	57.42
	Test: χ^2 = 2.169, *df* = 3, *p* = .538			**Test: χ^2 = 1.931, *df* = 3, *p* = .587**		
Strategic skills	25–29 years	50	65.91	25–29 years	50	67.29
	30–34 years	47	59.56	30–34 years	47	72.21
	35–39 years	27	73.13	35–39 years	27	52.11
	40 & more years	6	74.25	40 & more years	6	58.25
	Test: χ^2 = 3.312, *df* = 3, *p* = 0.346			**Test: χ^2 = 6.354, *df* = 3, *p* = .096**		

Results of the Kruskal-Wallis Test concerning age differences in perceived importance and perceived level of possession of knowledge/skills relevant to PMs

However, there is a general tendency whereby the age group 30–34 years gives the highest scores for actual possession of professional, social and strategic knowledge or skills to the current police management, while police officers of the oldest age group (40+ years) on average give the lowest scores for such knowledge or skills.

3.7 Police administration category differences

The first category of Police Administration is the most complex with regard to area and population size, crime and security level, and geographic/territorial position. When observing the values of the average ranks for all four Police Administration categories and all six dependent variables, two interesting tendencies may be observed (see Table 8):

- Concerning the perceived importance of all three types of knowledge or skills for police managers, it is evident that the first category of Police Administration on average provides the lowest estimation for the importance and the second highest estimation for the possession of such knowledge or skills.
- The second Police Administration category on average gives the highest estimates for the importance and the lowest estimates for the possession of such knowledge or skills in police management.

Table 8: Results of the Kruskal-Wallis Test

	Importance of knowledge/skills			Level of possession of knowledge/ skills		
	PAC	*N*	*Mean rank*	*PAC*	*N*	*Mean rank*
Expert skills	1st category	33	56.30	1st category	33	55.82
	2nd category	26	64.92	2nd category	26	64.35
	3rd category	36	63.00	3rd category	36	67.24
	4th category	27	62.56	4th category	27	58.06
	Test: $\chi^2 = 1.401$, $df = 3$, $p = .705$			**Test: $\chi^2 = 2.907$, $df = 3$, $p = .406$**		
Social skills	1st category	33	53.52	1st category	33	62.85
	2nd category	26	74.88	2nd category	26	49.90
	3rd category	36	64.50	3rd category	36	69.58
	4th category	27	54.37	4th category	27	60.24
	Test: $\chi^2 = 10.769$, $df = 3$, $p = .013$			**Test: $\chi^2 = 5.555$, $df = 3$, $p = .135$**		
Strategic skills	1st category	33	60.80	1st category	33	68.38
	2nd category	26	66.40	2nd category	26	47.96
	3rd category	36	60.36	3rd category	36	66.96
	4th category	27	59.15	4th category	27	58.85
	Test: $\chi^2 = 0.854$, $df = 3$, $p = 0.837$			**Test: $\chi^2 = 7.398$, $df = 3$, $p = .060$**		

Results of the Kruskal-Wallis Test concerning police administration category (PAC) differences in perceived importance and perceived level of possession of relevant knowledge or skills among PMs

The specificity of the second PAC concerning the perceived importance of PMs' social skills is confirmed by the related Kruskal-Wallis test (χ^2 =10.77, df = 3, p = 0.013) and *post hoc* Mann-Whitney U Tests with a Bonferroni correction ($PC[\alpha]$ = 0.008), which detected significant differences between the first and second (Z = -2.965, p = 0.003 < 0.0085) and the second and fourth (Z = -2.785, p = 0.005 < 0.0085) PACs.

3.8 Police managers' personal characteristics relevant for professional functioning

Managers' success also depends on their individual characteristics relevant for professional functioning. In management theory and practice, it is well known that there are generally accepted lists of positive/desirable and negative/ undesirable professional personality characteristics for managers in the context of their impact on the managers' success. Out of 12 offered characteristics (six positive and six negative ones), the six most frequent ones are the negative

characteristics, indicating a very negative perception of police managers by police officers (see Table 9). Starting from the most frequent (rank 1) to the least frequent characteristic (rank 12), the dominant characteristics of the police managers – as perceived by their subordinates – may be presented as follows:

Table 9: Individual characteristics relevant for professional functioning

rank	Personal characteristics
1	Lack of objectivity
2	Superficiality
3	Lack of independence
4	Dishonesty
5	Indecisiveness
6	Unprofessional conduct
7	Decisiveness
8	Professionality
9	Systematic approach
10	Independence
11	Objectivity
12	Honesty

4 DISCUSSION

Participants in this research were mainly police station employees. Consequently, the conclusions primarily refer to the characteristics of police management at this level of hierarchy. Projection of the obtained results onto the middle and highest levels of police management cannot be considered automatic, nor can the assumption of the same or similar characteristics of police management at lower and higher levels be *a priori* discarded.

The current status of police managers' knowledge and skills, as revealed by the results, cannot be considered satisfactory. The research ascertained there is a dominant perception of *the highest level of importance* for all three categories of managerial knowledge/skills (technical, social, strategic), which is necessary for successfully managing organisational units in the police. However, the actual possession of such knowledge/skills was largely assessed to be at the *medium level*, meaning there is a significant disparity, implying a dysfunctional state in police management. There are multiple and cumulative reasons for this condition: no social skills acquisition in previous formal education, failures in selection procedures when choosing a candidate for a managerial position in which their social skills are not adequately identified and valued, systematic non-fulfilment of the conditions prescribed in the Regulation on police officers job classification (2011, 2012, 2013). Namely, according to this Regulation, among other things, a candidate must have completed a training programme on improving work of officers higher up the hierarchy appropriate to the rank they are appointed to. A logical question arises here: do officers who advance in their jobs truly possess the required skills or are they appointed to a managerial position through an arbitrary decision?

Especially striking is the discrepancy between the perceived importance and the perceived possession of social knowledge/skills (Table 3). The importance of this was felt by the participants in their daily procedures and experience of police work and, given their dissatisfaction with the quality of their superiors' conduct towards them, they expressed highest respect for the importance of social skills in police managers (Andrescu & Vito, 2010; Fleming, 2004; Vito & Higgins, 2010).

A significant difference was detected in assessing the relevance of certain skills (Table 4) and here another question arises: why do police officers in Croatia assess social skills as the most important and strategic skills as the least important? The reason for this might be: (1) specific police officers' experience is acquired on the lowest i.e. operative level of the police system (police administration), reflecting interactions chiefly with the lowest managerial level; (2) consequences experienced by possessing or not possessing the three types of skills (lack of reciprocity), but also (3) a need for qualities that will mostly facilitate and improve managing on that level. To be more concrete, the role and significance of strategic skills is primarily reflected on the highest level of police management while on the operative level of management specialised expert skills and competencies are more important, together with the ability to apply specific methods and techniques when doing jobs in a certain organisational police unit. On the other hand, social skills and competencies were assessed as the most important to possess in order to support subordinates and have a good organisational climate for the highly stressed police work, which involves the solving of conflict situations on an everyday basis (Euwema, Kop, & Baker, 2004).

Internal working conditions are very much defined by the quality of interpersonal relations, which directly depend on police managers' conduct, especially the way they treat the police officers and how they organise their daily activities. Finally, there are at least implicit expectations that managers of police administrations must differ from the frontline executives in terms of higher levels of social competencies because their position stands out chiefly due to managing jobs and coordinating working teams, and not so much in terms of technical/expert requirements.

The significant differences in perceptions of police managers possessing the three skills (Table 5) may be due to a misbalance in all areas of police managers' training, the criteria established for selecting managers, and may be partly influenced by expectations expressed in the perceived relevance of the skills. Namely, police trainings designed to develop social skills are significantly less represented than expert competence training. On the other hand, in the criteria for promotion police officers' social skills are not even indirectly (within achievements that include them) represented as intensively as technical/expert skills. Finally, if police officers have greater expectations of managers' social rather than technical/expert skills, then the same low level of social and technical skills can be perceived in favour of technical skills (they will be perceived as more present). This effect is known in users' evaluation of public services, and forms part of the broader phenomenon of *expectancy disconfirmation* (Poister & Thomas, 2011).

Due to the available data, we could not expect to observe systematic differences between male and female police officers regarding perceptions

of the importance and perceptions of the actual existence of the three types of managerial skills. There is a mild tendency (its significance would not change drastically by changing the sample) among female officers to assess that managers' possession of all three skills more than male officers who tend to assess managers' possession of social and technical skills as more significant (Table 6). This can possibly be explained by their higher professional criteria (being more systematic, analytical and sensible) than their male colleagues. Namely, people with higher professional criteria are expected to assess as significant all the professionally desirable qualities and strictly assess a lack of them. A possible cause of the higher professional criteria in female officers might be their intrinsic motivation for the profession of a police officer since this job is, due to its requirements, only chosen by few highly motivated females.

Checking of the perceived significance and actual possession of the three skills in police managers according to age differences (Table 7) was based on the expectation that longer work experience not only gives a better insight into the skills of the managers, but also forms a more critical opinion of which skills really count. The results of this research failed to confirm this, even though a tendency was identified whereby officers aged 30 to 40 assess the possession of the three qualities in their superiors more than others, especially the oldest officers (over 40), who assess them the lowest. Such results may reflect the unevenness of the age groups observed but also the heterogeneity of police officers of the same age group, according to various working requirements for a certain category of the police administration.

On the other hand, they might reflect the growth of professional cynicism with the length of employment. Namely, the misbalance of demands and rewards or resources is reinforcing itself within a negative spiral of exhaustion and cynicism (Bakker, Killmer, Siegrist, & Schaufeli, 2000). In this process, the work relations of professionals with their colleagues and clients typically become less rewarding, as emotional exhaustion evokes negative attitudes to clients, colleagues and the organisation at large (Kop, Euwema, & Schaufeli, 1999). In this regard, Bakker and colleagues (Bakker, Demerouti, & Euwema, 2005; Bakker, Demerouti, Taris, Schaufeli, & Schreurs, 2003) showed that job rewards, such as supervisory coaching and performance feedback, may play an important role in buffering the relationship between job demands and burnout (particularly exhaustion and cynicism from senior police officers).

Nevertheless, we believe the reason is multifaceted and based on differences in levels in the nature and mode of work, leadership styles, employees' experience and training, level of police cynicism, management experience, being used to the everyday pressure of police work etc. In connection to this, we can repeat Morreale and Ortmeier's statement (2005) about the common mind-set of police managers whereby "many believe that because they were promoted or appointed to positions of authority and responsibility they have a right to make all decisions unilaterally". This means that empowering subordinates or putting them first arises from their social construction as being an efficient police manager or leader.

The differences in the perceived importance of the three groups of skills, and in perceptions of their actual existence in police managers, among police officers

from different types of police administrations (Table 8) were led by expectations that various working requirements of certain police administrations generate different skill structures of their managers, but also different assessments of their significance. Generally, these expectations were not confirmed since it emerged that only in assessing social skills did the second category of police administrations value these skills more than others. Moreover, a tendency of the second police administration category is obvious (albeit not significant) to assess the importance the most and the possession of all three qualities the least, which might point to the higher criteria of police officers from the first category of police administration. The tendency of the first police administration category to assess the three skills with the lowest grades is interesting, although not significant.

One still cannot expect to obtain systematic differences in assessments of the significance and actual managerial possession of the three skills among the four police administration categories from such a sample, and one may question how heterogonous the very police administrations are according to the factors relevant for assessing the three skill types. Although on the grounds of these tendencies no sensible explanation can be offered, one might speculate the reasons for understatement. Namely, with this level of data it is unclear if the present tendencies are the results of a representative sample or there might be relevant factors that were not included in the questionnaire.

Regarding the personality traits of police managers, one research finding was the participants' perception of predominantly negative personal characteristics of the PMs. This finding points not only to isolated cases of weakness within police management but to a weakness in the overall system which has a destructive impact on the functioning of police organisations.

The work of police officers is complex, responsible and highly stressful, thus making it extremely important that the work atmosphere and organisational climate within a police organisation is satisfactory. Internal or micro work conditions (atmosphere or climate) are by and large determined by the quantity and quality of interpersonal relations among employees on a day-to-day level. The social knowledge/skills of police managers impact directly on police officers' motivation and self-confidence and this impact may be *positive, neutral* or *negative.* They mainly relate to interpersonal relationships and depend on the character, stands and behaviour of police managers, or on their behaviour (communication, motivation, directing and leadership) towards their subordinate police officers. The quality of the impact managers have on staff is manifested in the professional satisfaction and work élan/enthusiasm of police officers and, consequently, in the success/effectiveness of the police unit.

5 CONCLUSION

A relatively small sample of participants was chosen to represent the entire population of highly educated police officers and the research sought to broadly diagnose their perception of the subjective elements of police management. The research tackles a relatively rare topic, especially in the Croatian environment, a topic related to aspects of police management. The main outcome of this research

shows the participants are not satisfied with collaboration, managerial support for subordinates, the lack of feedback and communication, and taking responsibility for staff well-being. Qualitative insufficiency in all of the individual elements of police management significantly restricts the potential and functionality of police organisations. Cumulative effects of the insufficiencies/negativities generate negative impacts on the organisation, making it dysfunctional and inadequately effective, in the long term limiting the development and prosperity of both the organisation and its employees.

Related to this is a need to engender organisational commitment by providing support to subordinates, giving feedback, promoting collaboration, and giving them a voice in the decision-making process (Densten, 2002, 2005; Johnson, 2012, 2015; Vito & Higgins, 2010). Thus, police officers are in need of more personal interaction, coaching and mentoring. The suggested improvements indicate there is room to improve the procedure for selecting police managers and normative instruments, such as institutional (job positions, salary, education, police ranks, promotions) and individual stimulations (accountability, work assessment, rewards).

The research results may be viewed as relevant indicators of the state of police management and may offer guidelines for further (more comprehensive and in-depth) studies, while also being a useful tool for making improvements in the organisational-managerial system of the Croatian police. However, in forming systematic guidelines for possible changes in the education system as well as in staff assessment and police officers' promotion, it is necessary to conduct research on a bigger sample that is representative of the whole system of police management (with even numbers in age groups), increase the number of questionnaire items referring to the same types of skills (to generate composite results on a higher measurement scale), but also add new questions to directly assess factors relevant to the three skills observed and to evaluate them. The effect of these factors could be examined by applying the focus group method, which would directly explain the observed tendencies.

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Public Video Surveillance: A Puzzling Issue for Serbian Lawmakers

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Purpose:

This paper examines the status of and practical problems in the use of public video surveillance for police and criminal procedural purposes.

Design/Methods/Approach:

The approach in this research paper entailed a comparative legal analysis of the Serbian system with regard to public video surveillance and the use of recorded material as evidence in different procedures. Our research also examined reactions to the use of such material by various government agencies, such as the Ombudsman, the Commissioner for Information of Public Importance and Personal Data Protection, as well as the procedures and activities of the police department when dealing with criminal investigations. This paper examines this issue from the perspective of the European Convention on Human Rights (ECHR), the jurisprudence of the European Court of Human Rights, and their implementation in Serbia.

Findings:

The results provide different perspectives on changes made in Serbian law. They also guided us in the interpretation of strategically important decisions and led us to construe methods and procedures for implementing different solutions and approaches in surveillance.

Research Implications:

Although the findings of this paper are strictly connected with the Serbian legal system, their implications and proposed solutions are universal in their possible application.

Originality/Value:

While in Serbia there have already been studies covering public video surveillance, evolutionary changes in certain crucial laws have lagged behind. This paper critically deals with such strategic imperfections.

UDC: 343

Keywords: surveillance, public surveillance, public video surveillance, Serbia, law

Javni video nadzor: zapleteno vprašanje za srbske zakonodajalce

Namen prispevka:

Prispevek obravnava stanje in praktične težave pri uporabi javnega videonadzora za policijske in kazensko procesne namene.

Metode:

Temeljni pristop v prispevku je izvedba primerjalno-pravne analize srbskega sistema javnega video nadzora in uporabe posnetega materiala kot dokaza v različnih postopkih. V raziskavi smo preučili tudi reakcije glede uporabe posnetega materiala s strani različnih državnih organov, kot sta varuh človekovih pravic in komisar za informiranje javnega pomena in varstvo osebnih podatkov. Prikazani so tudi postopki in dejavnosti policije, ki se ukvarja s preiskavo kaznivega dejanja. Problematika je obravnavana tudi z vidika Evropske konvencije o človekovih pravicah (EKČP), sodne prakse Evropskega sodišča za človekove pravice in njihovo izvajanje v Srbiji.

Ugotovitve:

Rezultati predstavljajo različne perspektive uvajanja sprememb v srbsko zakonodajo. Vodijo tudi k razlagi strateško pomembnih odločitev in predstavljajo različne rešitve in pristope za izvajanje nadzora.

Praktična uporabnost:

Vsebina prispevka je tesno povezana s srbskim pravnim sistemom. Obenem pa so ugotovitve in predlagane rešitve splošne in uporabne tudi v drugih državah.

Izvirnost/pomembnost prispevka:

Čeprav so v Srbiji že bile študije, ki zajemajo javni videonadzor, pa so razvojne spremembe v nekaterih ključnih zakonih zaostajale. Prispevek te strateške pomanjkljivosti kritično obravnava.

UDK: 343

Ključne besede: nadzor, javni nadzor, javni video nadzor, Srbija, zakonodaja

1 INTRODUCTION

Even though technology is rapidly and continuously evolving, there are still more technical innovations that could improve everyday life. When it comes to protecting residential, commercial and public buildings, premises and places, video surveillance systems can play an important role in preventing adverse events, along with their use by (repressive) regulatory authorities. In Serbia, many public buildings (both commercial and residential) have installed video surveillance systems in recent years and this has become one of the main means for protection and crime prevention.

On one hand, if a video surveillance system is properly designed it may prove useful in preventing improper behaviour at sports stadiums or other public

events, as well as during traffic control and supervision. Preventive or proactive actions are possible if a police officer spots someone committing or attempting to commit a crime (e.g. theft or robbery) and responds in an appropriate way by way of prevention or detection. A suppressive effect on crime can be achieved by archiving and analysing adverse events. This may be of great importance for the further course of operational work and could later provide evidence in criminal proceedings. On the other hand, setting up the equipment for video surveillance without clear, strict and normative legal regulation may lead to the violation of basic human rights, particularly those to privacy.

Therefore, we deal with the normative regulation of public video surveillance systems in the Republic of Serbia and neighbouring countries, as well as the risks and perspectives that exist when it comes to the right to privacy.

2 NORMATIVE FRAMEWORK FOR IMPLEMENTING VIDEO SURVEILLANCE IN THE REPUBLIC OF SERBIA

The primary goal of public video surveillance systems is to increase potential offenders' awareness of the risk of being caught in order to deter them from possible perpetration. Having that in mind, the prerequisite conditions for using video surveillance in the Republic of Serbia, as well as the laws and bylaws governed by international legal documents which are primarily concentrated on human rights (especially the right to privacy and more specifically Article 8 of the European Convention on Human Rights [ECHR], 1950) and the corresponding obligations of competent state authorities.

Among the many legal documents at the European level, the most significant ones are:

- Article 8 of the ECHR (1950), which states that everyone has the right to respect for his private and family life, his home, and his correspondence.
- The European Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data (Council of Europe, 1981) of the Council of Europe mainly regulates the processing of personal data. Questions concerning technical protection are regulated in Chapter 2 of the Convention, which among other things determines which data cannot be processed (i.e. data related to religious and racial origins, political opinions, health status, or sexual orientation) and other data protection measures.
- Pursuant to the Data Protection Directive of the European Parliament (European Commission, 1995), member states primarily agreed to protect the fundamental rights and freedoms of individuals, in particular their right to privacy with regard to the processing of personal data.
- Article 8 of the Charter of Fundamental Human Rights in the European Union (European Commission, 2000) emphasises that everyone has the right to protection of their personal data. The second paragraph of Article 8 stresses that such data can be processed for a specific purpose but must have the consent of the person in question or some other legitimate

reason for processing the data, based on law. This paragraph also states that everyone has the right to access information gathered about him or her, as well as the right to rebut such data.

The European Charter for a Democratic Use of Video Surveillance (European Forum for Urban Security, 2010) was created as a result of a project of the European Forum for Urban Security which identified seven key principles to be adhered to when using video surveillance. These principles are as follows:

1. The principle of legality
The design and implementation of video surveillance can only be done and paid for pursuant to existing laws and regulations.
2. The principle of necessity
The installation of video surveillance systems must be justified.
3. The principle of proportionality

The design and deployment of a video surveillance system must be appropriate and proportionate to the vulnerability of the protected premises or persons. Proportionality is chiefly related to the objectives to be achieved and the means for achieving them.

4. Principle of transparency
Each legal entity must have a clear and consistent policy concerning the operation of its system.
5. The principle of responsibility
The right to supervise public places is reserved for carefully selected properties. Proprietors are responsible for the systems installed on their behalf.
6. Principle of independent control
The term "control" means a clearly established system of norms and standards. Control can be performed by an independent expert or a special body, including citizen participation.
7. The principle of citizen participation
Everything must be done to encourage citizen involvement in every stage of the development of video surveillance systems.

In addition to the above EU legal documents, when it comes to video surveillance, the legislative framework in the Republic of Serbia contains the following laws:

Article 69 of the Law on Police (2005, 2011) regulates recording in public places. This regulation specifies that recording in public places comprises the continuous acoustic and video surveillance of public places in which criminal offences are frequently committed in order to suppress them. If there is the risk of a threat to human health and life or property during a public gathering, an authorised official may permit video recording or photographing of a public event. The police are obliged to publicly disclose their intention to carry out these activities.

In order to achieve efficient protection of the state border, Article 61 of the Law on State Border Protection (2008) stipulates that border police have the right to collect personal data and to add this to the records of individuals over whom that right is exercised. For the purpose of keeping records, border police are

authorised to perform scanning and video surveillance. Devices must be placed in a prominent place and marked with a warning sign. Recordings of personal data collected in this way must be destroyed 5 years from the day they were made, unless they are required for the purpose of criminal proceedings.

On 13 December 2012, the Regulation on Installing and Using Equipment and other Technical Resources while Protecting the State Border (2012) was adopted to regulate the installation and use of such equipment and other technical means in accordance with the above protective objective. Among other things, the Regulation provides that border police may use automatic devices for imaging and recording video material during surveillance as well as other technical means to record or photograph events at border crossings. In the event of recording at a border crossing, passengers and other persons should be alerted with a warning sign about the installation of automatic devices for taking pictures, recording and video surveillance. In addition, this regulation provides that automatic devices can be used for the prevention and identification of illegal crossings of the state border and other illegal activities. In accordance with international law and regulations, the regulations and images made in this way may be copied or electronically processed for training purposes, as proof in criminal or disciplinary proceedings, in determining facts in appeal proceedings, or in determining material loss. The primary purpose is for training, but first the images must be electronically altered so that it is not possible to determine the identity of the person/s in them.

Article 23 of the Law on City Police (2009) stipulates that, while performing activities within their jurisdiction, municipal police have the power to provide video surveillance wherever needed to prevent violations in public spaces and other facilities. The space or facility must be marked clearly with a distinguishable inscription that there is video surveillance. The video monitoring devices used must be visible.

In the new Law on Road Traffic Safety (2009, 2010, 2011), video surveillance may be employed for the prevention of traffic violations and as evidence. Article 296 stipulates that if a police officer and competent inspection authority in control of traffic establish through video surveillance or photo records that a vehicle is parked or has stopped in a manner which violates the Act, they may order the removal of vehicles in a period which may be shorter than three minutes. Article 322 states that a photo or video record in which the vehicle's registration number and relevant elements of the offence are clearly visible represents an authentic document proving the perpetration of the offence.

The Law on the Protection of Personal Data (2008, 2009, 2012) prescribes conditions for the gathering and processing of personal data, together with the rights and protection of those rights of people whose data are collected and processed. It also regulates restrictions on personal data protection, the procedure before the competent authority for the protection of personal data, security data, records, data exports from the Republic of Serbia, and supervision of the application of this Act.

Article 15 of the Law on the Prevention of Violence and Misbehaviour at Sports Events (2003, 2007, 2009, 2013) states that the organiser is obliged to provide technical equipment to monitor and record the entry and behaviour of people in the sports facility.

Article 54 of the Law on Games of Chance (2011, 2012) stipulates that, by order of the Board, the organiser has to ensure continuous audio-video surveillance of tables and gaming devices, casino entrances and exits, players and visitors, as well as provide documentation of continuous recordings made over a 10-day period.

The National Strategy for the Fight against Corruption in Serbia for the period 2013 to 2018 (2013) lists video surveillance at border posts and border crossing points as an effective means for fighting corruption, as well as helping determine responsibility. This Strategy cites the lack of a legal framework, technical equipment, and incompetent staff as the greatest problems.

When it comes to privacy protection, on the basis of the aforementioned it can be concluded that in the Republic of Serbia legislative provisions have not been adopted that in a comprehensive manner could resolve the issue of video surveillance in the context of the processing and protection of personal data. Although the conditions for collecting and processing personal data, the personal rights and the protection of those persons whose data is collected and processed, and the limits to the protection of personal data, as well as the procedure before the competent authority for the protection of personal data, securing of data, keeping records, and transfer of data from the Republic of Serbia abroad are all defined by the Law on the Protection of Personal Data (2008, 2009, 2012), the Law contains no provision to regulate the processing of personal data of citizens using video surveillance.

According to proposed amendments to the above-mentioned law[1], video surveillance is defined as any system used to capture particular public, official and working space acting, regardless of whether it allows control or storage of videos thereby made and their transfer via a computer network.

The proposal also contains specific provisions regarding video surveillance with access to official and business premises and video surveillance installed on official and business premises. Article 34 of the draft law states that the data controller can establish access control in official or business premises if needed for the safety of persons and property, in order to control entry or exit from official or business premises, or if due to the nature of work there are potential risks for employees. The decision on introducing video surveillance must be made in writing by the data controller. This decision must contain the reasons for the introduction of video surveillance if the introduction of video surveillance is not already prescribed by law, and the employees who work in a space under video surveillance must be informed about it. Video surveillance is not allowed in official and business premises outside the workplace, particularly in changing rooms, lifts and sanitary facilities. Particular objectives and outcomes of video surveillance are determined by the specifics of objects where video surveillance is to be implemented (e.g. in banks and exchange offices to use video surveillance to deter a potential perpetrator from making attacks on the protected object and, in the event a robbery did occur, video surveillance footage may be important evidence in the process of detecting, clarifying and proving it).

1 *Commisioner for Information of Public Importance and Personal Data protection has prepared model of Law on personal data protection and opened public dispute on it in June of 2014 Model of the law is opened publicly and posted at: http://www.poverenik.rs/images/stories/model-zakona/modelzzpl.docx (last time accessed on 04.08.2015).*

The different bodies of legislation in countries in the region have dealt with the use of public video surveillance in a largely similar way, so we will briefly review their laws and regulations in which video surveillance is regulated differently than in Serbia.

For example, in Bosnia and Herzegovina the issue of video surveillance is regulated by Article 21a of the Bosnian Law on the Protection of Personal Data (2006, 2011) governing the issue of personal data processing by video surveillance. This Article stipulates that recordings obtained through video surveillance from a certain area on the basis of which a data carrier can be identified – represent a collection of personal data, and the controller who performs video surveillance is obliged to make a decision that will contain the processing rules with the aim of respecting the right of the data carrier's privacy and personal life. It is the obligation of the controller which does the surveillance in a publicly accessible place to prominently display a notice on monitoring and contact through which information about the video surveillance can be obtained.

In the Republic of Croatia, the field of video surveillance is regulated by the Ordinance on the manner and conditions for performing private security in public areas.

This Ordinance regulates the methods and conditions for implementing private security in public areas, as well as the method for exercising powers on public land under the Croatian Law on Private Security (2003, 2010) by authorised persons. When it comes to technical security, the Ordinance defines the basic characteristics of the video surveillance system (the minimum to be met by technical equipment and the treatment of recorded material). Authorisation to provide private security in public areas is issued by the police department that supervises the performance of security activities that are dedicated to certain security authorities on the proposal of the local government.

Video surveillance in Montenegro is regulated by the Montenegrin Law on Protection of Personal Data (2008, 2009, 2012).

The mentioned Act stipulates that a public authority, the Local Government Administration, a company or other private entity or entrepreneur can perform video surveillance and thereby access official or commercial property for the safety of persons and property, to control entry or exit in official or business premises or if due to the nature of work there is a possible risk to employees' safety. In addition to defining the conditions for setting up video surveillance in residential buildings, official or business premises, the said Act defines the rules concerning the content of video (e.g. the recording must include the date and time) as well as the handling of personal data. The provisions of the said Act apply to the use of video surveillance in public areas, unless a special law provides otherwise.

Based on the above, and in the context of protecting the right to privacy, it can be concluded that video surveillance entails obtaining and storing audio, visual or other records through a system of video cameras, and that state agencies and economic entities planning to install video surveillance in order to record and store images and videos of recorded areas must meet and adhere to certain rules. This primarily involves a clear idea of whether the setting of the system is in accordance with the law; whether it is necessary and possible to achieve certain objectives by use of another solution.

When it comes to privacy protection, given the above-mentioned it can be concluded that in the Republic of Serbia legislative provisions have not been adopted in a comprehensive manner concerning the issue of video surveillance in the context of the processing and protection of personal data. Although the conditions for collecting and processing of personal data, the rights of persons and the protection of the rights of persons whose data is collected and processed, are limited to the protection of personal data, the procedure before the competent authority for the protection of personal data, securing of data, making records, and transferring data from the Republic of Serbia are regulated by the Law on the Protection of Personal Data (2008, 2009, 2012), the Law contains no provision regulating the processing of personal data of citizens using video surveillance.

The proposed amendments in the text provide a better environment since video surveillance is defined as any system used to capture a particular public, official and working space, regardless of whether it allows only monitoring or recording and storing of video thereby captured and transmitting that data via a computer network.

The proposal also contains specific provisions regarding video surveillance with access to official and business premises and video surveillance on official and business premises. Article 34 of the proposal states that the data controller can perform access control on official or business premises if necessary for the safety of persons and property, to control entry or exit from official or business premises, or if due to the nature of work there are potential risks for employees. The decision on video surveillance must be made in writing. It must contain the reasons for introducing the video surveillance, if the introduction of video surveillance is not prescribed by law, and the employees who work in a space under video surveillance must be informed about it. Video surveillance is not allowed on official and business premises outside the workplace, particularly in changing rooms, lifts and sanitary facilities. Particular objectives and outcomes of video surveillance applications are determined by the specifics of buildings where video surveillance is implemented (e.g. in banks and exchange offices to use video surveillance in order to deter a potential perpetrator from making attacks on the protected object and, in case a robbery does occur, video surveillance footage may be important evidence).

3 THE USE OF PUBLIC VIDEO SURVEILLANCE IN SERBIA

In late 2010, projects were initiated in cities across Serbia to introduce video surveillance in order to deter potential perpetrators. There are currently more than 150,000 cameras located in public places on the streets of Belgrade and Novi Sad. Video surveillance systems are also deployed and established in Subotica, Pancevo, Prokuplje and other major cities. Over the last few years, video surveillance has been massively introduced in many buildings, such as schools, restaurants, bars, business and residential areas, as well as other public places. In addition, it should be mentioned that the introduction of video surveillance in schools supports preventive measures taken by the police already in progress to improve the safety of children. For example, in May 2011 in a police station in

Novi Beograd a control room was opened where a duty officer continually (24/7) monitors all primary schools in the municipality through 36 cameras, and responds if necessary. In addition, it should be noted that this type of monitoring has been included in some schools in the Belgrade municipalities of Palilula, Vračar, Rakovica, Zemun and, from mid-October 2011, to all schools in the municipality of Stari Grad. When it comes to preventive actions for traffic safety, the project "A modern model of traffic control" was launched in early 2008. This project involves the introduction of so-called "interceptors" (vehicles without police markings) in the daily work of the traffic police to improve traffic control. These "interceptors" are cars with high-level technical ability, fitted with special equipment to detect and document offences and crimes. This equipment allows video documentation of any violation being committed, whether the vehicle in question is in motion or at rest (Figure 1 and Figure 2). This new prevention method was introduced to raise drivers' objective and subjective awareness of increased levels of detection risk, as well as possible sanctions for unlawful behaviour in traffic (Moje dete, 2011).

Figure 1

Figure 2

In the first half of 2014, the Ombudsman for information of public interest and the protection of personal data ordered the Ministry of the Interior of the Republic of Serbia to stop the unauthorised processing of personal data by police officers and citizens controlling cameras installed in patrol cars, as well as audio-recording devices installed in equipment and uniforms. This primarily relates to vehicles equipped with video surveillance that are used for recording the interventions of police officers on the move, movement behind the controlled vehicle at a distance of three to five metres, while the audio-video surveillance

is used to record the intervention of police officers stationed at a traffic control at the same distance. It is important to note that the prohibition does not apply to the use of "interceptors", which is defined by law and provides evidence that an offence has been committed. It was further pointed out that recordings made by an unspecified number of police officers and citizens in traffic had no lawful authority, legally stipulated purpose or proper court order (MUP upozoren da ispuni nalog poverenika, 2014).

4 ECHR PRACTICE IN MATTERS OF SURVEILLANCE

The focus of Article 8 of the ECHR, 1950 is the protection of an individual from arbitrary interference by public authorities. One such interference is public surveillance, whose results can be used in various ways. However, this provision does not merely compel the State to abstain from such interference; in addition to this primarily negative undertaking, there are positive obligations inherent in effective consideration of private or family life, even at public sites. These obligations may involve the adoption of measures designed to secure consideration for private life, even in the sphere of individuals' relations between themselves (the case of Söderman v. Sweden, 2013[2], Airey v. Ireland, 1979[3]), and especially in public locations such as squares, streets and so on.

The choice of means determined to secure compliance with Article 8 of the ECHR (1950; the Convention) in terms of the relations of individuals among themselves is in principle a matter falling within States' margins of appreciation, whether the State's obligations are positive or negative. There are different ways of ensuring respect for private life and the nature of the State's obligation will depend on the particular aspect of private life at issue (see, for example, Von Hannover v. Germany, 2012[4]; Odièvre v. France, 2003[5]; Evans v. the United Kingdom, 2007[6]; and Mosley v. the United Kingdom, 2011[7]). Where a particularly important feature of an individual's existence or identity is at stake, or where the activities in question involve a most intimate aspect of private life, the margin allowed for the State is correspondingly narrowed (Söderman v. Sweden, 2013[8]).

In terms of protecting the physical and psychological integrity of an individual from other persons, the Court has previously held that the authorities' positive obligations (in some cases under Articles 2 or 3 of the ECHR, 1950 and in other instances under Article 8 alone or combined with Article 3 of the ECHR, 1950) may include a duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals (a

2 *Söderman v. Sweden (Application no. 5786/08), ECHR 100 (2013)*

3 *Airey v. Ireland, 9 October 1979, § 32, Series A no. 32*

4 *Von Hannover v. Germany (no. 2) [GC], nos.40660/08 and 60641/08, § 104, ECHR 2012*

5 *Odièvre v. France [GC], no. 42326/98, § 46, ECHR 2003 III*

6 *Evans v. the United Kingdom [GC], no. 6339/05, § 77, ECHR 2007 I*

7 *Mosley v. the United Kingdom, no. 48009/08, § 109, 10 May 2011*

8 *Söderman v. Sweden (Application no. 5786/08), ECHR 100 (2013)*

comparison could be made with Osman v. the United Kingdom, 1998[9]; Bevacqua and S. v. Bulgaria, 2008[10]; Sandra Janković v. Croatia, 2009[11]; A v. Croatia, 2010[12]; and Đorđević v. Croatia, 2012[13]).

Regarding children who are particularly vulnerable, the measures applied by the State to protect them against acts of violence fall within the scope of Articles 3 and 8, and they should be effective. They include reasonable steps to prevent any ill treatment of which the authorities had, or ought to have had, knowledge and to create an effective deterrence against such serious breaches of personal integrity (Z and Others v. the United Kingdom, 2001[14]; M.P. and Others v. Bulgaria, 2011[15]). Such measures must aim to ensure respect for human dignity and protect the best interests of the child (compare with C.A.S. and C.S. v. Romania, 2012[16]; Pretty v. the United Kingdom, 2002[17]).

Regarding serious acts, such as rape and sexual abuse of children where fundamental values and essential aspects of private life are at stake, it falls upon the member states to ensure that efficient criminal law provisions are in place (for example, X and Y v. the Netherlands, 1985[18]; M.C. v. Bulgaria, 2003[19]). This obligation also stems from other international instruments such as, *inter alia*, Articles 19 and 34 of the United Nations Convention on the Rights of the Child (United Nations, 1989) and Chapter VI, "Substantive criminal law", of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007).

Concerning such serious acts, the State's positive obligation under Articles 3 and 8 to safeguard the individual's physical integrity may also extend to questions relating to the effectiveness of the criminal investigation (There are many authorities, but among others, similar ones are C.A.S. and C.S. v. Romania, 2012[20]; M.P. and Others v. Bulgaria, 2011[21]; and M.C. v. Bulgaria, 2003[22]) and to the possibility of obtaining reparation and redress (see, *mutatis mutandis*, C.A.S. and C.S. v. Romania, 2012[23]), although there is no absolute right to successful prosecution or conviction of any particular person where there was no culpable

9 *Osman v. the United Kingdom, 28 October 1998, §§ 128-30, Reports of Judgments and Decisions 1998 VIII, §§ 128-30*

10 *Bevacqua and S. v. Bulgaria, no. 71127/01, § 65, 12 June 2008*

11 *Sandra Janković v. Croatia, no. 38478/05, § 45, 5 March 2009*

12 *A v. Croatia, no. 55164/08, § 60, 14 October 2010*

13 *Đorđević v. Croatia, no. 41526/10, §§141-43, ECHR 2012*

14 *Z and Others v. the United Kingdom [GC], no. 29392/95, § 73, ECHR 2001*

15 *M.P. and Others v. Bulgaria, no. 22457/08, § 108, 15 November 2011*

16 *C.A.S. and C.S. v. Romania, no. 26692/05, § 82, 20 March 2012*

17 *Pretty v. the United Kingdom, no. 2346/02, § 65, ECHR 2002 III*

18 *X and Y v. the Netherlands, 26 March 1985, § 27, Series A no. 91*

19 *M.C. v. Bulgaria Application no. 39272/98 4 December 2003*

20 *C.A.S. and C.S. v. Romania, no. 26692/05, § 82, 20 March 2012*

21 *M.P. and Others v. Bulgaria, no. 22457/08, § 108, 15 November 2011*

22 *M.C. v. Bulgaria Application no. 39272/98 4 December 2003*

23 *C.A.S. and C.S. v. Romania, no. 26692/05, § 82, 20 March 2012*

failure to seek to hold perpetrators of criminal offences accountable (compare, for example, Brecknell v. the United Kingdom, 2007[24]; Szula v. the United Kingdom 2007[25]).

As to acts that do not constitute the seriousness of those at issue in X and Y v. the Netherlands, 1985[26] and M.C. v Bulgaria, 2003[27], the Court has examined the State's obligation to protect, for example, a minor against malicious misrepresentation under Article 8 (see K.U. v. Finland, 2008[28]). The wrongful act in that case did not involve any physical violence but could not be considered trivial as it entailed a potential threat to the minor's physical and mental welfare brought about by an difficult situation, namely that he was made the target of approaches by paedophiles. The act constituted a criminal offence under domestic law and the Court considered that practical and effective protection of the applicant required the availability of a remedy enabling the actual offender to be identified and brought to justice. The state failed to provide a legal instrument to enforce the right of the child.

More generally, however, in respect of less serious acts between individuals, which may violate psychological integrity, the State's obligation to maintain and apply in practice an adequate legal framework affording protection under Article 8 does not always require that an efficient criminal-law provision covering the specific act be in place. The legal framework could also consist of civil-law remedies capable of affording sufficient protection (compare, *mutatis mutandis*, X and Y v. the Netherlands, 1985[29]; K.U. v. Finland, 2008[30]). The Court noted, for example, that in certain previous cases concerning the protection of a person's picture from abuse by others, the remedies available among member states have been of a civil-law nature, possibly combined with procedural remedies, such as the granting of an injunction (for comparison, inter alia, Von Hannover v. Germany, 2012[31]; Reklos and Davourlis v. Greece, 2009[32]; and Schüssel v. Austria, 2002[33]). Hence, it is also very important to stress that guaranteeing the Convention's right to protection of one's image does require the criminalisation of covert filming and photographing of children and adults. Further, for public surveillance there should be many more safeguards in place for any individual. Signs or other types of public notices should be clearly displayed to draw the attention of members of the public, and warn them before they enter an area under surveillance. In that way, state instruments of Orwell's 1984 Big Brother-like public surveillance and prerogatives are legally covered, but with safeguards protecting individuals from

24 *Brecknell v. the United Kingdom, no. 32457/04, 27 November 2007*

25 *Szula v. the United Kingdom (dec.), no. 18727/06, 4 January 2007*

26 *X and Y v. the Netherlands, 26 March 1985, § 27, Series A no. 91*

27 *M.C. v. Bulgaria Application no. 39272/98 4 December 2003*

28 *K.U. v. Finland, no. 2872/02, §§ 45-49, ECHR 2008-V*

29 *X and Y v. the Netherlands, 26 March 1985, § 27, Series A no. 91*

30 *K.U. v. Finland, no. 2872/02, §§ 45-49, ECHR 2008-V*

31 *Von Hannover v. Germany (no. 2) [GC], nos.40660/08 and 60641/08, § 104, ECHR 2012*

32 *Reklos and Davourlis v. Greece, no. 1234/05, 15 January 2009*

33 *Schüssel v. Austria (dec.), no. 42409/98, 21 February 2002*

the misuse and abuse of such power. Those safeguards should not only cover information about present surveillance but also about their operation, recordings, storage and further use. Safeguards should even cover quality standards for technical specifications of appliances and technical or electronic safeguards for the use of any device. In the course of elaborating such standards in relation to public surveillance, it is worthwhile considering the case of Szypusz v. the United Kingdom, 2010[34]. In that case, the court accepted evidence from public surveillance cameras (CCTV) within a prison (or detainment facility) near to the actual crime scene. The only safeguard the court emphasised was that the operator of the CCTV equipment in the field should not present the CCTV evidence in court as that might also be considered to be a breach of Article 6 of the ECHR: the right to a fair trial. Safeguards should also be considered in light of the case Andrzej Krupicz v. Poland, 2016[35], in which the applicant claimed a breach of Article 3 of the ECHR on the grounds he was subjected to inhuman or degrading treatment through CCTV cameras installed in communal showers. Note that it was not a breach of Article 8 of the ECHR that was claimed here, but of Article 3. This should also be considered when elaborating this area.

In the case of Söderman v. Sweden, 2013[36] the Court examined whether, in the particular circumstances of the facts before it, Sweden had an adequate legal framework to provide the applicant with protection against the specific actions of her stepfather and would, to this end, assess whether each of the remedies allegedly available to her.

This new approach brings us to another issue we should consider. Even if all safeguards have been implemented in our internal legislation, the ECHR could find that not all safeguards have been considered, and through that we could receive a judgement referring to some legislative deficiency.

This approach, it should be emphasised, differs from that followed by the Chamber, which affirmed that "only significant flaws in legislation and practice, and their application, would amount to a breach of the State's positive obligations under Article 8". This referred to the terms used in M.C. v. Bulgaria, 2003[37] (§167) in relation to the scope of the State's positive obligations under Articles 3 and 8 of the Convention to afford protection against rape and sexual abuse. However, in that judgement the Court applied the "significant flaw" test to "alleged shortcomings in the *investigation*", pointing out that it "was not concerned with allegations of errors or isolated omissions" (§ 168) and holding that the shortcomings were "significant" (§§ 179 and 184) (also see M. and C. v. Romania, 2011[38]; compare and contrast Siliadin v. France, 2005[39] where such wording was used relative to a review of legislation and practice under Article 4 of the Convention).

It was stressed there that "The Grand Chamber considers that such a significant flaw test, while understandable in the context of investigations, has

34 *Szypusz v. the United Kingdom - 8400/07, 21.9.2010*

35 *Andrzej Krupicz v. Poland, Application no. 6068/12 1. March, 2016*

36 *Söderman v. Sweden (Application no. 5786/08), ECHR 100 (2013)*

37 *M.C. v. Bulgaria Application no. 39272/98 4 December 2003*

38 *M. and C. v. Romania, no. 29032/04, §§ 112 et seq., 27 September 2011*

39 *Siliadin v. France, no. 73316/01, § 130, ECHR 2005 VII*

no meaningful role in an assessment as to whether the respondent State had in place an *adequate legal framework* in compliance with its positive obligations under Article 8 of the ECHR, 1950 since the issue before the Court concerns the question of whether the law afforded an acceptable level of protection to the applicant in the circumstances" (§ 91, Söderman v. Sweden, 2013[40]).

Especially in such cases it is crucial to have a very integrated, interconnected legislative system. For instance, in this work, practically all major issues and powers relating to public surveillance are covered and, even if the problem involved a criminal prosecution of a perpetrator by the public prosecutor, it could be covered by a private criminal indictment.

It is interesting to note the way in which the Supreme Court of Sweden in its judgement of 23 October 2008 dealt with this issue: "The need for a strengthened legal framework against covert filming had already been acknowledged in Swedish legislative work in the 1960s, but had not yet led to any concrete results. The Supreme Court found it highly questionable whether the fact that acts of filming of an individual in situations where such filming deeply violated the personal integrity of the person concerned was left wholly unpunished under Swedish law was compatible with the requirements of Article 8 of the Convention" (§ 105, Söderman v. Sweden, 2013[41]). We can infer from this citation that even internal courts could initiate legislative changes in relation to the ECHR especially in this case in relation to Article 8.

In this case, the court found that neither a criminal nor a civil remedy existed under Swedish law that could enable the applicant to obtain effective protection against the said violation of her personal integrity in the specific circumstances of the case. Accordingly, there was a violation of Article 8 of the ECHR. So, from this, we can infer that it is possible to have a violation of the ECHR even if a right is systematically covered legislatively because rights should be covered from the general aspect of the ECHR – in particular relating to Articles 3 and 8.

5 CONCLUSION

A video surveillance system is an effective preventive measure. Its effect on crime prevention is accomplished indirectly by strengthening informal social control and cohesion of the community in which the monitoring is carried out.

It should be noted that, despite the increasingly frequent use of video surveillance in the Republic of Serbia, there is still no law clearly defining the issue. Although it is not normatively regulated, the use of video surveillance in Serbia is growing (over 350,000 cameras installed). At an international level, one of the most important normative acts is definitely a charter on the democratic application of video surveillance in the European Union, which regulates all video surveillance issues from a human rights perspective. This memorandum has already been signed by a dozen cities in Europe.

From the standpoint of prevention, video surveillance has undergone a boost in its application in preventive measures taken to increase the safety of children

40 *Söderman v. Sweden (Application no. 5786/08), ECHR 100 (2013)*

41 *Söderman v. Sweden (Application no. 5786/08), ECHR 100 (2013)*

in schools and in preventive measures regarding road safety. The system has also been applied for the security of protected areas of commercial premises such as banks, post offices, major shopping centres etc. in order to influence a potential offender's consciousness, with the overall goal of deterring a perpetrator from committing a criminal act.

In addition to prevention, video surveillance systems can lead to a reduced fear of crime and provide very important information in police investigations. Based on studies around the world, it can be concluded that CCTV has the greatest application in monitoring relatively small areas such as public parking places and transport stations, and the smallest application in large spaces such as squares, parks, residential buildings etc.

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Justification of the Dual Model of Legitimacy for its Application in the Prison Environment

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Purpose:

The aim of this paper is to present a new theoretical approach for studying legitimacy in the prison environment, which we call the dual model of legitimacy in prisons.

Methods:

Based on a literature review on legitimacy and self-legitimacy in the prison environment, we were able to form a new approach to studying legitimacy.

Findings:

Results of previous studies have shown that legitimacy is based on a constant dialogue between power holders and recipients. We argue that both groups (prisoners and prison staff) in prison should be studied simultaneously because legitimacy, which is based on the interpersonal relations formed between prisoners and prison staff, is not a fixed phenomenon. Given the changing nature of relations in prison, we can assume that perceptions of legitimacy and self-legitimacy are changing all the time.

Limitations:

The large number of factors included in the model raises the issue of multicollinearity. Further, because we assumed that legitimacy in prison derives from interpersonal relations between prison staff and prisoners, which are changing all the time, we have to measure legitimacy and self-legitimacy simultaneously. However, due to the ever-changing relations in prisons, which are very specific, we can assume that repetition of research would give different results – the problem of reliability of the results.

Originality:

The dual model of legitimacy in prisons not only combines two different approaches to studying legitimacy (prisoners' perception of legitimacy and prison staff' perception of self-legitimacy), but also represents the first step to a comprehensive approach to studying legitimacy in prisons, which still needs to be tested in practice.

UDC: 343.2.01+343.8

Keywords: legitimacy, prison, prison staff, self-legitimacy

Utemeljitev dualnega modela za preučevanje legitimnosti v zaporskem okolju

Namen prispevka:

Namen prispevka je predstaviti nov teoretični pristop k raziskovanju legitimnosti v zaporskem okolju, ki smo ga poimenovali dualni model legitimnosti v zaporih.

Metode:

Na podlagi pregleda literature o legitimnosti in samozaznani legitimnosti v zaporu smo oblikovali nov pristop za raziskovanje legitimnosti v zaporskem okolju.

Ugotovitve:

Ugotovitve preteklih študij so pokazale, da legitimnost temelji na konstantnem dialogu med nosilci moči in prejemniki. Trdimo, da bi bilo treba obe skupini (obsojence in zaporsko osebje) v zaporu preučevati istočasno, saj legitimnost, ki temelji na medosebnih odnosih, ni nespremenljiv pojav. Predvidevamo, da se zaradi spreminjajoče se narave odnosov zaznave in samozaznave legitimnosti v zaporu konstantno spreminjajo.

Omejitve:

Veliko število dejavnikov, vključenih v model, lahko vodi do problema multikolinearnosti. Legitimnost v zaporu temelji na odnosih med zaporskim osebjem in obsojenci, ki niso določeni, zato moramo zaznave in samozaznave legitimnosti v zaporu meriti istočasno, saj se le te venomer spreminjajo. Nadalje domnevamo, da bi s ponovitvijo študije zaradi spreminjajočih se odnosov v zaporu prišli do drugačnih rezultatov – težava z zanesljivostjo rezultatov.

Izvirnost prispevka:

Dualni model legitimnosti v zaporih ni le združitev dveh različnih pristopov preučevanja legitimnosti (zaznave legitimnosti obsojencev in samozaznave legitimnosti zaporskega osebja), temveč predstavlja tudi prvi korak k celovitejšemu pristopu preučevanja legitimnosti v zaporih. Naslednji korak je testiranje modela v praksi.

UDK: 343.2.01+343.8

Ključne besede: legitimnost, zapor, zaporsko osebje, samozaznana legitimnost

1 INTRODUCTION

Sykes (1958) argued that prisons are inherently illegitimate and, consequently, restless and unmanageable. We challenge this premise because we argue that some level of legitimacy can be achieved even though prison is a form of total institution where the majority of individuals are in conflict with the law that the prison system represents. The only question is what affects an individual's perceptions of legitimacy?

The first thing we have to ask ourselves when studying legitimacy in prisons is what is the purpose of the prison sentence which defines the essence and nature of the punishment, its implementation, and forms of work with prisoners (Petrovec in Šelih & Filipčič, 2015). Without an official definition of the purpose of the prison sentence, it is difficult to study legitimacy in prisons – without an established framework for what kind of effect prison should have on a prisoner, and what is the goal of the prison sentence, it is difficult to measure whether current procedures of those implementing prison sentences are legitimate. Further, the lack of the prison sentence's clear purpose has a negative impact on prison staff,[1] and causes frustration because of their inability to identify with their role within the prison (their role is not defined). Nevertheless, we can explore legitimacy in prisons if we derive from the assumption that legitimacy depends on the eternal debate and continuous dialogue between prison staff and prisoners that is reflected in the relations established between them (Bottoms & Tankebe, 2012; Liebling, 2011).

It is important to achieve legitimacy in prison due to prisoners' subordination to prison rules and the effective implementation of prison sanctions, regardless of their purpose. In other words, legitimacy in prison can be established irrespective of the prison's orientation (rehabilitation, restitution, incapacitation or retribution) because it is established on the basis of the quality of interpersonal relations that affect all 'participants' in the prison environment. Prisoners who do not see prison staff as legitimate holders of power will not be cooperative. At the same time, the self-legitimacy of the prison staff affects the efficiency of their work and attitude to prisoners (the dual nature of legitimacy in prisons) (Tankebe, 2014). We presume that the quality of relations between prisoners and prison staff is the key for achieving legitimacy and self-legitimacy in prisons and, consequently, the successful implementation of prison sanctions. In the following paper, we will present theoretical concepts of legitimacy and self-legitimacy in the prison environment. A review of studies on legitimacy and self-legitimacy in prison will show which factors influence legitimacy and self-legitimacy. Based on the theoretical concepts and results of prior studies on legitimacy and self-legitimacy in prisons, we will present proposals for further exploring legitimacy in prisons.

2 THE PROCESS OF ACHIEVING AND SUSTAINING LEGITIMACY IN PRISON

Beetham (1991) claimed that legality, shared values, and consent are needed for the legitimacy of a power holder. Further, Tyler (1990) argued that people who consider an authority's procedures against them as just (quality of the treatment) possess positive emotions against that authority, regardless of the final outcome. Legitimacy is based on beliefs that the authorities are trustworthy, honest and concerned about the welfare of the people with whom they interact, and that

1 *In the Penal Sanctions Enforcement Act (2000), the term prison staff is used for: governors, heads of department, heads of security, prison officers, social pedagogues, teachers, social workers, psychologists, sociologists, working instructors and health workers.*

it is necessary to accept authority and voluntarily comply with their decisions (Bottoms & Tankebe, 2012; Bradford, Jackson, & Hough, 2014; Tyler, 2011). On the other hand, Tankebe (2013) discovered that the legitimacy of authority is based on the legality, distributive justice, procedural justice and effectiveness of the bearers of authority. Legitimacy is important for voluntary compliance with the rules dictated by the authority as the use of power (especially coercive power) has a negative effect on prisoners' perceptions of legitimacy (Tyler, Braga, Fagan, Meares, & Sampson, 2008). Sparks and Bottoms (1996), with regard to Tyler's theory (1990), stated that through fair and respectful attitudes to prisoners it is possible to achieve a certain degree of internal legitimacy within prison, if it does not differ significantly from other social domains.

Legitimacy is considered as the sum of procedural justice and trust in authority, but Liebling (2011) claimed this definition is not satisfactory for the prison environment. New findings have shown that legitimacy is not a fixed phenomenon, but depends on the eternal debate and continuous dialogue between the power holders and recipients (Bottoms & Tankebe, 2012; Liebling, 2011). This concept of legitimacy, which can be called dialogical, dynamic or conditional, explains the importance of relations between prisoners and prison staff for life in prison (Liebling, 2011). Prison staff complicate this dialogue because they and the recipients (prisoners) do not have equal rights, or the rights of prisoners are very limited (deprivation of their freedom, limited decision-making etc.).

2.1 Adjustment of Prisoners to Prison Life

The common element of all prisoners is their primary conflict with the law. Clemmer (1940) asserted that, after entering prison, offenders assimilate into a hostile, anti-conventional social system characterised by deviant behaviour, manners and customs, and laid a foundation for development of the deprivation model. Supporters of the importation model highlighted the significance of pre-prison characteristics (e.g., criminal history, race, ethnicity etc.) as determinants of assimilation into prisoners' society. As a result, prisoners assume new social roles and affiliate with deviant norms (Jacobs, 1977; Reisig, 2001; Roebuck, 1963).

Pre-prison characteristics and deprivation after entering prison affect the convicted person's willingness to submit to the prison staff's authority and attempt to 'mend'. While prison staff cannot influence the pre-prison characteristics of prisoners, they can help them adjust to prison life through procedural and distributive justice (fair proceedings) (Van der Laan & Eichelsheim, 2013).

2.2 Influence of Procedural and Distributive Justice

Procedural justice is exploring ways of decision-making, the theoretical bases of which arise from the works of Thibaut and Walker (1975), Leventhal (1980), and Lind and Tyler (1988). The authors claimed there is a greater probability an individual will perceive processes against them as just, regardless of the outcome, if they had some control over the processes and decisions of the authority (have their own voice). Leventhal (1980) extended the work of Thibaut and Walker

(1975) and proposed six criteria for measuring procedural justice: 1) consistency; 2) the ability to suppress bias; 3) decision quality or accuracy; 4) correctability; 5) representation; and 6) ethical behaviour. Lind and Tyler (1988) proposed the relational model of procedural justice which assumed that, if wanted to be considered as just, decisions of authority should be: 1) neutral, impartial and fair; 2) trustworthy and benevolent; and 3) subordinates must be treated politely and with dignity and respect. Tyler and Huo (2002) contended that decisions in the prison environment have to be based on: 1) neutrality; 2) trust; 3) 'voice' (prisoners are involved in decision-making); and 4) respect and dignified treatment of prisoners.

The theoretical foundations of distributive justice are based on the assumption that people compare their outcomes with certain standards (Tyler, 2012; Walster, Walster, & Berscheid, 1978). Results of previous studies (Pritchard, Dunnett, & Jorgenson, 1972; Schmitt & Marwell, 1972) show that people express greater satisfaction when they receive a fair outcome (distribution), and not when they consider that they are getting 'too little' or 'too much' (Tyler, 2012). Liebling and Price (2001) obtained similar results as prisoners expressed greatest satisfaction when they realised the proceedings against them were fair and the sanctions were justified (regardless of their severity). Prisoners' perceptions of distributive justice affect their perceptions of equality before the law, discrimination, and granting of benefits (different awarding of benefits while meeting the same criteria have an extremely negative impact on prisoners' perception of distributive justice). The impact of procedural and distributive justice reflects the important role played by prison staff, their way of enforcing the prison rules, and their impact on prisoners' perception of legitimacy of the enforcement of penal sanctions.

2.3 The Role of Prison Staff in Achieving Legitimacy in Prison

While the traditional role of prison officers was based on maintaining safety and implementing certain forms of treatment, the role of specialised workers in prison focused on the treatment and education of prisoners. Both groups form a particular social group and have an impact on relations with prisoners and their perception of legitimacy. Molleman and Leeuw (2011) found that the perception of inmates regarding the situation in Dutch prisons related to the prison staff's orientation to meeting the prisoners' needs (autonomy, access to goods and involvement in activities) and the conditions in prison itself.

Liebling and Price (1999: 86) described prison officers as "... gatekeepers, agents of criminal justice, peacemakers, instruments of change and deliverers and interpreters of policy". Stern (1987) described them as a closed social group of family men who feel misunderstood, disrespected and seek opportunities for social life and support from their colleagues (other prison officers), and have humorously bitter, cynical and pessimistic outlooks on life. It is difficult to leave from such a group because the social, professional and cultural ties are extremely powerful. Similar features can be observed among female prison officers (Liebling & Price, 2001). Meško, Valentinčič and Umek (2004) argued that Slovenian prison officers are a professional group of very homogeneous and conservative

individuals, the majority of whose work consists of classic tasks and activities of workers in total institutions.

The main product of a prison officer's work is not only security and control, but also personal interaction between themselves and the prisoners (Gilbert, 1997). Pilling (1992), and Genders and Player (1995) stated that relations between prisoners and prison officers are based on three characteristics: 1) individualism; 2) permissiveness; and 3) trust. The attitude of prison officers toward prisoners is due to: 1) gender (Farkas, 2000; Zimmer, 1986); 2) race (Jackson & Ammen, 1996; Van Voorhis, Cullen, Link, & Wolfe, 1991); 3) age (Farkas, 2000); 4) seniority (Farkas, 2000; Toch & Klofas, 1982); 5) shifts and frequency of contact with prisoners (Farkas, 2000; Lombardo, 1981); 6) conflict of roles and stress (Farkas 2000; Hepburn & Albonetti, 1980); 7) involvement in decision-making (Shadur, Kienzle, & Rodwell, 1999); and 8) job satisfaction (Hepburn & Knepper, 1993). Kaminski and Gibbons (1994) stated that the power of the prison subculture has a negative impact on the control power of the prison officers.

Despite the strong influence of the prison subculture on prisoners' behaviour, Liebling (2000) claimed that the compulsory power of prison officers remains, most of the time, in 'reserve' because everyday activities primarily take place without reference to that form of power (Liebling, 2000). These types of relationships are important for achieving internal legitimacy because prisoners do not have the same 'voice' as free citizens regarding decisions that concern them (Sparks & Bottoms, 1996; Tyler & Blader, 2000). Reisig and Meško (2009) found that prisoners' perceptions of legitimacy do not affect compliance with prison rules. The importance of relations between prisoners and prison officers is reflected in instrumental reasons (smooth workflow in prison and the provision of information), normative reasons (the importance of good relations for life in prison) (Liebling & Price, 2001), and constraints (Bottoms, 1999).

Prison officers must positively perceive their own legitimacy (trust and confidence in their own competence) and the legitimacy of their work (beliefs in the legality of their own work, and beliefs that their work forms part of the common moral values of society), especially if they want to perform daily tasks efficiently and in a way that positively impacts on their relations with prisoners, colleagues and supervisors (Bottoms & Tankebe, 2012). Tankebe (2014) defined self-legitimacy as a process of the construction, validation, and resistance of the self-esteem of a certain power holder. Tyler and Blader (2000), and Bottoms and Tankebe (2013) stated that the interactions of prison staff with their colleagues, supervisors (leaders), and the wider community (in the case of prison staff, prisoners represent the wider community), constitute moments to learn about self-legitimacy (opportunities for certification of formulated possible selves). Reisig and Meško (2009) stated that prison officers' attitudes to prisoners have a strong influence on prisoners' perceptions of the legitimacy of prison officers. Tankebe (2014) assumed that the lower an individual is in the hierarchy of the organisational structure, the more energy, time and intensity he needs to endorse the legitimacy and confirmation of the requirements for power. An important factor influencing self-legitimacy is identification with the group (Liebling & Price, 2001). Meško, Tankebe, Čuvan and Šifrer (2014) argued that the self-legitimacy of

prison officers is due to: 1) relations with colleagues; 2) procedural fairness of supervisors; 3) perception of the wider community; 4) age; 5) years of service; and 6) education. Further, pro-organisational behaviour of prison officers was influenced by beliefs about their self-legitimacy.

Relations between prison staff and prisoners, prison staff and supervisors, and among the prison staff themselves, affect the self-legitimacy of prison staff. We assume that perceptions of the self-legitimacy of prison staff affect the quality of their relations with prisoners, which consequently reflect in prisoners' preparedness to cooperate with prison staff.

2.4 Cooperation of Prisoners with Prison Staff

Cooperation in the prison environment is difficult due to the inequality of prisoners relative to prison staff. Further, the majority of 'cooperation' from prisoners is demanded (time of waking up, time of meals, time of walks, cleaning of the facilities etc.) – prisoners have limited rights in the decision-making process about their own life while in prison. Compliance with prison rules is reflected in the behaviour of prisoners in accordance with these rules. As noted by Meško et al. (2004), the majority of prisoners comply with prison rules and cooperate with prison officers, with the goal of obtaining benefits (instrumental reasons for compliance with authority). Moreover, normative reasons for compliance with authority (prisoners and prison staff share common moral values) are almost non-existent in prison, while the prison subculture, which is characterised by a strict hierarchy, represents an obstacle to the prisoner's compliance with the prison rules. Kaminski (2003) stated that the prison subculture dictates a prisoner's behaviour in nearly all situations of daily life in prison. We assume that prisoners' cooperation with prison staff reflects the fact they did not defer to the prison subculture. Further, we argue that their moral values are closer to the values of prison staff, and the cooperation of prisoners with prison staff should reinforce these values, which would consequently affect their perception of legitimacy. Inmates' perceptions of legitimacy affect their subjugation to prison rules. Perceived legitimacy also reflects good relations with prison staff, which we assume influence a prisoner's decision to engage in misconduct.

3 STUDYING LEGITIMACY IN PRISONS

A review of the literature shows there are only a handful of studies on legitimacy in prisons. Gray (2007) studied the effects of treatment on prisoners' compliance and outcome satisfaction in a Chicago prison, with the results showing that: 1) prisoners' perceived legitimacy had a strong impact on their satisfaction with the prison staff; 2) prisoners' perceptions of legitimacy had an impact on following staff orders, trading and trafficking with other prisoners or staff and not making too much noise at night; 3) age and characteristics of the sentence had an influence on compliance with the rules; and 4) procedural justice did not influence prisoners' satisfaction with the prison staff or their compliance with the

institution's rules. The results of Gray's study confirmed those of several previous studies (Liebling, 2004; Sparks & Bottoms, 1996; Stichman, 2002) indicating that in prisons where prisoners perceived the prison staff's power as legitimate there is a higher probability of prisoners' compliance with the rules, a faster throughput of information, and better living conditions (Liebling, 2011). Molleman and Leeuw (2011) studied the impact of prison staff orientation and working conditions on prisoners' perceptions of prison circumstances in Dutch prisons. The results revealed that the prison staff's perceptions of the prison conditions show congruency with those of the prisoners. They perceived prison conditions where prison staff's orientation to the prisoners is relatively supportive as more positive. Beijersbergen, Dirkzwager, Eichelsheim, Van der Laan and Nieuwbeerta (2014) discovered that prisoners in Dutch prisons who felt treated in a procedurally just manner were less likely to be reported engaging in misconduct. Moreover, anger fully mediated the effect of procedural justice on prisoners' misconduct. Beijersbergen and colleagues (2014) discovered that the number of female prison officers in prison, the rehabilitation orientation of the prison staff, and a high prison staff/prisoner ratio influence a prisoner's perception of fairness of treatment in prison.

Slovenian explorations of legitimacy in prisons started with the work of Reisig and Meško (2009) who studied the impact of procedural justice and legitimacy on prisoner misconduct in the Slovenian prison at Dob. The authors believed that prisoners who consider that the attitudes of prison officers towards them are fair and perceive prison staff in general as legitimate will not violate prison rules. The results of the study revealed that: 1) prisoners' judgments on the fairness of procedures in prison had no effect on their perception of the legitimacy of the prison staff; 2) prisoners' perceptions of legitimacy had no effect on their misconduct; and 3) prisoners' judgments on procedural justice had an effect on their compliance with the prison rules. Meško et al. (2014) found that relations with colleagues, procedural justice by supervisors, and audience (prisoners) legitimacy have an effect on the self-legitimacy of Slovenian prison officers. Further, they showed that prisoners' beliefs regarding self-legitimacy affected the pro-organisational behaviour of the prison officers.

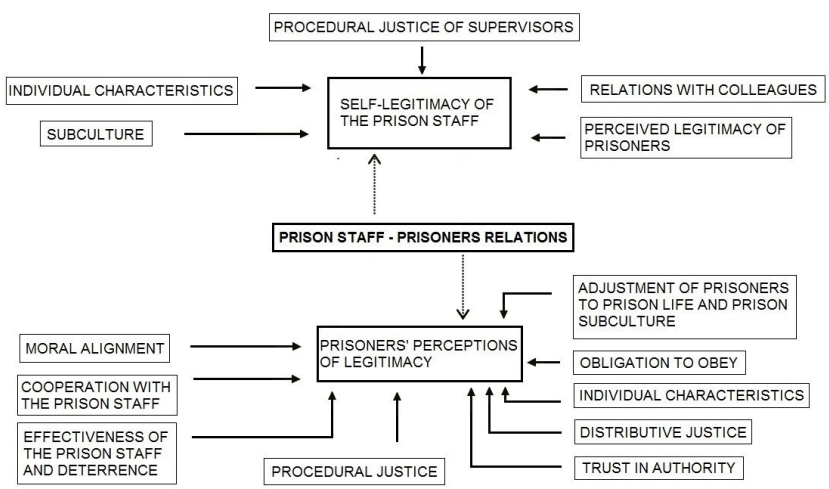
The literature review showed that most studies focused on studying prisoners' perceptions of legitimacy, mainly relative to the prisoners' judgments on procedural fairness, and somehow neglected other factors that influence prisoners' perception of legitimacy. Further, we found only one study that focused on exploring the self-legitimacy of prison staff. The review of previous studies shows the lack of a comprehensive approach to studying legitimacy in prison, which would include various factors that influence legitimacy, and simultaneously explore prisoners' perception of legitimacy and the self-legitimacy of prison staff. For these reasons, we propose a new approach to researching legitimacy in the prison environment, which we call the dual model of legitimacy in prisons.

4 THE DUAL MODEL OF LEGITIMACY IN PRISONS

We see prison as a total institution where, due to its confinement, a special kind of closed society is formed. Individuals in this society can be classified in two basic

groups: prison staff and prisoners. Despite inequality between the groups (prison staff have almost complete control over the prisoners), we argue that some level of legitimacy can be achieved and sustained in such a society if relations between groups are based on mutual respect, dignity and procedural justice. Given the specific attributes (small population, daily interactions, specific relations etc.) of the 'prison society', we propose that exploring legitimacy in prisons should be conducted comprehensively. We argue that the following comprehensive approach should be employed: 1) researchers should explore the effect of inter-personal relations on the perception of legitimacy and self-legitimacy; 2) exploring legitimacy in prisons should include both groups (prisoners and prison staff); 3) research of both groups should be carried out simultaneously because the prison population is changing fast, and a different prison population may have a different effect on the social dynamic of a prison; and 4) researchers should include the factors we have identified and presented in Figure 1 in their research into legitimacy in prisons.

Figure 1: The dual model of legitimacy in prisons



We argue here that the self-legitimacy of prison workers (staff) is due to: 1) the individual characteristics of a prison worker; 2) the procedural justice of the supervisors; 3) relations with colleagues; 4) subculture; 5) the perceived legitimacy of prisoners; and 6) prison staff–prisoners relations.

Individual characteristics of the people employed in the prison system play a vital role in their work with prisoners and establishing relationships with them. Moreover, individual characteristics influence a person's way of thinking, perception of the workplace, their self-esteem, trust in their abilities, and their perception of self-legitimacy. We see gender, ethnicity, age and seniority (years worked in the prison system) as those individual characteristics that affect a prison worker's perception of self-legitimacy.

Performance at work is closely connected, not only in relations with colleagues, but also in relations with supervisors. If a person perceives the procedures of supervisors as fair and just (supervisors are seen as an example for employees), this will positively affect his or her self-esteem, trust in their work abilities and,

in the end, their perception of self-legitimacy. Further, positive perceptions of supervisors will prevent the 'us' and 'them' division inside the organisation – cynicism (Meško et al., 2014).

Relations with people with whom we work are an important influence on our satisfaction with work and consequently on our performance. We sometimes spend more time with colleagues at work than with our families and friends; consequently, it is logical they represent an important influence on our way of thinking, behaviour etc. In addition, workers in total institutions, such as prison, must have complete trust in their colleagues that they will help them when in trouble or being attacked by prisoners. If we add the influences of the prison officer subculture to the equation, we can say that relations between colleagues in prison represent an important source of influence on a prison worker's trust in his or her abilities, work performance and perception of his or her self-legitimacy.

Every environment produces some specific form of behaviour and way of thinking (subculture). Subcultures have an important influence on the development of relations in the institution, attitudes of workers, behaviour of workers, work performance, perception of the work place and perception of self-legitimacy. We argue that the prison environment or, more precisely, prison orientation (treatment orientation, orientation towards security etc.) has an impact on the development of norms in the prison officers' subculture.

Public perceptions of a person's work have a significant influence on their perspective on the work place. If workers do not receive confirmation about their work from the audience (prisoners), their perception of their work is affected and can force them to reconsider the importance of their work. At the point where workers are reconsidering the meaning of their work, their self-legitimacy is already significantly threatened. Further, we argue that the legitimacy of prison staff perceived by a prisoner's affects the self-legitimacy of the prison staff (Meško et al., 2014) through the quality of relations.

In the model, we argue that a prisoner's perception of legitimacy is due to: 1) trust in authority; 2) cooperation with prison staff; 3) moral alignment and obligation to obey; 4) procedural justice; 5) distributive justice; 6) effectiveness of the prison staff and deterrence; 7) individual characteristics of the prisoner; and 8) the adjustment of prisoners to prison life and the prison subculture.

Prisoners' trust in prison staff affects the relations and cooperation between prison staff and prisoners, and a smooth workflow in prison (Liebling & Price, 2001). We argue that, in the prison context, a prisoner's trust in prison staff influences their perception of legitimacy and their willingness to cooperate with the staff. Moreover, we see procedural justice (prisoners' judgments on the fairness of procedures and processes) and effectiveness of the prison staff (if prisoners perceive the prison staff's work as not sufficiently effective they will not cooperate with them) as two factors that have an important influence on building prisoners' trust in the prison staff.

Moral alignment with rules and norms in prison affects a prisoner's will to comply with these rules. We argue that prisoners' identification with the moral norms of prison staff affect their willingness to follow the rules (obligation to obey) and preparedness for cooperation with the prison staff.

Procedural justice is the central field of study concerning prisoners' perceptions of legitimacy, and we agree with the theory that procedural justice impacts perceptions of legitimacy. We argue that just procedures of prison staff toward prisoners exert a significant influence on prisoners' perception of the legitimacy of prison staff.

Liebling and Price (2001) argued that prisoners express the greatest satisfaction when they understand that the proceedings against them were fair and the sanctions were justified (regardless of their severity). We argue that prisoners' perceptions of distributive justice affect their perception of equality before the law, discrimination, and the granting of benefits (different awarding of benefits while meeting the same criteria has an extremely negative impact on prisoners' perception of distributive justice).

Tankebe (2013) stated that the legitimacy of authority is based on the legality, distributive justice, procedural justice and effectiveness of the bearers of authority. We believe that prison staff's effective work will influence prisoners' will to cooperate with them, help to improve prisoners–prison staff relations, and positively impact prisoners' perceptions of the prison staff's legitimacy.

Individual characteristics of a prisoner consist of demographic characteristics (age, gender, ethnicity and education), prison misbehaviour and criminal histories. A prisoner's adjustment to prison life influences the prisoner's willingness to cooperate with the prison staff and comply with the prison rules, the quality of prisoners–prison staff relations, and their perception of legitimacy. We further acknowledge Adams' (1992) factors for a prisoners' adjustment to prison life: 1) the individual characteristics of the prisoner; 2) characteristics of the sentence; and 3) environmental factors.

The dual model of legitimacy in prisons provides the framework for future simultaneous research into two different aspects of legitimacy in prison – prisoners' perception of legitimacy and prison staff's perception of self-legitimacy.

5 CONCLUDING REMARKS

Despite the growing research concerning legitimacy in prisons, compared with the number of studies on the legitimacy of the police or criminal justice, this strand of research remains modest. Further, studies on legitimacy in prison have focused on only one group of individuals in prisons (prisoners or prison staff). We argue that previous studies did not adequately explain legitimacy in prisons. Since legitimacy is based on constant dialogue between power holders and recipients, we argue that both groups in prison should be studied simultaneously because legitimacy is not a fixed phenomenon and we can assume that perceptions of legitimacy are changing all the time. The dual model of legitimacy in prison not only combines two different approaches to the study of legitimacy (prisoners' perception of legitimacy and prison staff's perception of self-legitimacy), but also represents the first step towards a comprehensive approach to studying legitimacy in prisons, which still needs to be tested in practice.

We see two limitations of the model. First, it is based on the assumption that interpersonal relations between prison staff and prisoners have the greatest

impact on legitimacy. However, relations are not fixed, but are changing all the time (especially in prison where relations are established on the basis of sanctions and benefits). Consequently, we have to measure legitimacy and self-legitimacy simultaneously because we will thereby obtain a clear view on legitimacy and self-legitimacy in a particular prison at the specific time of our measurement. Moreover, given the ever-changing relations in prisons, which are very specific, we can assume that repetition of the research would give different results. We see a second limitation in the large number of factors that affect legitimacy and self-legitimacy, which we included in the model; namely, the problem of multicollinearity. This problem can be avoided by carefully defining factors in accordance with the proposed theoretical model.

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