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CONTENT:

NATIONAL COURTS AND AMNESTIES: THE MACEDONIAN CASE 7

MARIJA MILENKOVSKA

THE IMPACT OF THE COVID-19 PANDEMIC ON HUMAN RIGHTS - EUROPEAN COMPARATIVE PERSPECTIVE IN CRIMINAL TRAILS 19

VESNA TRAJANOVSKA
NATASHA PEOVSKA

DEALING WITH ILLICIT TRAFFICKING OF IONIZING RADIATION SOURCES ON THE TERRITORY OF THE REPUBLIC OF NORTH MACEDONIA 37

EMILIJA PETROVA
ZLATE DIMOVSKI
METODIJA DOJCINOVSKI

JUVENILES AS PERPETRATORS AND VICTIMS OF CRIMINAL ACTS 47

SLAVICA DIMITRIEVSKA

DEVELOPMENT OF TERRORISM UNDER THE INFLUENCE OF THE MEDIA 55

IVAN DROBNJAK
VOJO LAKOVIĆ

Editorial Notes

Dear readers, we have a new edition of the International Yearbook of Faculty of security 2020/2.

Faculty od security Skopje, University of ,,St. Kliment Ohridski,, Bitola, Republic of North Macedonia, continues to publish scientific articles and treatment of actual security themes. We have a few areas which are part of the journal, such as: Criminalistics, Criminology, Police, Penal law, Politics, Security and Private security etc.

Every number of the journal consists articles with contemporary issues about security, crime, new treats, risks, and themes related with security. In this number we have an article about National courts and amnesties: the Macedonian case from Marija Milenkovska which is about the approach of the Constitutional Court to the amnesty introduced in the Republic of Macedonia in 2002. Vesna Trajanoska and Natasha Peovska discusses about The impact of the Covid -19 pandemic on human rights – European comparative perspective in criminal trails. The next paper from the authors Emilija Petrova, Zlate Dimovski and Metodija Dojcinovski is about Dealing with illicit trafficking of ionizing radiation sources on the territory of the Republic of North Macedonia. Slavica Dimitrievska discusses about Juveniles as perpetrators and victim of criminal acts. Ivan Drobnjak and Vojo Lakovic analyze Development of terrorism under the influence of the media.

We hope that those articles will keep your attention and will be a new quality in scientific areas such as security and others. Thanks for the effort of Editorial Board members, Secretary, reviewers and another staff, we can publish this second number of International Yearbook for 2020 year.

Sincerely,
Editor of the International Yearbook of the
Faculty of security

Professor Marina Malish Sazdovska

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NATIONAL COURTS AND AMNESTIES: THE MACEDONIAN CASE

Marija Milenkovska
Faculty of Security – Skopje
marijamilenkovska@yahoo.com

Abstract

The paper analyzes the approach of the Constitutional Court to the amnesty introduced in the Republic of Macedonia in 2002 (the name of the country was changed in 2019) in response to the crimes that were committed during the armed conflict that occurred in the country in 2001. It criticizes the resolutions of the Court which upheld the amnesty and explains why some human rights bodies have been critical of the amnesty introduced in the country. The issues this paper examines have implications not only for the domestic human rights system, but also for different fields of the international law, including the status of amnesty laws under customary international law.

Key words: amnesty, international law, domestic courts, international crimes.

1. INTRODUCTION

Blanket or partial amnesties are sometimes a useful or a necessary tool for dealing with the violent past (see Stahan, 2019; Reisman, 1996; Snyder & Vinjamuri, 2003/04), promoting reconciliation or diminishing/ending an armed conflict (see Dancy, 2018; Marie-Claude, 2017;). But many scholars view them as "denials of justice that encourage further impunity" (Thoms, Ron & Paris, 2010, p.331). They may affect the development of human rights and undermine the rule of law (see Sevastik, 2020). As Cryer et al. (2010) rightly assert, amnesties are "probably the most well-known", but also "controversial alternatives to prosecutions" (p.563). Amnesties for violations of international humanitarian law (IHL) and serious human rights violations are heavily criticized in terms of their legitimacy, effectiveness, and legality. While they are regularly viewed as incompatible with states' 'obligations under international human rights law (IHRL) by the international courts and bodies, their legality under international law is still subject of dispute in the literature on amnesty (see Meron, 2018; Freeman & Pensky, 2012, Ratner, 1999; Roht-Arriaza, 1990; Laplante, 2009; Drumbl, 2007; Drumbl, 2012).

Researching the approach of national courts to amnesty laws "can significantly contribute to the understanding of amnesty laws and the wider fields of transitional justice and international law in a number of ways" (Mallinder, 2008, p. 245). Studying the decisions of national courts on amnesty can contribute to the understanding of the impact/effectiveness

of IHRL. Furthermore, the decisions of national courts on amnesty laws can explain the actual status of international law within national legal orders, but they can also be "one element in discerning to what degree customary law obligations are emerging in the area of accountability" (Roht-Arriaza & Gibson, 1998, p. 845–46).

Each case is important because national courts approach amnesties differently (see, for example Martin, 2018; Tang, 2015; Contesse, 2015; Mallinder & Hadden, 2013; McNamara, 2013). Many cases, however, remain unstudied. This paper fills that gap by providing a comprehensive analysis of the approach of the Constitutional Court to amnesty introduced in the Republic of Macedonia (RM)[1] in 2002 in response to the crimes that were committed during the 2001-armed conflict. It focuses on the following questions: how did the Court explain its position? Did the international law influence the Court?

The paper criticizes the Court's decision to uphold the amnesty by referring to national and international law. To explain these criticisms, Part I of the paper discusses the position of international law on amnesty and how national courts of different countries approach amnesty. Part II determines the scope of the amnesty introduced in the country referring to the 2002 Law on Amnesty. Part III of the paper analyses the resolution of the Constitutional Court which upheld the amnesty and explains the restrained approach of the Court to international law. Part IV gives the conclusion.

2. AMNESTIES: THE ISSUE OF LEGALITY

An accepted legal definition of amnesty has not been developed in the international law, but as the International Committee of the Red Cross (CIRCA) observed "it can be understood as an official legislative or executive act whereby criminal investigation or prosecution of an individual, a group or class of persons and/or certain offences is prospectively or retroactively barred, and any penalties cancelled. In such cases, an amnesty can halt imminent or ongoing prosecutions, quash convictions already handed down and/or lift sentences already imposed. Amnesties may also take the form of a treaty or political agreement" (ICRC, 2017). One may accept that the essence of amnesty is the providing of impunity for wrongful acts. It is a completely different issue what the impunity is provided for, to whom and under which conditions. There are various types of amnesty. There are blanked amnesties which "prevent legal proceedings against all persons [perpetrators] without distinction" (Cryer et al., 2010, p. 563) and limited amnesties which "exclude certain categories of crimes… or certain individuals such as the leaders and intellectual authors of the policy of oppression and violence or member of particular organization" (Mallinder, 2010, p.794). A further distinction could be made between: 1) amnesty "offered by states to former opponents" (Collins, 2010, p.29); and self-amnesty "introduced by the authorities partly or wholly to protect themselves against sanctions for their own behavior" (Collins, 2010, p.29); and 2) unconditional amnesty and conditional amnesty (which means that applicants have to "perform tasks such as surrendering weapons, providing information on former comrades, admitting the truth about their actions or showing remorse to benefit from amnesty" (Mallinder, 2010, p.795)).

[1] The name of the country was changed in 2019. The paper analyses legal acts adopted by the country before this period, so we use the old constitutional name of the country that corresponds to the period under discussion and the text of the legal acts under discussion.

Various types of amnesty have been introduced in different parts of the world, but each type raises serious legal dilemmas. One question is particularly central: can a state grant amnesty for violations of IHL and serious human rights violations? The question of legality of amnesties for atrocious crimes under the international law has been discussed in the existing literature on amnesties many times, but there is no consensus among the authors regarding this issue. Some authors are "widely associated with a view that is supportive of a strong international duty to prosecute past abuses" (Orentlicher, 2007) and they are not prepared to accept the suggestion that prosecuting atrocious crimes is nothing more than an option (see Orentlicher, 2007). Others suggest that "amnesties which provide some degree of accountability do not violate international law" (Trumbull IV, 2007, p. 320), or that "conditional amnesties might satisfy the commitment to individual accountability for gross violations of human rights if the conditions include requiring truthful testimony about the person's role in violent acts" (Minow, 2019, p. 42). Freeman and Pensky (2012), on the other hand, argue that international law "cannot offer clear guidance regarding the legality of domestic amnesty for international crimes" (p. 64). They could not identify strong legal arguments to support the thesis that amnesty for international crimes is contrary to the international law.

The main points of disagreement (between the authors) can be summarized by the following questions: do the existing international treaties forbid amnesty for violations of IHL and serious human rights violations? Does 'the respect and ensure provision' common for many human rights acts imply a state's duty to prosecute serious human rights violations? Is there a general duty (under customary international law) to prosecute atrocious crimes?

At first sign, as Cryer et al. (2010) observed, Article 6 (5) of the Additional Protocol II to 1949 Geneva Conventions relating to the protection of victims of non-international armed conflicts – which provides that "at the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in an armed conflict, or those deprived of their liberty for reasons related to an armed conflict, whether they are interned or detained" – appears to argue in favour of amnesties (p. 365). However, the ICRC in 1999 interpreted this provision to cover combat immunity (for participating in a conflict, including killing combat enemies), but not international crimes (see Bell, 2009). The Inter-American Court of Human Rights (IACtHR) excludes its application in respect of certain types of crimes (war crimes and crimes against humanity) as well for the reason that according to the Court "this norm is not absolute, because, under the international humanitarian law, states also have an obligation to investigate and prosecute war crimes" (*Marguš v. Croatia*, 2014, para. 66).

The analysis of the international treaties relevant to the matter under discussion, however, reveals that an international treaty that would explicitly forbid amnesty has not been adopted yet. Some international treaties contain provisions that explicitly require states to prosecute and punish certain acts which constitute crimes under the international law (e.g., 1987 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) while others, including the key international human rights acts, are silent regarding such an obligation. However, many of the treaties that fall in the second category contain provisions that require from the states to respect and to ensure to all individuals within its jurisdiction the rights protected by the treaty, such as the American Convention on Human Rights and the International Convent on Civil and Political Rights (ICCPR) or to secure to everyone within their jurisdiction the rights and freedoms defined in the treaty

(European Convention on Human Rights) – which has virtually the same meaning as the 'ensure and respect provision'.

The question thus arises as weather the 'respect and provision' common for many human rights acts imply a state's duty to prosecute grave human rights violations. Legal scholars differ on whether this provision common for many human rights acts obliges states to prosecute and punish human rights abusers (see Ratner, 1999; Scharf, 1996; Ludwin King, 2010) while the human rights bodies, established by those treaties have proclaimed such an obligation. Thus, Human Rights Committee (HRC) (2004) in its General comment no. 20 pointed out that amnesties in respect of act of torture "are generally incompatible with the duty of States to investigate such acts, to guarantee freedom from such acts within their jurisdiction and to ensure that they do not occur in the future" (para. 15) while in its General comment no. 31 it observed that "a failure to investigate as well as a failure to bring to justice perpetrators of violations of the rights guarantee with the ICCPR "could in and of itself give rise to a separate breach of the Covenant" (para. 18). In the case *Hugo Rodrigues v Uruguay* (1994) the HRC did not accept that the "state has no obligation to investigate violations of the Convent rights by a prior regime, especially when these include crimes as serious as torture" (para.12.3) and reaffirmed its position that amnesties for gross violations of human rights "are incompatible with the obligations of the State party under the Convent" (para. 12. 4).

The IACtHR has made one step forward in affirming the positive duty of the state to prosecute serious human rights violations. In the case ***Barrios Altos v. Peru*** (2001) it stated that "all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law" (para. 41). The IACtHR referred to ***Barrios Altos v. Peru*** case in the case *Gomes Lund et al ("Guerrilha do Araguaia") v. Brazil (2010)* and *The Massacres of El Mozote and in the case Nearby Places v. El Salvador (2013*).

Other human rights bodies refer to the case law of the IACtHR, despite certain claims that its case law is in response to the specific circumstances that it was dealing with (see Cryer et. al, 2010, p. 71), including the European Court of Human Rights (ECtHR). The Court in Strasbourg considered the question of amnesty in the case *Marguš v Croatia* (2014). It did not adopt a total ban on amnesties by suggesting that amnesties "are possible where there are some particular circumstances, such as a reconciliation process and/or a form of compensation to the victims" (*Marguš v Croatia*, 2014, para. 140). However, it noted that: 1) "granting amnesty in respect of the killing and ill-treatment of civilians would run contrary to the State's obligations under Articles 2 and 3 of the Convention since it would hamper the investigation of such acts and necessarily lead to impunity for those responsible" *Marguš v Croatia*, 2014, para. 127); and 2) "a growing tendency in the international law is to see amnesty for acts which amounted to grave breaches of fundamental human rights as unacceptable because they are incompatible with the unanimously recognized obligation of States to prosecute and punish grave breaches of fundamental human rights" (*Marguš v Croatia*, 2014, para. 139).

One may agree that there is a growing tendency in the international law to see amnesty for acts which amount to grave breaches of fundamental human rights as

incompatible with certain recognized state obligations under the international law. But it can hardly be said that a general state duty to prosecute war crimes or all international crimes has been developed under the customary international law. Yes, a number of non-binding acts (resolutions, declarations and similar) have been adopted (including by the UN), in addition to a number of international treaties (which oblige only the states parties) that affirm such duty. However, the state practice does not support the existence of a state's duty (generalized) to prosecute under the customary international law. Many states have granted different amnesty types since the end of the Second World War (Argentina, Chile, Uruguay, El Salvador, Peru, South Africa, Columbia, Afghanistan, Haiti, Uganda and many others).

The response of the domestic courts to these amnesties was different. Many states, as Argentina (see Jacobson, 2006) have annulled their amnesty law in response to different events. Yet, the domestic courts in some countries have upheld the introduced amnesty. For example, in 2010, the Brazilian Supreme Federal Court decided to uphold the country's amnesty law (adopted in 1979) which covers violations of human rights committed during the military dictatorship (see Tang, 2015).

The decisions of national courts (constitutional and/or ordinary courts) upholding or overturning an amnesty are often based on the legality of the law, under either domestic (whether the amnesty is introduced in accordance with the Constitution; whether the amnesty violates the rights protected by the Constitution) or international law (whether the state has obligation under the international law to investigate or prosecute crimes covered by the amnesty) (see Mallinder, 2008). When deciding whether to uphold or overturn amnesty, courts sometimes consider the motives for amnesty and/or "the political situation in the country at the time the amnesty was introduced" (Mallinder, 2008, p. 239). There are also, cases where courts rely upon the separation of powers doctrine "to evade discussing the amnesty" (Mallinder, 2008, p.239). Or, they engage in different types of transnational dialogue with other courts – either with foreign courts of the same status or with supranational court in order to justify their decisions, National courts in some countries in Latin America developed a legal approach to amnesty laws that incorporates inter-American human rights standards within their constitutional orders (see Martin, 2018).

The approach of the Constitutional Court to the amnesty introduced in the Republic of Macedonia in 2002 will be analyzed below, but first we will briefly discus the scope of the amnesty introduced in the state.

3. LAW ON AMNESTY: THE SCOPE OF AMNESTY

The Law on Amnesty (Official Gazette 18/2002) was adopted in the Republic of Macedonia in 2002, in response to the crimes that were committed during the 2001 conflict. As enacted, the law created a limited amnesty which *inter alia* protected certain persons from prosecution. Article 1 of the Law on Amnesty provides that amnesty covers all citizens of the Republic of Macedonia, the persons with legal residence as well as the persons who have property or family in the Republic of Macedonia who are reasonably doubted to have prepared or have committed crimes relating to the 2001 conflict by 26th September 2001 (including those who prepared or committed crime relating to the 2001 conflict before 1st January 2001). According to this article they were exempt from prosecution and all criminal proceedings against them were stopped, and if the criminal proceedings against them had finished they were completely exempt from execution of the prison sentence. Also, it determines the annulation of the punishment and cessation of its consequences by 26th

September 2001. Article 2 of the law granted amnesty to persons who, during the conflict period, did not respond to the invitation and avoided the military service and military exercise as well as persons who voluntarily left the armed forces. Article 3 of the law provides that "the persons lawfully convicted for criminal acts covered by the criminal code and other laws of the Republic of Macedonia are exempt from 25% of the remaining part of their sentence if on the day this Law come into force, they started serving the prison term in the penal-correctional institutions in the Republic of Macedonia". It does not apply to persons convicted for crimes against humanity and international law, unauthorized production and distribution of narcotics, psycho-tropic substances and precursors and those convicted to life in prison.

The analysis of Article 1 of the Law reveals that to receive amnesty, individuals are not required to fulfill any condition or to perform certain tasks. It is, also, clear from the wording of the law that the state granted amnesty to all persons who are reasonably doubted to have prepared or have committed crimes related to the 2001 conflict, not only to the members of the National Liberation Army (NLA). However, the law does not define the term "conflict" nor does it define the type of crimes covered by the amnesty. Paragraph 4 of Article 1 of the law exempts from amnesty the crimes related to the 2001 conflict which are under jurisdiction of the ICTY and for which the Tribunal will initiate proceedings. But it does not provide a clear answer to the following question: what if the ICTY returns the cases to national authorities for prosecutions?

In 2002, five cases were deferred to the jurisdiction of the ICTY (Ljuboten case, Neprosteno case, Mavrovo road workers case, NLA Leadership case and Lipkovo water reserve case). The ICTY issued an indictment only in the Ljuboten case (concerns individuals who were suspected of committing crimes against ethnic Albanians in Ljuboten village). The other four cases (investigative files) involving alleged crimes committed by the NLA members were returned to the national authorities for prosecution. The authorities undertook a number of activities to provide that the country is prepared to cope with this challenge (e.g., improvement of the legal framework governing the judiciary and cooperation with the ICTY; capacity building measures). In the Mavrovo Road Workers case the trial had begun. However, in 2011 the Parliament adopted the authentic interpretation of Article 1 of the Law on Amnesty – which quotes Article 1 of the law and then, in the last paragraph, provides that Article 1 of the law applies to all perpetrators of crimes related to the 2001 conflict by 26th September 2001 except to those who committed crimes related to the 2001 conflict which are under the jurisdiction of the ICTY and for which the Tribunal initiated proceedings (the law uses the term shall initiate) are exempted from amnesty – and the law was applied to all four cases returned for prosecution by the ICTY.

The same year, two incentives for assessment procedures of the constitutionality of Article 1 of the Law on Amnesty and the authentic interpretation of Article 1 were submitted to the Constitutional Court. In 2012 (31st October) the Court refused the incentives. It found that the authentic interpretation of Article 1 of the Law cannot be a subject of assessment of constitutionality based on its content. The Constitutional Court concluded that the authentic interpretation has no substantial new content that aims to interpret (i.e., to clarify) the norm subject of the authentic interpretation (see U no. 158/2011). It also refused to assess the constitutionality of Article 1 of the Law on Amnesty based on Article 28 (2) of the Rules of Procedures, which prescribes that the Court will refuse an incentive if it has already dealt

with the same matter, and there is no basis for a different decision. The Court did not find grounds to depart from its position on the Law on Amnesty established in 2003, a Resolution which will be analyzed in the next chapter.

4. CONSTITUTIONAL COURT AND AMNESTY: 2003 RESOLUTION

The applicant, in their application for assessment of the constitutionality of the Law on Amnesty submitted to the Constitutional Court in 2002 *inter alia* claimed that the law violates the rule of law as one of the fundamental values of the constitutional order (Art. 8 of the Constitution) because: 1) Article 1 of the Law provides that the amnesty covers crimes related to the 2001 conflict committed by 26th September 2001, but it fails to define when such period begins; 2) the law covers crimes in relation to the 2001 conflict, but it fails to define the term conflict in a situation when the law covers individually named persons, thus abusing the definition of amnesty as an act that concerns unspecified persons; 3) the law fails to list or precisely define the crimes covered by the amnesty (see U. no. 169/2002). They also argue that the law violates the right to life protected by Article 10 (1) of the Constitution (because it fails to define the crimes covered by the amnesty), prohibition of torture (Art.11 (2)) and the irrevocability of the right to liberty (Art. 12 (1) of the Constitution).

The Constitutional Court decided not to initiate a procedure for assessment of the constitutionality of the Law on Amnesty (Resolution U. no. 169/2002, adopted on 19 February 2003). Underling the fact that the amnesty is introduced by the institution that has the authority to grant amnesty, the Court explained that amnesty acts in the country have always been adopted as an act of good will of the state with certain aims. In this context, it observed that the aim of the 2002 Law on Amnesty is the establishment of peace, resolution of the crisis and reintegration of the persons who prepared and committed crimes in relation to the 2001 conflict and their earlier rehabilitation in the society as free citizens pointing out that amnesty is always necessary in a situation "when a legal solution cannot be found by other legal means" (U. no. 169/2002, para. 7). In addition, it advanced certain legal arguments to justify its decision. It found that the Law does not violate the rule of law, as one of the fundamental values of the constitutional order, because it was not necessary for the legislator to: 1) define both the starting period concerning the preparation of crimes related to the 2001 conflict and the term conflict (as the applicant argued) because Article 18 of the Criminal Code defines the term preparation of a crime while the term 'conflict' is generally known (see U. no. 169/2002); 2) list or precisely define the crimes covered by the amnesty because one may determine the type of crimes covered by the amnesty based on Article 1 (4), 2 and 3 (2) of the law, which exempt certain crimes from amnesty, and, "moreover, not every crime has a character of a crime that has been prepared or has been committed in relation to the 2001 conflict" (U. no. 169/2002, para. 10). It also concluded that the law does not violate the constitutional rights invoked by the applicant (right to life, the right to physical and moral dignity and the right to liberty) because: 1) the Constitution does not prohibit amnesty of the perpetrators of the gravest crimes or of any crime; 2) Article 1 and 3 of the Law on Amnesty exempt certain persons from amnesty, thus providing a mechanism for protection of the rights in question given the fact that "the violations of these rights are characterized as violations of the international humanitarian law, that is, as crimes against humanity and international law" (U. no. 169/2002, para. 11).

Yes, the amnesty was granted by a body that has the authority to introduce it. It is also true, as Constitutional Court noted, that the Constitution does not explicitly prohibit amnesty of the perpetrators of the gravest crimes or of any crime. The Court, however, did not give appropriate weight to the fact that the basic rights and freedoms of the individual and the citizen, recognized in the international law and set down in the Constitution, are fundamental values of the constitutional order of the republic. They can be restricted only in cases determined by the Constitution and the restriction of freedoms and rights cannot be applied to certain rights and freedoms, including the right to life and the prohibition of torture, inhuman and humiliating treatment, and punishment. The main argument of the Court that Articles 1 (4) and 3 of the Law on Amnesty, which exempt certain persons from amnesty, provided a mechanism for protection of the right to life, the right to physical and moral dignity and the right to liberty (given the fact that the violations of these rights are characterized as violations of the IHL, that is, as crimes against humanity and international law) cannot be regarded as strong enough because the operation of this mechanism under Article 1 (4) of the law depends on the decision of the ICTY. The Tribunal has concurrent jurisdiction with the national courts and it "was not established to prosecute all the crimes that fall within its jurisdiction" (Del Ponte, 2006). It focused on the most senior political and military figures, leaving the responsibility of prosecuting the other perpetrators of crimes to national courts (see the address of the ICTY Prosecutor to the UN Security Council on 27 November 2001 and the 2002 Report on the judicial status of the ICTY and the prospects for referring certain cases to national courts). Does Article 1 (4) of the law – which exempts from amnesty the crimes which are under jurisdiction of the ICTY and for which the Tribunal will initiate proceedings – suspends the jurisdiction of the state to prosecute and punish the perpetrators of the gravest crimes committed during the conflict? The Constitutional Court (analyzing the ICTY Statute and national Criminal Code) concluded that the exemption provided in Article 1 (4) is necessary because according to Article 118 of the Constitution international agreements ratified in accordance with the Constitution are part of the internal legal order. The Court referred to the jurisdiction of the ICTY (the primacy over national courts) and the fact that crimes under jurisdiction of the ICTY and crimes against humanity and international law defined in the Criminal Code are based on several international conventions. In addition, it also noted that many of the international acts sanctioning grave crimes and human rights treaties are part of the domestic legal order. It provided certain explanations why the crimes under the jurisdiction of the ICTY are to be exempted from amnesty, however, it failed to state whether the law leaves room for granting amnesty to perpetrators of the gravest crimes if the Tribunal does not initiate proceedings against them. It explicitly noted this dilemma, but it did not explicitly resolve it.

This raises other important question of whether a state can justify a violation of international treaty that requires it to prosecute and punish perpetrators of certain acts by referring to a decision of the international tribunal (which has concurrent jurisdiction with the national courts) not to initiate proceedings against them. Article 118 of the Constitution provides that the international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law (which means that they apply directly and are above laws). However, despite the fact they have legal status above the laws, the Constitutional Court, so far, has demonstrated no will to assess the constitutionality of laws in terms of their compatibility with the international agreements, explaining its controversial position by referring to Article 110 of the Constitution which lists the

competences of the Constitutional Court. It is true, that this Article does not explicitly provide that the Constitutional Court decides on the compatibility of national legislation with the ratified international agreements (see Georgievski, Cenevska and Prešova, 2014), but it provides that the Court decides on other issue determined by the Constitution. The Constitution also provides that the rule of law is one of the fundamental values of the constitutional order of the republic. However, the Constitutional Court interprets its constitutionally regulated powers in a restrictive manner and applies restrained approach to the international law. The Court applied the same approach in amnesty cases. It referred to Article 118 of the Constitution and certain international agreements to justify the fact that the Law on Amnesty exempts certain crimes from amnesty, but it failed to discuss the compatibility of the law (which exempts from amnesty the crimes which are under the jurisdiction of the ICTY and for which the Tribunal will initiate proceedings) with the state obligation under certain international agreements to prosecute and punish perpetrators of certain acts (all of them).

In 2008 the UN Committee against Torture (CAT) expressed concern that the "inclusion in the scope of the Amnesty Law adopted in 2002 of "all criminal acts related to the 2001 conflict", may create the conditions for impunity for serious violations of the international human rights and humanitarian law, including violations of the Convention against Torture" (Concluding observations 2008, para. 5). In 2015 the Committee expressed serious concern that the 2011 authentic interpretation of the law "ensures impunity for persons accused of human rights violations perpetrated during the 2001 conflict, which include four cases of war crimes" (concluding observations 2015, para. 16). It recommended that the state should take the necessary measures to ensure that all cases of torture and other cruel, inhuman or degrading treatment or punishment are investigated and perpetrators are prosecuted and punished, fully investigate the cases of alleged disappearances and abduction and consider amending the Law on Amnesty "to the extent required to remove inconsistencies with the provisions of the Convention [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment] and international law and standards, in order to ensure that allegations of torture are not exempt from investigation and prosecution" (Concluding observations, para. 16). In 2008 the HRC (2008) stated that the country "should ensure that the Law on Amnesty is not applied to the most serious human rights violations or violations that amount to crimes against humanity or war crimes" (Concluding observations, para. 12).

The Constitutional Court did not refer to the ICCPR and failed to address the 1987 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (that explicitly require states to prosecute acts of torture) in its resolutions on amnesty. The Court also, failed to engage in dialogue with other courts, national or supranational (including the ECtHR) to justify or explain its conclusions.

5. CONCLUSION

The paper analyzed the approach of the Constitutional Court to amnesty introduced in the Republic of Macedonia in 2002 in response to the crimes that were committed in the 2001 conflict and thus explained the actual status of the international law within the domestic legal order.

The paper argued that the country dealt with crimes that occurred during the 2001 conflict by violating international law. Consequently, it was criticized by the HRC and UN

Committee against Torture. The Constitutional Court, however, did not overturn the amnesty. The Court advanced some non-legal arguments (such as aims of the law) to support its decision and referred to national and international law to justify its position, but it did not assess the constitutionality of the law in terms of its compatibility with international agreements ratified by the country that require states to prosecute and punish certain crimes. It applied its well-established restrained approach to the international law. According to Article 118 of the Constitution international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law. The analysis of the approach of the Constitutional Court to 2002 Law on Amnesty provided in this paper showed that this formal opening of the domestic legal order to international law has not been transformed in reality.

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THE IMPACT OF THE COVID-19 PANDEMIC ON HUMAN RIGHTS - EUROPEAN COMPARATIVE PERSPECTIVE IN CRIMINAL TRAILS

Vesna Trajanovska
International Balkan University (IBU)
vesna.trajanovska@yahoo.com
Natasha Peovska
Faculty of Security – Skopje
natasa.akademija@yahoo.com

Abstract

Today, the world is facing a new challenge, called COVID-19. The pandemic caused by this virus is a global, primarily health problem, but also a general problem that has affected more than millions of people from almost every country on the planet. In such circumstances, countries face the challenge of tackling an unknown enemy, protecting their citizens, while not violating their freedoms and rights.

However, it seems that this all goes together, and the global pandemic dictates a new way of running the "normal" functioning of the world, by imposing an urgent obligation to undertake a series of "extraordinary" measures. However such extraordinary measures largely encroach on the democratic values of the states, placing the enjoyment of human rights and freedoms in question with the justification - achievement of the common good. Hence, the picture is real of states that in the fight against the "invisible enemy" crossed the allowed borders and went so far as to derogate rights, which should not be derogated under any circumstances.

There are certain institutions, functions, and instruments that are a key link in a democratic society and their work should not be completely stalled under any circumstances. One of those links of democracy is the judicial system, and the work of the courts and the judicial administration must not be questioned even under these conditions of a global pandemic, primarily due to the fact that they are a guarantee for the realization of one of the essential human rights - the right of access to justice and the right to a fair trial.

The Covid-19 outbreak has challenged long-established legal procedures, the material functioning of the Court, the rule of law itself. In this article, videoconferencing in court proceedings is seen not only as an exceptional measure, but as possibly an effective part of the ordinary activity of courts. Fundamental rights at stake are taken into account, among them the European Convention on Human Rights and EU Charter rights of the defence, to effective remedies, to a fair trial, to be heard to a public hearing and to privacy.

Human physical presence is invaluable. However, the current Covid 19 situation commands to treasure the earlier experience of the Spring 2020, and the absence of any ideological approach is desirable, whether this is in favour or against videoconferencing in Court.

Key words: human rights, access to justice, right to fair trial, COVID-19

1. INTRODUCTION

The Covid-19 outbreak has affected the world in dramatic fashion and led to emergency of measures in most member states of the Council of Europe, aimed to contrast a deadly pandemic with few precedents in modern times. Restrictions on human rights (as an effect of emergency measures) have been put in place and justified as exceptional measures to protect public health. (UN Human Rights office of the High Commissioner, 2020)[2] Subsequently, in most countries, ordinary hearings, held physically in a courtroom, were no longer possible. This was notably the case from 9th March 2020 (Gori, 2020)[3] in Italy, the first western country to be hit severely by the spread of the virus.

As a result, all pending ordinary proceedings were suspended until 11th May 2020 (in the case of civil and criminal proceedings) and until 15th May 2020 (in the case of administrative proceedings), (Decree law no. 23, 2020) with significant exceptions for urgent matters, which were expected to be regularly addressed by the courts and decided without delay. Such a goal was considered by the lawmaker to be compatible with respect for the right to life of defendants, lawyers, judges and for public health only by means of physical distance through the systematic use of videoconferencing in court hearings. (European Law Instiute, 2020)[4]

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[2] The UN Human Rights office of the High Commissioner on 27 April 2020 adopted guidelines for emergency measures and Covid-19. Restrictions on such fundamental liberties have to meet four requirements (legality, necessity, proportionality, non discrimination): "The restriction must be 'provided by law' (…) of general application (…) not be arbitrary or unreasonable, and it must be clear and accessible to the public. (…) necessary for the protection of one of the permissible grounds stated in the ICCPR, which include public health, and must respond to a pressing social need. (…) proportionate to the interest at stake (…) and it must be the least intrusive option among those that might achieve the desired result. (…). No restriction shall discriminate contrary to the provisions of international human rights law."
<https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf>, visited on 8th November 2020.

[3] Art. 1 of Decree-law no. 11, published in the Official Gazette on 8 March 2020. For a commentary, P. Gori, "Covid-19: la Cassazione apre alle udienze da remoto' <www.questionegiustizia.it>, visited 8 November 2020. A key provision adopted a few days later is Art. 83 of Law-decree 17th March 2020, No. 18 (as further modified), carrying out urgent measures in the field of civil, criminal, tax and military justice in order to deal with the epidemiological emergency from Covid-19, resulting in: 1) postponement of all hearings scheduled from 9th March to 11th May (civil and criminal matters), 2) limitation of access to courts, whereas it is ensured that urgent civil and criminal activities are carried out, 3) suspension of the expiry of the terms for the carrying out of any procedural act, including the terms for starting judicial proceedings and the terms for the notification of appeals before the upper courts; 4) the expiry of the term for the carrying out of a procedural act that begins during the suspension period is deferred to the end of the above-outlined period. This complex procedural regulation has been converted in Law no. 27, published in the Official Gazette on 29th April 2020.

[4] This practice is consistent with European Law Institute (ELI) guidelines for the Covid-19 Crisis: "The judiciary should do all that is reasonably practicable to continue to conduct proceedings and trials, particularly through the use of secure video and other remote links where available to the courts (…) provided that the right to a fair trial,

Before the Covid-19 pandemic, videoconferencing in court was already used in Italy as a technical solution in specific situations, and the European Court of Human Rights found no violation of Article 6 of the European Convention on Human Rights. (Marcello Viola v Italy, 2006)[5] For instance, minors heard as witnesses in trials for sexual abuse or a person who, in any capacity, was detained in a prison regarding mafia-related and other serious offences (Italian Code of Criminal Procedure, 1998)[6] could already take advantage of such technology.

However, the exceptional measures adopted in March and April 2020 (Decree of the Court, 2020)[7] to govern the health crisis introduced for the first time the idea of a possible full legal procedure being carried out through videoconferencing instead of the parties being physically present in court. This is the case for urgent criminal matters like trials of arrested persons, where the exercise of the police power of arrest needs to be validated within 48 hours by a court. (Consiglo superiore della magistratura, 2020)[8]

Such a new approach raises a number of questions, regarding its compatibility with key fundamental rights – namely respect for privacy, due to the specific technology adopted for court videoconferencing, (Ministry of Justice, 2020)[9] – and more generally with the right

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including the right to defence, is not infringed. The restrictions on the operation of the judiciary must be immediately removed when the Covid-19 emergency permits." See Principle 5 'Justice System' 2020 <https://www.europeanlawinstitute.eu/>, visited on 8th November 2020.

[5] ECtHR 5 October 2006, No. 45106/04, Marcello Viola v Italy (No. 1), CE:ECHR:2006:1005JUD004510604, paras 21–2: provided that the relevant Italian regulation demands that certain 'results' have to be attained and, in particular, the 'effective' participation of the accused in the proceedings with a view to ensuring the proper exercise of his right to a defence, and contact between the accused and his defence counsel, present where the defendant is situated with the ability to communicate with each other, "in the opinion of the [Italian] Constitutional Court, the fact that the new provisions departed from 'tradition' did not upset the balance and dynamics of a trial that, on the contrary, remained substantively unchanged.". Finally, the Court found no violation under Article 6 (1) ECHR.

[6] Law no. 11 of 7 January 1998 introduced, among the implementing provisions of the Italian Code of Criminal Procedure, Art. 146-bis which, as later amended, reads as follows: "1. In proceedings concerning one of the offences provided for (…) a person who, in any capacity, is detained in a prison shall participate in the hearings in videoconference (…): (a) where there are serious requirements of public safety or order; (b) where the proceedings are particularly complex and participation at a distance is deemed necessary in order to avoid delays (…)

5. The place from which the accused is connected by audiovisual link to the hearing room shall be regarded as an extension of the hearing room. (…)".

[7] In some cases procedural measures were adopted by authorities other than the Government, such as the Constitutional Court – which is not part of the ordinary judiciary and it is not considered a judicial body in the classic sense. See Decree of the Court's president 24 March 2020 'Ulteriori misure per lo svolgimento dei giudizi davanti alla Corte costituzionale durante l'emergenza epidemiologica da COVID-19' (new procedural regulations) and the commentary from P. Costanzo, 'Con l'emergenza decolla la Corte 2.0' <www.giurcost.org> visited 8 November 2020.

[8] See the Guidelines for urgent criminal matters, adopted on 20 April 2020 by the Court of Rome, for an example of best practices enforced during the Covid-19 pandemic to prevent the stop of the jurisdiction <www.altalex.com>, visited 8 November 2020. The Consiglio superiore della magistratura (the central body for self-government within the judiciary) already on 5 March 2020 adopted guidelines to coordinate emergency organisational planning from all judicial offices <www.csm.it>, visited 8 November 2020.

[9] Privacy issues were immediately raised by a proactive association of Italian criminal lawyers (the Unione camere penali), since no videoconferencing tools specifically designed for court proceedings had been adopted by the legislator. In need of an urgent solution, the Government choose general business products immediately available on the market ('Teams' and 'Skype for Business'). These products were already experimented within the Ministry of Justice. On 19 April 2020 the Italian Privacy Authority asked the Ministry a full disclosure of information about data treatment and storage from Microsoft tools used in criminal proceedings in the framework

to be heard in court, the right of defence, the right to effective judicial remedies and the right to a fair trial. The issue is expected to be salient in the future, at least in the event of the return of exceptional conditions, not to mention the possibility that videoconferencing in court hearings may become an ordinary procedural tool. (Marinho, 2020)[10]

Emergency legislation governing the Covid-19 crisis in the Netherlands is very interesting as well. A bill proposed by the Dutch government was adopted by the Senate, and published on 24 April 2020. (Staatsblad, 2020) The emergency legislation was set to cease to apply on 1st September 2020. As it could not be excluded that temporary legislation would still be needed after this date, the law included a clause providing for extensions (of two months each time) which is now extended until 30th November 2020. (Staatsblad, 2020) Some provisions in the Bill have taken effect retroactively to 16th March 2020.

The judiciary is in general now allowed to make greater use of electronic means of communication. Video links are already in use for oral proceedings and may be applied more frequently in the future, for example, so that lawyers or parties to proceedings no longer need to appear in person, given that video call technology suffices.

In several European States, emergency measures adopted have been challenged before national administrative high courts (BvR, 2020)[11] and several judgments have already been delivered.[12] Such a judicial check on central and local governmental action appeared to be a key remedy in democratic societies since many parliaments could not sit and operate properly for a substantial period due to the pandemic.[13]

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of the emergency Covid-19 measures <https://www.garanteprivacy.it/home/docweb/-/docweb-display/docweb/9316889> visited 8 November 2020. On 21 May 2020, the Authority found that the tools chosen in administrative proceedings would be compatible with the relevant privacy regulation on condition that a few improvements were made <https://www.gpdp.it/web/guest/home/docweb/-/docweb-display/docweb/9347225> visited 8 November 2020.

[10] For instance, since the beginning of the twenty-first century, Portuguese courts have systematically used videoconferencing either in internal Court proceedings, e.g., for taking witnesses from overseas territories, or to effect the taking of evidence in cross-border proceedings, under the following structures: 1) Regulation (CE) n.1206/2001 for EU Countries, 2) the Iberoamerican Judicial Network, an informal structure since 2005 through national contact points for South and Central American Countries, 3) the Convention on the taking of evidence abroad in civil and commercial matters signed on 18 March 1970 (applicable to countries that ratified it), 4) Reciprocity for the rest of the world (source: Carlos Marinho, judge at the Court of Appeal of Lisbon).

[11] Conseil d'état, 28 March 2020– n° 439726 on a request that the Government provide masks, screening tests and medicine (hydroxychloroquine) to the general public; n° 439765 on the same medicine; n° 439693 on masks, hydroalcoholic solution and other personal protection equipment for medical staff; n° 439720 on the temporary shut-down of administrative detention centers for aliens awaiting removal. As references of reviews on Covid-19 measures in front of Constitutional courts, see one individual application Bundesverfassungsgericht 12 May 2020, BvR 1027/20, DE:BVerfG:2020:rk20200512.1bvr102720; as an example of the mechanism of Article 61 of the French Constitution operating a preliminary control of constitutionality on the matter, see Conseil constitutionnel, décision n.2020-800 DC du 11 Mai 2020, FR:CC:2020:2020.800.DC. (Summaries of these judgments can be found in Jurifast 'ACA Europe' <http://www.aca-europe.eu/index.php/en/jurifast-en.> visited 8 November 2020.)

[12] District Court, The Hague 3 April 2020, NL:RBDHA:2020:3013 on an application (temporary injunction) where the plaintiffs requested a 'full lockdown' to be imposed. This application was dismissed on 3 April 2020. (A summary of this judgment can be found in Jurifast 'ACA Europe'.)

[13] Most Italian Covid-19 statutory law was adopted by the Government and by regional presidents with little initial control from the Parliament, which was not able to work effectively for weeks, due to the sanitary emergency. Effective parliamentary control over statutory law came only with the conversion of the urgent law decrees into law, almost sixty days after the first provisional regulation was adopted by the Government.

2. RIGHT TO FAIR TRIAL

The right to a fair trial refers to the administration of justice in a criminal and civil context. It is a principle that entails a series of individual rights that guarantee the administration of justice from the first moment - from the grounds of suspicion to the execution of the judgment.

The realization or administration of justice has two aspects: institutional and procedural. The institutional aspect, simply put, provides for the right of every individual to be tried before an independent and impartial court, established by a law that operates under the laws of the state and to which everyone has equal access. The second aspect, the procedural one, carries a series of rights related to the right to a fair trial. These include the right to equality before the law and the court, the right to access to effective and equitable remedies, the right to presumption of innocence, the right to a trial without necessary delay and in their presence, the right to counsel, the right to translator (if they do not understand the language of the court) and an interpreter, as well as the principle "nulla poene sine lege"[14]. Full observance of all of them would represent full observance of the right to a fair trial.

In addition to the domestic law, the principle of the right to a fair trial is also protected by the European Convention on Human Rights (ECHR), where Article 6 states that every citizen when exercising their rights and obligations, or if criminal proceedings are instituted against them, has the right to a fair and public hearing which shall be held within a reasonable time before an independent and impartial court established by law. The ECHR states that proceedings before courts and judgments should be public, and the public can only be excluded (completely or partly) only if it is in the interest of morals, public order, and national security in a democratic society, or when it is necessary for the protection of the interests of underage persons or of the privacy of any of the parties involved in the proceedings, as well as if the court decides that the public would be contrary to the interests of justice. (European Court of Human Rights, Council of Europe, 2020) Furthermore, this article of the ECHR provides for all the above elements (or rights) of the principle of a fair trial, which are a guarantee that it is fully respected.

Our legislator envisaged the principle of a fair trial in the Law on Criminal Procedure and in the Law on Courts. The Law on Criminal Procedure provides for the same in the first chapter (Basic Principles) where Article 5 states “A person accused of crime has the right to a fair and public trial before an independent and impartial court, in a contradictory procedure to be able to challenge charges against them to propose and present evidence in their own defense." (Code of Criminal Procedure of the Republic of North Macedonia, 2010) The Law on Courts also stipulates the right to a fair trial in the first chapter (Basic Principles), where Article 6, paragraph 2 states: within a reasonable time before an independent and impartial tribunal established by law. (Law on Courts of the Republic of North Macedonia, 2010)"

[14] One cannot be punished for doing something that is not prohibited by law at the moment when it was conducted

2.1. THE RIGHT TO BE HEARD AS PART OF THE RIGHT OF THE DEFENCE

The Strasbourg Court declared in Colozza, (Colozza v Italy, 1985)[15] that the defendant's right to be physically present at his or her trial serves the effectiveness of other rights protected by the European Convention on Human Rights as well. Is exercising the right to examine witnesses or to be assisted by an interpreter or even to defend oneself possible without a physical presence in court? – a requirement imposed by the exceptional measures to combat coronavirus.

In Poitrimol (Poitrimol v France, 1993)[16] the Court affirmed that a waiver of the right to take part in a trial must be established in an unequivocal manner and must be attended by minimum safeguards commensurate to its importance. The right to be present in court needs typically to be exercised in the first instance. According to an established case-law, there is no unconditional right to appear personally before a panel of judges on appeal or in front of a court of cassation. The case-law is consistent in denying this, even if it is within the capacity of the upper court to examine both issues of law and of facts, in a full review, with exceptions mostly related to incorrect exercises of the right to be heard in first instance, before the review in appeal or cassation. (Marcello Viola v Italy, 2019) The underlying line of reasoning is that the courts concerned do not have the task of establishing the facts of the case, but rather only that of interpreting the legal rules involved.

In Kamasinski, the Strasbourg Court set out the principle according to which the presence in person of the accused at a hearing of an appeal where only points of law are considered is not crucial. (Kamasinski v Austria, 1989)[17] In any case, even where high courts have jurisdiction to review a case both as to facts and as to law, Article 6 does not always require necessarily a right to a public hearing and a fortiori a right to be present in person, irrespective of the nature of the issue to be decided. (Fejde v Sweden, 1991) According to the Fejde case, other points must be taken into account, including the right to trial within a reasonable period and the related need for compliance with the 'reasonable time' requirement which is protected by Article 6, which must be considered in determining the need for a public hearing and the need for personal appearance before the appellate court on appeal and possibly at third instance.

Account must be taken of the entirety of the proceedings and of the role of the court of appeal therein (Ekbatani v Sweden, 1988) and, inter alia, the special features of the proceedings involved and the manner in which the interests of the defense have been

[15] ECtHR 12 February 1985, No. 9024/80, Colozza v Italy, CE:ECHR:1985:0212JUD000902480, para 28 develops and interesting reasoning on the burden of proof: "In conclusion, the material before the Court does not disclose that Mr. Colozza waived exercise of his right to appear and to defend himself or that he was seeking to evade justice."

[16] ECtHR 23 November 1993, No. 14032/88, Poitrimol v France, CE:ECHR:1993:1123JUD00140328838, para 31:

"The Court considers that the inadmissibility of the appeal on points of law, on grounds connected with the applicant's having absconded, also amounted to a disproportionate sanction, having regard to the signal importance of the rights of the defence and of the principle of the rule of law in a democratic society."

[17] ECtHR 19 December 1989, No. 9783/82, Kamasinski v Austria, CE:ECHR:1989:1219JUD000978382, para 106: "However, the personal attendance of the defendant does not take on the same crucial significance for an appeal hearing (…) as it does for the trial hearing (…). Consequently, this is an area where the national authorities enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law".

presented and protected at first instance, particularly in the light of the issues to be settled, (Helmers v Sweden, 1991) and having regard for their importance for the defendant as well. What is really needed is that an accused person should be represented by a lawyer and that the possibility of organizing his or her own defense is granted. (Ziliberberg v Moldova, 2005)[18]

Can a defendant refuse to take part in court proceedings held by means of videoconferencing, and instead successfully rely on the European Convention on Human Rights? The Strasbourg Court has held several times that a hearing and a subsequent decision in absentia is also compatible with the right to be heard, if the latter is in fact willingly not exercised by the applicant. At this regard, the burden of proving such a subjective condition may be excessive for an applicant. In this case, a trial in absentia results in a violation of the Convention, insofar as concerns the right to be heard, according to the Sejdovic case law, (Sejdovic v Italy, 2006) only where an unequivocal expression of a will to appear before the court is expressed by the defendant and either no public interest can justify a denial of this or the applicant has sought to escape judicial trial. In Sejdovic no official notice was served on the applicant, and therefore the Court found that he could not be regarded as having been sufficiently aware of his prosecution and the trial to be able to decide to waive his right to appear in court, or to be deemed to have evaded justice.

As a result of the above considerations, the right to be present in court cannot be confused with the right of personal attendance. It has been held (Italian Constitutional Court, 1999) that participation at a distance in a hearing by means of videoconferencing is compatible with the right to defense, but it requires that certain results are met. In particular, the effectiveness of the participation of the accused in the proceedings is a proportionate measure, taking into account the need for the expeditious handling of proceedings involving accused persons in detention.

2.2. VIDEOCONFERENCING AND THE RIGHT TO A PUBLIC HEARING

The Covid-19 outbreak has in practice led to exceptional measures preventing physical access to court buildings and, subsequently, the possibility of classical public hearings for months. In the Netherlands, the buildings of the district courts were closed from 17th March 2020 until 11th May 2020 to prevent the spread of the coronavirus. Due to this closure, no court hearing could be held in facilities that were usually open to the public. On this issue, we would like to draw attention to two interesting rulings by the administrative jurisdictional division of the Council of State, the findings which explicitly refer only to the period between 17th March 2020 and 11th May 2020.

The first judgment is about hearings in detention cases of foreign nationals. (Council of State, 2020) In the Netherlands, foreign nationals who appeal against a detention measure are always heard by court. Hearings often take place physically in court buildings, but facilities in detention centers are also used regularly to hear foreign nationals at a distance by means of videoconferencing. The 'video conference decision' of 2006 both allows and regulates this method. Under Covid-19 exceptional measures, however, physical hearings could no longer be held at all. Videoconferencing was not possible in each instance, because

[18]That was not the case in ECtHR 1 February 2005, No. 61821/00, Ziliberberg v Moldova, CE:ECHR:2005:0201JUD006182100, para 41, where the applicant was prevented from organising his own defence since he had no prior notice of the hearing of the appeal.

of the limited capacity and the fact that facilities available at the detention centers were too small to comply with the corona measures adopted. The question was whether such a limitation violated a foreign national's right to be heard.

The Council found that resolving a case in writing was an acceptable temporary solution, if the court had received the consent of both the appellant and the state secretary to do this. What was important was that the fundamental right of the foreign national is heard and not neglected. Where either the appellant or state secretary would not consent to a written procedure, both parties could agree that only the authorized representatives had to be heard by telephone, as a further temporarily acceptable hearing method. In contrast, where either an authorized representative or a foreign national stated that he or she did not waive the right to be heard physically, the onus was on the court to make every effort to offer the applicant the opportunity to be heard in person. The court might, however, conclude that a hearing was simply not possible in practice due to the Covid-19 outbreak. The Council then deliberated on the consequences of such exceptional circumstances. What was required was to assess the practical impossibility of hearing the foreign national, taking into account other fundamental rights at stake, such as the right to an early decision on the lawfulness of the detention measure, the privacy rights, and the right to health of the applicant and the general importance of public health. The Council concluded that refraining from hearing a foreign national was possible given the special circumstances of the corona crisis, but this could not happen automatically. The court was required to make a recognizable and specific assessment of all the interests involved. The second judgment focused on the temporary emergency ban of public hearings in buildings that were usually publicly accessible. (Council of State, 2020) The judiciary sought a temporary alternative in order to meet the requirement that judgments should be pronounced subject to open scrutiny, and it is relevant for present purposes since it was taken as a reference point by other administrative judgments during the period of time between 17th March 2020 and 11th May 2020.

Pursuant to Article 8:78 of Dutch General Administrative Law Act, a judgment had to be delivered in public, this being a fundamental principle laid down in various human rights treaties (Article 14(1) UN International Covenant on Civil and Political Rights and Article 6(1) of the European Convention on Human Rights). The legislator made reference, *inter alia*, to the Strasbourg *Pretto* ruling, (Pretto v Italy, 1983) in which it was stated that human rights treaties did not require judgments to be pronounced in public in all cases. Other means of disclosure were permitted as long as anyone could access the full text of the judgment, and Article 8:78 took into account that the internet offered opportunities to give a more contemporary interpretation to the requirement of public disclosure of the judgment.

The Dutch courts usually disclosed a judgment to the parties involved in the dispute by sending a copy of the ruling to them. According to the established case law, others, who were not involved in the procedure, had to be able to read the judgment in a simple manner. As long as there was no suitable form of digital disclosure, holding 'disclosure sessions', accessible to the public, was an adequate measure to meet the requirements for the disclosure of judgments. The minutes of the hearings, including the case number and the names of the parties, and the relevant decisions, had then be made available for scrutiny by the public in the court's registry.

Under the Covid-19 outbreak the Council found that district courts might suspend the 'disclosure sessions' and took the view that the publication of the full text of judgments

on the internet (via www.rechtspraak.nl) provided easy access to them for interested parties. As publication of all judgments was not yet possible due to the limited capacity of the court administration, a possible alternative was to make available and free of charge an official record of the judgments taken on the same day. The interested parties were then allowed to get a copy of the judgment. The Council accepted this method acknowledging that the courts had already tried to publish as many judgments as possible. Therefore, a combination of sending the judgement to the parties and providing an opportunity for others to become aware of the content of the decision by means of the internet or through publication of official records was an acceptable temporary solution and did justice to the essence of the principle of public justice, given the current exceptional circumstances.

3. COMPARATIVE EXPERIENCES IN REALIZING THE RIGHT TO A FAIR AND EQUITABLE TRIAL DURING COVID-19

The normal functioning of everyday life around the world is paused by undertaking a series of measures to deal with the virus - the introduction of a state of emergency, restriction of freedom of movement, restrictive and strictly controlled access to institutions, the introduction of a complete "lockdown" of shopping centers, sports centers, restaurants and the like. These, as well as many other measures, have an impact on the overall functioning of society, including the functioning of the criminal justice system, as countries have resorted to rigorous measures that have restricted access to much of the institutions, and consequently, the practice of basic human rights is also severely restricted. But in the process of creating and implementing measures to combat the virus, they seem to have forgotten the fact that certain functions and institutions in democratic societies must not be completely stalled under any circumstances.

When the situation with the number of infected with COVID-19 escalated, many countries took rigorous measures, such as full or partial closure of courts (Albania, Estonia, Finland, Hungary), courts functioning only in emergencies (Greece, Italy, Latvia, Romania), failure to act on new cases (Belgium), suspension of deadlines and all court activity (Bulgaria, Luxembourg, Montenegro), (UIHJ - International Union of Judical Officers, 2020) as well as a number of other measures, including a ban on visits to penitentiary institutions, for example in Italy, where all prison visits were banned, which eventually resulted in mass protests by the prison population, but also in the Netherlands, where prison visits were banned except for children that are in institutions. (Penal Reform International, 2020)

The protection of fundamental human rights and freedoms, even in the wake of a global pandemic and state of emergency, is essential and must be respected by all social actors. The ECHR (Unated Nations Human Rights Office of the High Commissioner), as well as the International Covenant on Civil and Political Rights (Unated Nations Human Rights Office of the High Commissioner), provide for a range of rights that must not be derogated in this situation. Among those rights, although not explicitly stated, is the right (or principle) of a fair trial, because the denial of certain fundamental human rights can never be strictly necessary, regardless of the situation, because the observance of these rights is of essential importance for ensuring the full enjoyment of those rights which may not be derogated from in any circumstances. (American Association for the International

Commission of Jurists, 1985) Hence, the right to a fair trial must never be restricted, as this would circumvent the protection of rights that must not be derogated.

In addition, deviations from certain fundamental principles, such as the principle of a fair trial, should be prohibited under any circumstances, and even in an emergency, or the restriction on the principle of a fair trial should be kept to a minimum in crisis situations where there is endangered national security. In other words, the restriction of the full enjoyment of certain rights must be necessary and proportional to the situation, but must not undermine the essence of fairness in the proceedings. (OSCE / ODIHR, 2016)

Given the fact that there is still no clear assessment of how long this crisis could last, and in most countries, including ours, only urgent court cases are processed, the need arises to consider and find alternative solutions, all in order to ensure the smooth exercise of criminal law protection. Many countries around the world have already found and started implementing such alternative solutions by introducing a system of "remote" or "virtual" trial, using modern audio-visual technology.

By introducing these measures, the criminal justice system can remain fully functional, which will prevent long delays in proceedings, ensure the processing of emergencies, such as detention, but through the introduction of such technologies the right to an effective defense can be provided, which would enable defendants deprived of their liberty to have regular communication with their defense counsel despite visiting bans. Such alternative measures are also recommended by the European Commission, which recommends the use of audio and video communication or other virtual tools, such as undertaking other precautions and protection, such as glass partitions in police stations, courts, and prisons, in order to ensure the right to a fair trial and access to an effective defense. (The European e-Justice Portal, 2020)

Some countries (within and outside the EU) have already started to apply this practice, so the United Kingdom, in addition to introducing a "virtual trial" of the Supreme Court, also provides for video streaming on several websites, which provides full respect of the principle of a fair trial by providing all the necessary elements, including the public. (The Judicial Committee of the Privy Council (JCPC), 2020) This practice was undertaken by several courts in the United States and Europe, (Maurice & Ben, 2020) as well as in our neighboring countries, i.e. the Republic of Serbia, where a decision was introduced by the Ministry of Justice through the "Skype" application for persons who violated self-isolation measures. (Ministry of Justice, 2020)

4. UNDERTAKING MEASURES FOR PROTECTION AGAINST COVID-19 IN EXERCISING THE RIGHT TO A FAIR AND EQUITABLE TRIAL IN THE REPUBLIC OF NORTH MACEDONIA

Our country was in a very complicated constitutional and legal situation, primarily due to the fact that the pandemic came in the pre-election period, with a dissolved Assembly and a caretaker government, namely without a functional legislative and executive branch. In such a situation, a solution to deal with the virus was found in the declaration of a state of emergency, all in order to facilitate the management of the situation. However, in a situation of emergency, where the institutions work with a minimum capacity and with a strictly restrictive physical approach, the realization of fundamental rights is questioned.

The series of measures, recommendations, and decrees that have been adopted have severely restricted access to justice. While we have a ban on contact with the outside world in penitentiary institutions, strictly limited access to court and thus to the right to the public at court proceedings (except when it comes to the professional public), processing of court cases only in emergencies, we can not speak of full observance of the right to a fair trial.

The Judicial Council on March 17th, following the recommendations of the Government, made a decision obliging the presidents of the courts and judges to harmonize the management of court cases with the measures and recommendations of the Government of the Republic of North Macedonia and the competent health authorities and to take all precautions to reduce the risk of infection. For that purpose, the entrance to the courts was (and still is) placed under strict control and it is subject to security and health measures. In addition to preventive measures, the decision obliges the courts to act only on necessary matters such as the trials of criminal cases where the defendants are in custody, house arrest or another measure has been imposed on them to ensure their presence; criminal cases where the parties do not have a place of residence in the Republic of North Macedonia; criminal cases for which there is a threat of delay; criminal cases for criminal offenses under Art. 205 of the Criminal Court, Art. 206 of the Criminal Court, Art. 208 of the Criminal Court, Art. 382 of the Criminal Court, Art. 383 of the Criminal Court and Art. 387 of the Criminal Court; misdemeanor cases that are urgent in nature; cases that are in the decision-making phase, as well as those for which there is a risk of violation of the principle of trial within a reasonable time and which are urgent by law. With regard to the submissions, with this decision, the courts remained open for their submission, as well as for other matters related to legally preclusive deadlines. (Judicial Council of Republic of North Macedona, 2020)

Somewhat later, after the declaration of the state of emergency, the Government of the Republic of North Macedonia adopted a Decree with legal force by which all legal and exclusive deadlines related to litigation, extrajudicial proceedings, proposals for criminal prosecution, filing a private lawsuit, request for enforcement and claims, lawsuits for initiating administrative disputes, initiating proceedings before the Constitutional Court, as well as for all other court proceedings, have ceased to run from the moment the decree enters into force until the cessation of the state of emergency, (Government of the Republic of North Macedonia, 2020) which means that the decree is still in force.

Furthermore, with the decree, all legal and preclusive deadlines related to the declaration of remedies, and taking procedural actions for the above procedures ceased to run. As far as criminal and misdemeanor proceedings are concerned, the deadlines for submitting an appeal or objection to the decisions ending the proceedings have ceased to run, and the deadlines for filing legal remedies have also ceased to run. Also, the deadlines for the statute of limitations for criminal prosecution, initiating and conducting misdemeanor proceedings, execution of criminal and misdemeanor sanctions, as well as the deadlines for issuing referral acts for serving a prison sentence of up to three years, until September 1st 2020 have ceased to run, except for cases for which there is a danger of the statute of limitations of the execution of the sentence. (Government of the Republic of North Macedonia, 2020) If we add to all this the functionality of the penitentiary institutions which, according to the Government's recommendations, operate in strictly controlled conditions, respecting the measures for protection and prevention of COVID-19, we can say that the justice system is at a standstill. An example of this is the recent trial of two people for violence, a case that was widely reported in the media, and whose first hearing was

postponed because the defendants, for whom a detention measure was imposed, were placed in self-isolation in the detention units in the Kumanovo prison, so they do not have the opportunity to prepare their defense together with their lawyer. (All for fair trails, 2020)

While countries around the world, but also in our environment, are taking alternative solutions to minimize the effects of the crisis on such essential human rights, our country does not seem to be following that trend. Despite the recommendations and good practices for the introduction of trials at a distance, through the use of various modern technologies, such a practice in our country was reached only by the Basic Court in Kavadarci, which held several "virtual" hearings, where the professional public had the right to attend. In addition, the Basic Court in Kavadarci took additional protective measures, and during May, plexiglas screens were installed in the courtrooms, which enabled the safe functioning of the court. Unfortunately, the largest court in the country, Skopje Basic Criminal Court, where most of the court cases in the country are practically processed, did not hold a single "virtual trial", leaving a large number of defendants, victims, as well as other parties in uncertainty regarding their court proceedings.

On 20.10.2020, a Protocol for implementation of measures for protection against COVID-19 in the courts was published on the website of Skopje Basic Criminal Court, which provides a series of measures that apply to all employees, but also to all parties and citizens who enter in court1. (First Instance Court, Republic North of Macedonia, 2020) On the same day, it was noted that in certain courts, persons in the capacity of public, including the professional public in accordance with the procedural laws, on the basis of this Protocol are prevented from attending and observing court hearings, with the explanation that there is not enough space in the courtroom as an adequate physical distance between the persons inside.

In this regard, there are concerns about the potential impact that the Protocol thus drafted and thus adopted may have on the right to a fair trial, in many respects. First of all, although this Protocol, according to its content, refers to all courts in the country, so far it has been published only by the Basic Criminal Court Skopje and at the same time, it is not stated at all which organ, body or institution has adopted it, but only that it was prepared by the Association of Judges and published by the Basic Criminal Court in Skopje. This situation raises a number of questions regarding the transparency and independence of the judiciary. In this context, although the Association of Judges is a professional organization composed of judges, it is still only a civil organization, namely an association of citizens, so it is not recognized as a body, institution or organ that can in any way formally influence the judiciary and pass obligatory acts for all courts in the country, directly encroaching on the powers of the Judicial Council. In this direction is the Decision for acting of the courts in the Republic of North Macedonia in conditions of increased danger from the COVID-19 virus, which in March 2020 was adopted by the Judicial Council of the Republic of North Macedonia (First Instance Court, Republic North of Macedonia, 2020), and considering this, the question arises whether this Protocol before starting to be implemented should be previously adopted by the Judicial Council and it should be clearly stated by which organ it was adopted, as well as to be made public and available in all courts so that citizens can be properly informed and get adjusted to the measures?

Of additional concern are the measures set out in the Protocol, which give judges broad powers to restrict or even remove the public from proceedings contrary to the legal, constitutional, and international provisions related to the right to a fair trial. Thus, in

accordance with the Constitution of the Republic of North Macedonia, the European Convention on Human Rights of the Council of Europe, the International Covenant on Civil and Political Rights of the United Nations, as well as the domestic procedural laws, trials in the courts of the Republic of North Macedonia are public, and the reasons why the public can be excluded, as well as the way it can be done, are properly envisaged. The public character of the proceedings is an important part of ensuring justice, and the administration of justice should be visible so that it is subject to public oversight, which will also serve as a mechanism that can strengthen citizens' trust in the judiciary and judicial institutions (Bianku, Ledi, Nula, & Hannah, 2020). In this regard, the European Court of Human Rights, in the case of Riepan v. Austria, emphasizes that the holding of public court hearings is a basic principle of Article 6 of the ECHR, that is, this principle is one of the mechanisms by which trust in the judiciary is to be maintained (Riepan v. Austria, 2000).

In this regard, the ECHR recognizes the need for exclusion of the public for the protection of security or privacy (B. and P. v the United Kingdom, 2001), but still concludes that cases in which security concerns justify the exclusion of the public are truly rare (Riepan v. Austria, 2000), and that security measures must be appropriately adjusted and in accordance with the principle of proportionality, after all the possible alternatives have been reviewed (Krestovskiy v Russia, 2000). In view of the fact that in the criminal procedure there is a particularly high expectation of the public (B. and P. v. the United Kingdom, 2001), Article 346 of the Law on Criminal Procedure stipulates that if there are no appropriate conditions for holding the main hearing in certain premises, the court may decide to hold the main hearing in another room. Therefore, we believe that the courts should make efforts to consider all other alternative measures in order to provide adequate premises for holding court hearings during the pandemic, in order to ensure standards for fair and equitable trial of citizens. Pursuant to the Law on Criminal Procedure, it is precisely determined in which situations the court may exclude the public from the main hearing, and this would not be considered a substantial violation of the procedure in accordance with Article 415 paragraph 1 item 4 of the LCP (Code of Criminal Procedure of the Republic of North Macedonia, 2010). At the same time, the LCP obliges the trial judge, or the judicial council, if there are reasons for exclusion of the public, to make a decision on the same, which must be immediately and publicly explained.

Bearing in mind the abovementioned, the judicial institutions and courts welcome the efforts for protection from COVID-19, undertaken so as not to expose the citizens to the risk of infection, but also appeals to the courts and judicial institutions to make additional efforts to respect human rights during a pandemic, in order to ensure a fair and equitable trial for all citizens in accordance with the highest international standards for a fair and equitable trial.

5. CONCLUSION

In conclusion, there are significant differences in the respective scopes of Articles 6 and 13 of the European Convention on Human Rights and Article 47 Charter of Fundamental Rights of the European Union. However, both the Convention on Human Rights (an instrument of international law) and EU law (a proper international legal-system) guarantee the right to a fair trial and clearly need to be respected while using videoconferencing for court proceedings.

The Strasbourg case-law on Articles 6 and 13 of the Convention is a key factor in interpreting the meaning of the right to a fair trial as fundamental EU right enshrined in Article 47 Charter. Article 6(1) might be considered as constituting a *lex specialis* in relation to Article 13, depending on the facts underpinning a given case.

Given its relative nature, the right to be heard is constantly balanced with other fundamental rights. Such freedom is primarily enforced at national level (on the basis of subsidiarity), and extensive use of the relevant Strasbourg case law by domestic courts normally prevents deep review by the Court of Human Rights as well as by the Luxembourg Court. Such use strengthens any court decision. Several Covid-19 emergency measures have been already challenged at national level, and further litigation in front of the European international Courts is expected.

In this picture, extensive videoconferencing in court proceedings is encouraged by the Covid-19 emergency regulation in many EU Countries, to contribute to coping with the health crisis and prevent a full stop of the jurisdiction. However, it raises new challenges for the exercise of the right to be heard, which requires careful protection, mostly at national level and especially at first instance.

Videoconferencing in court is not at all a new tool. It has been already implemented in many European States in civil and criminal proceedings and enjoys an established legal framework within the Union. However, in fact, although the EU has encouraged videoconferencing as a key part of its e-Justice plan, *prior* to the Covid-19 crisis it was generally used in specific procedures only, such as cross-border legal proceedings, or for peculiar court activities, for instance vulnerable victim hearings to be carried out from separate facilities for protection needs, or witnesses taken in organized crime trials.

The new approach differs from the previous one, since it aims to carry out to the greatest possible extent any hearing activity through videoconferencing so as to reduce effectively health risks which would stem from being physically present in court. Is it merely a quantitative massive adoption of an already well-known item in the toolbox of lawyers and judges? Or can it, through indiscriminate use, have a qualitative impact on the exercise of jurisdiction, especially at first instance, where the core evidence is taken before a judge and the right to be heard is traditionally exercised by a defendant in a classic public hearing? Is the option of using videoconferencing in court something solely for courts, or is it already within the scope of the right of defense and thus something which needs in principle to be accepted by the parties?

This survey shows that it is not easy to give a plain answer to such questions. There are preconditions which must always be checked before any videoconferencing session, and which cannot be taken for granted. This is particularly the case if some speakers during a court session (such as experts or witnesses) are not professional legal representatives and are connected with different facilities. It is important that they understand practical arrangements for videoconferencing and use as hardware technical equipment which provides a stable connection. The software should also be standardized to the greatest extent possible insofar as concerns its class and configuration, so as to facilitate interoperability between equipment and speech intelligibility, and to reduce delays in video and audio data transmission as well as any risks of speak-over.

All participants to the session, especially the judge, should be able to recognize each other visually, and to see both the speaker asking questions or making statements when he or she can be heard, and the reaction of the listeners, without missing words during the

duration of the videoconferencing. Moreover, privacy requirements need to be met to assure that no extraneous interference or unofficial recording can take place, and also so that after closing the open session the former participants themselves cannot re-enter the virtual court room without authorization.

As regards the content of the videoconferencing session, in the authors' view, there is no need for an ideological approach to this matter, such as a universal generalisation in favour of or against a new perspective on the conduct of ordinary court proceedings. The proposed approach here, as a result of the survey, suggests distinguishing case-by-case three different scenarios: hearing activities that are well or even better performed by videoconferencing rather than in the conventional way; activities that can be carried out using such a tool but at the cost of certain complications which must be carefully assessed; and activities that are hardly compatible with videoconferencing.

As an example of the first option, videoconferencing could grant exhaustive protection of the right of defence as a means of reducing the discomfort which could be caused by the journey of a detainee in temporary custody to reach his or her appointed judge so as to submit statements, or to confer with a delegated judge, other than the person entitled to decide.

Regarding the second scenario, let us think about proceedings with many defendants and parties, especially if these require interpreters. This is a situation which implies connections being established not just point-to-point, between two locations or a few more, but rather multi-point, simultaneously between many locations, and consequently putting at serious risk the meeting of certain preconditions already mentioned concerning the efficiency and real awareness of videoconferencing for each participant.

Thirdly, although the taking of evidence is possibly one of the most important uses of court videoconferencing, a confrontation between witnesses on opposing sides in criminal proceedings is probably not fully compatible with the above-mentioned fundamental rights, by reason of the psychological implications of judicial assessment on the reliability of conflicting witnesses (which is not confined to a mere check of the logical internal coherence of the content of each statement).

Best practices already established in courts favour the adoption of videoconferencing as much as possible with the parties' agreement rather than by means of a court order. At least in civil and administrative matters, there is a strong interest from most parties to get through hearings quickly and a flexible tool such as videoconferencing is definitely an option. The scope of a videoconferencing session is clearly to let participants in a position as close as possible to the usual practice in a physical court room. However, systematic and indiscriminate use of this device, especially if imposed on parties in taking evidence at first instance may not be neutral, and may have an impact both on the outcome and on the public perception of the ruling.

In conclusion, we need to learn from the severe Covid-19 pandemic crisis, since our national legal systems and court functioning may be exposed to other extraordinary conditions in the close future, well after the current resurgence of the virus is over. It is not desirable that democracy is locked down for months: we need to value the terrible experience of the Spring 2020 and to use it to enforce the ordinary rule of law in our democratic societies even in exceptional situations. Mastering videoconferencing in court proceedings, under the conditions outlined here, could effectively contribute to such a goal.

From all of the above, we can conclude that today the world is in an extremely complicated situation for which it is still impossible to estimate how long it would last. This state of emergency requires "extraordinary" measures, which on the one hand help to deal more easily with the pandemic, and on the other hand, encroach on basic human rights and freedoms. One of those rights, which are endangered by the application of these measures, is definitely the right to a fair trial, with all the rights that belong to it, necessary for full observance of the same.

In a situation, as in our country, where the state of emergency is still ongoing, the courts operate with minimal capacity and work only in emergencies, many urgent court hearings are postponed due to mandatory isolation of one of the parties in the procedure and the like, the principle of a fair trial has been seriously questioned and its full observance requires an immediate response from the competent institutions. Excessive duration of the travel ban, mandatory social isolation, as well as other effects of the measures taken is likely to cause an increase in crime rates, but also victimization of those who are most vulnerable (e.g., victims of domestic violence). Therefore, it is more than necessary to put the judicial system in full "force", and if it can not be done in the usual way, alternatives must be found by taking practices from countries that have so far successfully dealt with such situations.

Lastly, we must mention that the most important aspect in democratic systems is to achieve the common good of as many citizens as possible, and the common good will not be achieved if we have a successful fight against the virus but without a serious violation of the basic human rights and freedoms, thanks to the partial functioning of the state system.

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DEALING WITH ILLICIT TRAFFICKING OF IONIZING RADIATION SOURCES ON THE TERRITORY OF THE REPUBLIC OF NORTH MACEDONIA

Emilija Petrova
Student, Faculty of Security-Skopje
emilijapetrova83@yahoo.com
Zlate Dimovski
Faculty of Security-Skopje
dimezd@gmail.com
Metodija Dojcinovski
Military Academy Gen.Mihailo Apostolski-Skopje
metodija.dojcinovski@mod.gov.mk

Abstract

We are in a world where international and cross-border organized crime is constantly increasing, using increasingly sophisticated technical methods and tools, and an impressive modernization of communication capabilities. There are always safer ways to carry out such activities. Under international agreements, the movement of all radioactive materials should be subject to high standards of regulatory, administrative and security controls to ensure that such movements are performed in a safe and secure manner. In order to successfully counter such threats, law enforcement agencies, and especially those responsible for border management, must always be one step ahead. It is necessary to develop mutual communication, coordination of activities, planning and readiness to respond to threats quickly and efficiently. This could not be done without well-trained and inventive professionals. Well-designed, effective, and consistent exchange of information and intelligence procedures, in correlation with operational planning are vital.

***Keywords**: radioactive materials, border, illicit trafficking, security, control*

1. INTRODUCTION

Illicit Trafficking implies any intentional, unauthorized movement of radioactive and nuclear material, with criminal intent.

Under international agreements, the movement of all radioactive materials[19] should be subject to high standards of regulatory, administrative and security controls to ensure that such movements are carried out in a safe and secure manner. In the case of nuclear material,

[19] Radioactive material is any material that emits radiation

there are additional requirements for physical protection and liability to insure against the threat of nuclear proliferation, and to protect against any diversion attempt. The aftermath of the September 2001 terrorist attacks underscored the need for improved control and safety of nuclear and radioactive materials. In this regard, measures have been taken to increase the global physical protection and safety of nuclear materials. Similarly, efforts are being made to improve the safety and security of radioactive sources in many industries and healthcare facilities. It follows that the detection of radioactive materials (nuclear material and radioactive sources) at the borders[20] is an essential component of the overall strategy, to ensure that these materials do not fall into the hands of terrorist groups and criminal organizations that will provide the data. Attention to law enforcement and regulatory agencies to determine legality to prevent diversion and illicit trade. Experience in many parts of the world continues to prove that the movement of radioactive materials outside the regulatory[21] legal framework continues to occur. Such movements can be either intentional or unintentional. Deliberate illegal movement of radioactive materials, including nuclear material for terrorism, political or illicit gain is considered illegal[22] or illicit trafficking. Many common movements outside regulatory control are unintentional in nature. There are a number of measures that need to be taken by states to combat human trafficking and the unintentional movement of radioactive materials. The role of the Customs Services and the Border Police in the execution of the Legislation for Prevention of Illicit Trafficking in Radioactive Materials is certainly important.

Ionizing radiation is electromagnetic, particle and any other radiation that by interacting with matter directly or indirectly produces pairs of positively or negatively charged ions.

Ionizing radiation source is any device or substance that produces ionizing radiation.

Radiation is the energy emitted (or radiated) from excited atoms by the energy emitted by radioactive material. Radioactive material is any material that emits radiation.

Radioactivity is a process when an unstable atom emits radiation.

Radioactive contamination is the unwanted deposition of radioactive material on the surface or inside structures, surfaces, objects or people. Simply put, radioactive contamination is radioactive material at an unwanted location. For example, most smoke detectors use radioactive material, as well as certain medical and diagnostic tools and treatment procedures. Only when the radioactive material is in an unwanted place (e.g., on land, in water or on people) then we indicate contamination. One of the most important concepts in radiation control is to understand the difference between radiation and contamination. Illicit trafficking means any intentional, unauthorized movement of radioactive and nuclear material, with criminal intent.

Safety implies a measure to minimize the likelihood of accidents involving radioactive sources, and if such an accident occurs, the consequences should be mitigated.

Security culture - a set of characteristics and attitudes in organizations and individuals, where it is determined that the main priority is protection and security issues. Security -

[20] National Strategy for Development of Integrated Border Management Skopje-2014-2019
[21] Law on State Border Surveillance (Official Gazette of RM no. 71/06/66/07)
[22] Guidelines for work in detecting increased levels of ionizing radiation (CA of the Republic of Macedonia) - Skopje, 2011

measures to prevent unauthorized access, theft or unauthorized transmission of radioactive sources.

2. ILLICIT TRAFFICKING WITH RADIATION SOURCES

2.1 Sources of ionizing radiation in the Republic of North Macedonia

Ionizing radiation sources in the Republic of North Macedonia are used in medicine (diagnostic and interventional radiology, radiotherapy), industry (defectoscopy and X-ray industrial meters, X-ray machines and accelerators for checking shipments and luggage), science and education and other activities. Closed and open radioactive sources are used in the Republic of North Macedonia.

Closed radioactive sources

1. Radioactive source in medicine for teletherapy (Co-60) - exported, no longer used
2. Radioactive source in gamma industrial radiography (Ir-192, Se-75);
3. Radioactive sources in brachytherapy medicine and in industry as industrial meters (Ir-192, Cs-137, Am-241, Co-60) at low dose rates;
4. Radioactive sources in brachytherapy medicine, radioactive lightning rods, industrial meters (Eu-152, Co-60, Am-241, Sr-137, Ra-226) with high dose rates;
5. Radioactive sources for calibration, radioactive lightning rods, industrial meters, education and science (Sc-137, Co-60, Am-241, Sr-137, Sr-90, Cl-36, Po-210.

Open radioactive sources:

Open radioactive sources in the Republic of Macedonia are used in Nuclear Medicine for therapy and diagnostics (Mo99 / Tc 99m, I-131), these sources are used in medicine, they are imported for the needs of three institutions (two in Skopje and one in Bitola) in the Republic of North Macedonia.

In the Republic of North Macedonia there is no danger of radiological accidents, there are also no nuclear facilities and no danger of nuclear accident in the country, but the consequences can be expected and felt on our territory from nuclear facilities located within a radius of 1000 km from the borders of the Republic of North Macedonia.

2.2. Radiation detection equipment at border crossing in the Republic of North Macedonia

To detect increased levels of radioactive radiation, customs and police officers use the following instruments:[23]

- panel detector: fixed instrument for detection of ionizing (radioactive), X (X-ray), alpha, beta, gamma radiation).
- pager: a sensitive small ionizing radiation detection instrument that can be worn on a customs uniform belt[24],
- hand instruments (Geiger-Miller counter): instruments that, in addition to the purpose of detecting radioactive radiation, also have the ability to measure the level of radiation and the type of radiation source.

[23]Code of Conduct on the Safety and Security of Radioactive Sources, (IAEA /**CODEOC/2004)**

[24] Radiation Safety: Protection and Management for Homeland Security and Emergency Response /09

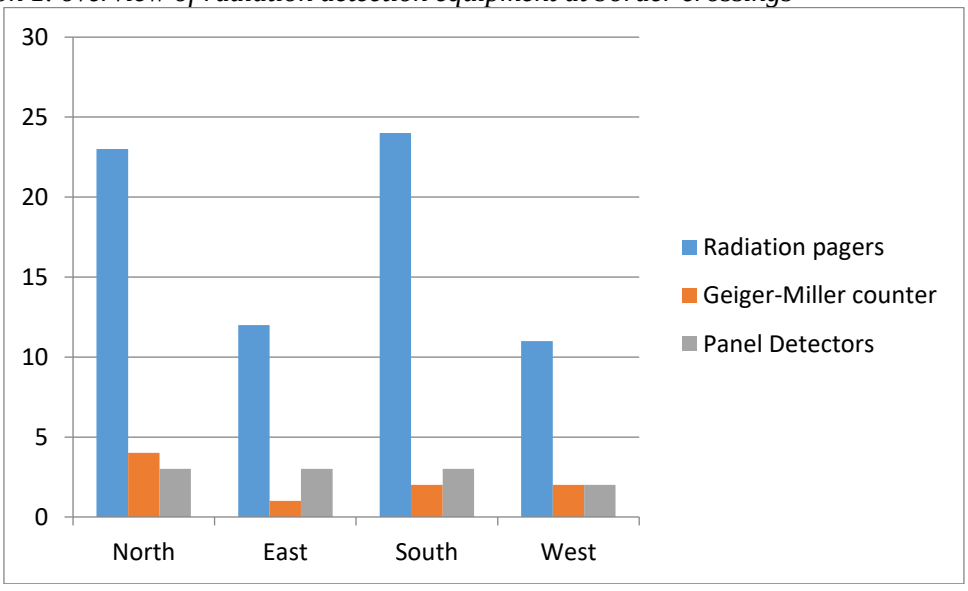
Table 1. Equipment for radiation detection at the border crossings of the Republic of North Macedonia

State border	Radiation pagers	Geiger-Miller counter	Panel Detectors
North	23	4	3
East	12	1	3
South	24	2	3
West	11	2	2
Total	70	9	11

Table 1 shows the total number of detection equipment used by customs officers and border police officers. From this we can conclude that the equipment used by officials is as follows: radiation pagers, Geiger-miller counters and panel detectors. At our northern border, officials have 23 pacemakers for radiation detection, 4 Geiger-Miller counters and 3 panel detectors. At the eastern border, officials have 12 radiation detection pagers, a Geiger-Miller counter and 3 panel detectors. At the southern border, officials have 24 radiation detection pagers, 2 Geiger-Miller counters and 3 Panel detectors. At the western frontier, officials own 11 radiation pacemakers, 2 Geiger-Miller counters, and 2 panel detectors. On the territory of the Republic of North Macedonia, the customs and police officers have a total of 70 pagers for radiation, 9 Geiger-Miller counters and 11 panel detectors.

Graph 1 graphically shows the equipment for detection of ionizing radiation sources separately for each instrument for detection of radiation at the border crossings of the Republic of North Macedonia. From the graphic display we can see that the officers at the border crossings have the biggest number of pagers for radiation, because every officer must wear it on his uniform during the daily controls. It is a sensitive instrument and will immediately detect a source of ionizing radiation.

Graph 1. overview of radiation detection equipment at border crossings



2.3. Previous experiences with incidents of illicit trafficking on the territory of Republic of North Macedonia in the period of (2007-2012)

Namely, in the period from 2007 to 2012, there were 27 incidents of illicit trafficking on the territory of the Republic of North Macedonia, with the largest number of incidents occurring in 2008, at the border crossing Blace.

In 2017 and 2018, there were a total of 8 incidents with illicit trafficking at the border crossings in the Republic of North Macedonia, with the majority of incidents recorded at the border crossings Tabanovce and Blace.

From the above we can conclude that the largest number of extraordinary events in the period 2007 - 2012 occurred at the border crossing of Blace during import. The reason for this is the fact that in Kosovo at that time the area of protection from ionizing radiation, including radioactive sources, was not properly regulated. The lack of a regulatory body is the reason for the increased number of emergency events, especially in 2008. After the establishment of an appropriate regulatory body in Kosovo, which was established on 21.06.2011, there is a significant decline in the number of emergency events at the border crossing Blace.

On 06th June 2018 the Radiation Safety Directorate of the Republic of North Macedonia and the Agency for Radiation Protection and Nuclear Safety of the Republic of Kosovo signed a memorandum of cooperation. Co-60, Th-232, Eu-152/154, Am-241, Ra-226 and others appear as sources in most of the extraordinary events in this period. These are radioactive sources built into lightning rods that were installed in the past on the entire territory of SFRY by the Institute of Nuclear Sciences "VINCA", ionization fire alarms and radioactive sources that are part of measuring instruments. The detected radioactive sources are usually of 5 categories or are excluded from the control, but they have enough activity to be detected. In case of detection of a radioactive source at the border crossing, actions are taken to respond and deal with the situation.

The following are performed: basic, secondary and tertiary inspection and control. The Border Police and the Customs Administration of the Republic of North Macedonia are competent institutions for initial (basic) control of the border crossings for entry and exit from the Republic of North Macedonia and responsible for initial reaction and action in case of activation of a certain alarm and its assessment. Of course, they are also responsible for performing a secondary check that will highlight the initial signs of a threat. Agencies, which should act in case of identification of suspicious alarms or threats.

The Radiation Safety Directorate for any incident that will occur at the border crossings receives notification from the responsible person of the Customs Administration through the Duty Operations Centre DOC or through the NCCGU (National Coordination Centre for Border Management). We can also see that since 2008 to 2012, the number of imports and exports of ionizing radiation sources has been increasing. This is because the regulatory body for protection against ionizing radiation and radiation safety of the Republic of North Macedonia and the Customs Administration of the Republic of North Macedonia through the EXIM system can easily control all imports, exports and transits on the territory of the Republic of North Macedonia. Ionizing radiation is weakest; it occurs once in 3-4 years. In the period from 2007 to 2012 there was a transit of a source of ionizing radiation; it is Co-60 (radioactive source of the first category intended for therapy for medical needs).

The initial destination of the source is the Republic of Greece intended for Germany and the transit took place through the territory of the Republic of North Macedonia.

2.4. Radiation security

A very important segment in this research is radiation safety and by implementing programs for monitoring and detection of radioactive sources, the state should have responsibility for the safety of radioactive sources, management of abandoned sources and users of radioactive sources in relation to threats from various sources used on the territory of the country, with the possibility of losing control of one or more radioactive sources.
The state should take appropriate measures in accordance with its national legislation to protect the confidentiality of information it receives in the confidence of another state. If the State receives information from international organizations in confidence, steps should be taken to ensure that the confidentiality of the information is protected. It is necessary to prepare a security plan that will contain security measures and administrative measures.

2.5. Procedure for detection of radiation at the border crossing of the Republic of North Macedonia

In case of detection of increased level of radioactive radiation, the customs officers are obliged to check and confirm the radiation, taking care that the inspection time is as short as possible. If it is a vehicle on which the customs markings (seals, stamps) are placed, during the inspection it is strictly forbidden to damage or remove them without prior approval of the Commission. Basic, secondary and tertiary inspection and control are performed at the border crossings. The customs officers and the officers of the Ministry of Interior - Border Police are in charge of the primary and secondary inspection and control. The RSD-Radiation Safety Directorate is in charge of the tertiary inspection and control.

Steps to be taken:

At least two officers should perform all secondary checks and controls. Each of them must own PRD. The area where the secondary inspection and control is performed is located at a location designated for goods (goods and cargo) or a room for persons (designated by the Border Police). During the whole procedure, the passengers and / or the vehicle that triggered the alarm must be properly secured. Officials are required to make all devices used for basic screening and detection of gamma radiation, such as PMR, PRD, RID or Geiger counters, available to colleagues performing secondary screening and control. If the primary alarm refers to gamma-neutron or neutron radiation, if possible, perform an additional check and measurement with another primary detector or PMR. If only gamma radiation, gamma-neutron or neutron-only radiation is detected during the additional initial check-up, direct persons or vehicles to the secondary check-in and check-out location. If no additional alarm is activated during the additional initial check and control, then it can be assumed that the cause of the initial alarm was natural background radiation. In that case, the officials should document the event, thus ending the procedure.

For all persons and vehicles that will be direct5ed to secondary inspection and control, the official should provide all available data regarding the activated alarm from

CAS, the relevant documentation for the shipment (if any), the form for the Report for secondary inspection and control and hand-held radiation detection and detection devices, which will be required for secondary inspection and control. At the moment of access to the persons or vehicles that have turned on the alarm, the officials must be equipped with personal radiation detectors (PRD) or so-called pagers, and a radioisotope identification device (RID) must be available. If at any time, before or during the secondary inspection and control, the official notices a reading of “9” on the screen of their PRD, he or she must immediately move away from the radiation source until the display number changed to "8" or lower, after which they should immediately inform their superior about it.

Remove passengers from the vehicle. Constantly secure both persons and vehicles. After setting up the safety perimeter with the help of PRD, using the manual radiation measuring devices, try to locate the potential source of radiation among the passengers or in the vehicle. If you can, mark potential locations where the source might be located. If you suspect that it may be residual radiation as a result of medical treatment, isolate the person and ask them about any medical treatments they have been exposed to in the past.

Officials MUST NOT be in close contact with persons considered to have been exposed to medical isotope treatment. All body fluids in these patients may be contaminated with medical isotopes, including their sweat and saliva. Try to identify the source of radiation on the spot, using UIRI. Record your findings. The Officials should immediately provide all illegal sources of radiation and notify their superiors. If necessary, call RSDs to perform tertiary verification and confirm the source identification. Officials should detain all persons and vehicles that turn on the neutron and high gamma radiation alarms and report the incident to their superiors immediately. Officials should call the RSD whenever it is necessary to coordinate tertiary verification and control and verify the identification of the source. Isolate and secure the source or sources until RSD Representatives arrive at a safe location at the border crossing. At the very border of the security perimeter around the source, i.e., the safe zone, the reading of PRD must not be higher than "8". The event and all data related to it, should be recorded in the Report for performed secondary check and control. If necessary, they can be entered in CAS. The radiation sources and the persons responsible for its transmission should be provided, until they are taken over by the competent authorities.

3. CONCLUSIONS

In order to improve the entire coordination system and fulfil the strategic commitments of the Government of the Republic of North Macedonia, the main goal of the work of the National Coordination Centre for Border Management is to challenge its position and role in implementing and fulfilling its competencies and responsibilities, and in order to protect national interests. It is necessary to strengthen the mutual relations of the institutions at all levels, whereby they will always be up to date with the situation and possible indications for illegal migration or human trafficking and detection of criminal activities, on the one hand and ensuring the free flow of people and material goods across the border, on the other hand. Improving the information and data exchange process will help prepare a comprehensive inter-institutional and thus national analysis of all relevant information and data. The summarized data and information will be returned to the competent institutions responsible for managing operational activities and strategic policies. This will be achieved by:

- Optimization of actions and measures[25] for reduction and elimination of the consequences of radiation emergency events, plants, facilities where activity is performed with those sources of that nuclear material. [26]
- To strengthen the control of all sources of ionizing radiation in the Republic of North Macedonia.
- Execution of the competencies of the border guards at the border and the institutions of the state administration in the Republic of North Macedonia.
- To control the vehicles intended for transport of radioactive sources.
- To control the used radioactive sources in the Republic of North Macedonia.
- To control mobile dosimetry devices by customs officers and border police at border crossings.
- To increase internal security.
- To improve inter-ministerial coordination and cooperation and action in relation to existing and future challenges or threats.

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JUVENILES AS PERPETRATORS AND VICTIMS OF CRIMINAL ACTS

Slavica Dimitrievska
PhD Candidate at the Faculty of Security – Skopje
slavica.dimitrievska@gmail.com

Abstract

Is there a difference between a perpetrator and a victim? At first glance, certainly there is. When we go deeper and dissect both terms, one can see a very slippery ground where the first can become the other and vice versa. Of course, in both terms there are categories that can be highly disputable, especially when it comes to certain psycho-pathological features. Questions related to the concept of both the perpetrator and the victim are highly problematic and very nuanced. Often, our perception of both terms is very rigid and clear but based on assumptions, on a simple division or distinction between the right and wrong, the black and white. When it comes to juveniles, those assumptions are even stronger. This paper will try to contribute towards the sea of studies, observations and perceptions about the characteristics of both the perpetrator and the victim, especially when it comes to the juveniles. Both terms shall be assessed closely from a victimological point of view going under the surface of both terms and entering the area of the risk factors and other circumstances that contribute for a juvenile to become a perpetrator, a victim or both.

Keywords: *juveniles, perpetrator, victim, criminal offense*

1. INTRODUCTION

According to the United Nations Convention on the Rights of the Child, a child means every human being below the age of 18, unless otherwise provided by the national laws of the signatory states to the Convention[27].

Children in their physical and emotional growth face challenges that may determine their adult life for good. Children, along with the elders and the persons with disabilities, are the most vulnerable categories that due to their age, dependency on others and thus vulnerability, can easily become a subject of abuse (physical, emotional or both), violence or silent witnesses of violent events happening in the families[28]. The consequences affecting the child as a result of the above may develop in variety of directions, physical problems: bruises, broken limbs, death or mental, i.e., behavioral disorder.

The concept of behavioral disorder is very frequent among children and adolescents and attracts the attention and interest of the scientific community for quite some time in order

[27] Article 1 of the UN Convention on the Rights of the Child, A / REZ / 44/25 of 20.11.1989 (accessed on 30.08.2021)
[28] Николиќ-Ристановиќ, В. (2019), „Од жртве до победника“, Виктимолошко друштво Србије, Београд

to explore its roots, factors that contribute towards it, manifestations and manners of its treatment. The behavioral disorder among children is mainly manifested in the inability for integration in the peer community, tantrums, lack of respect towards the elders, aggressive behavior towards animals and people and a delinquent attitude. In the recent years the number of children with behavioral disorder has been escalating and the first signs of behavioral problems appear already at the age of 8 but mainly between 8 and 12 years. What is of concern is the fact that the first disorder signs can appear even earlier in life, in the so-called pre-school age.[29] The most prominent factors that determine behavioral disorder are the factors of the environment and the factors of the personality.

Childhood victimization as the most abusive form of the environmental impact, represents a serious, worldwide social problem that may lead to delinquency or it may become a cause for adult criminality[30]. Hence, one should not undermine neither the fact that delinquency may also lead to victimization, especially when referring to the way one lives their life, the so-called theory of a lifestyle[31].

Witnessing violence at home and in the community adversely impacts a child's mental health and development, including an increased likelihood in some to become directly involved in violence later in life, whether as victims or perpetrators.

The juvenile delinquency as the most severe form of behavior disorder in children aims to describe the specifics and the rigorousness of the act itself and the problem imposed on the perpetrator i.e., the child. The very fact that the crime was committed by a child prevents the attempts to define this phenomenon in a simplified way but it opens a whole range of questions related to other scientific fields, law, sociology, psychology, pedagogy, economic, etc. Key element for understanding the term is the age as a significant argument in the social sense of the word, but particularly in the criminal one since as a result of the age, it will depend whether the perpetrator will be prosecuted and what sort of measures or sanctions will be imposed on him.

This paper aims to elaborate the specifics of the connection between the perpetrator (delinquent) of criminal acts and a victim, the relation between early victimization and delinquency later in life. For that purpose, I will try to give an insight of the main, key elements of the topic and thus contribute to the sea of studies and scientific papers in this field.

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2. ADOLESCENCE AS A KEY STAGE OF LIFE OF CHILDREN

A crucial time period that relates both terms is the adolescence. In its essence it represents the most stigmatized social period when a person grows and matures. The term adolescence lat. adolescere (grows, matures) indicates a series of psychotic changes that accompany the maturation of the body for which the professional term puberty (from the Latin word pubertas - maturity) is used. Puberty, which can easily be described as a work of the nature, has its visible beginning by initiating bodily changes with its culmination in achieving biological sexual maturity.

Adolescence is divided into early, mid and late adolescence. Early adolescence covers a period of 10 to 14 years of age. Children begin to feel and notice changes in their bodies, they are more aware of themselves, and they see the environment with different eyes. At this stage, differences among adolescents are more emphasized. Cognitive abilities allow for systematic, logical thinking and a better understanding of the complexity of the abstract concepts. Juvenile adolescents think more about the meaning of life, transience, death. They are able to see things not only as they are presented to them, but also to reflect on them. Mid adolescence covers the period between 15 and 19 years of age. The main feature of this phase is the need to feel well connected with their peers, the environment where they gravitate, i.e., school, various sports, artistic and cultural activities. Individual friendships are important, but belonging to a group that is manifested through common attitudes, interests (e.g., listening to the same type of music, wearing a certain type of clothing, engaging in certain sports or social activities, etc.) is more important. They live in the present and strive to get to know themselves better. They feel good when are alone and struggle to be distinguished in various social situations. Late adolescence is a phase that is quite difficult to determine but mostly covers the time period between 20 and 24 years i.e., 25 years of age. Late adolescents already perceive themselves as complete individuals and already know who they are and what they want to achieve in life[32].

When it comes to the difficulties adolescents face, they can be classified in those of internal nature i.e., internalized and of external nature, externalized. The internal classification embraces emotional difficulties as anxiety, depression, social withdrawal, and psychosomatic discomfort. They are based on a feeling of sadness, fear, anxiety, guilt and misery. Hopelessness in life and depression are often accompanied by sleeping problems, loss of appetite, concentration and energy. The difficulties of internal nature are primarily related to problems with the person, which makes them more challenging to be perceived.

The difficulties of external nature are usually manifested by anger, frustration, hostility and disrespect for social values with the emergence of certain deviant behaviors such as theft, lying and kidnapping, running away from home, running away from school, destroying property, early sexual intercourse, aggressive behavior and antisocial and delinquent behavior. This type of behavioral problems leads to open conflict with the closer surrounding, parents, peers, school authorities and sometimes the law.

The link between both groups of problems are the emotions. It is easy to cope when the emotions are positive; positive emotions lead to positive acts but the negative ones are those that one should be concerned about, particularly if we add to this the influence of the near surrounding of the adolescent, the family atmosphere, economic status, school

[32] Мурџева-Шкариќ-Олга, (2011) Психологија на детството и на адолесценцијата (Развојна психологија 1), Филозофски факултет - Скопје, Универзитет „Св. Кирил и Методиј“ - Скопје

atmosphere, peers, everything that may aggravate the occurrence of negative emotions. Also, if the early adolescence comprises a struggle to belong to a group, creating ties with peers, acknowledgment by others, then with negative emotions prevailing, such type of children may easily lean towards negative behavior and acts that may convert to delinquency. Children adolescents consider the group as a safe net, a space where they can quest their identity and easily enter the world of adults. But the very same fact that they are at a crossroad between childhood and adulthood, makes them particularly susceptible to influences of the environment that can lead them, on one hand to conformist behavior, and on the other towards criminal one. Which way they will take depends on many factors, among them their own personality and the influence of the wider and narrower environment (Rot, 2006).

3. ANTISOCIAL BEHAVIOR AND AGGRESSION

The causes and development of antisocial behavior is mostly seen through risk and protection factors. Risk factors are those that increase the likelihood of antisocial behavior, while protective factors reduce the potentially detrimental impact of risk factors.

Modern psychiatric surveys make a link between the mental disorders that appear in adulthood and developmental psychiatric disorders in children that can occur in the first years of life. The disorder that occurs in children and adolescents is associated with increased aggression, impulsivity, hyperactivity, neglect, obsessive and compulsive behavior, depression, aggressive and suicidal behavior, anxiety, etc.

The antisocial behavior is considered to be related to behavioral problems, such behavior can be directly or indirectly harmful and dangerous upon the adolescent and / or his environment and represent a clear indicator for future negative developmental forms that cannot be overcome unless a professional assistance is provided. The causes for antisocial behavior are usually found in the family, school or the wider environment.

The social environment is the widest influential element for antisocial behavior, this includes the overall social system and the environment in which the person lives. The local community has even a stronger impact than the social one, this factor also affects the parents, the classmates and other people that the adolescents spend their time with. This is particularly emphasized in countries of transition where the political and economic fluctuations affect everyone but in particular the young population. Poverty and declining living standards, gaps between rich and poor, disappearance of the middle class, collapse of the family life and values, constant search for money and success, unstable jobs and the struggle to survive, leave a strong mark on the development of the child and their personality, especially in the period of early and mid-adolescence. As a result, many generations instead of building values and ethical criteria, become inclined to idealize and glorify persons and activities that are far from being a core sample of virtue.

The inability to be "as everyone" creates frustration and pain that can be manifested in different ways, from depression and alienation to exaggerated, aggressive conduct. If the pressure from the near and far surrounding is accompanied by violence, it aggravates the whole situation even more. The manifestations and shapes of misbehavior may grow wider, and if not treated timely, they can easily overtake various manifestation of delinquent behavior. The porous system of social and school services whose primary goal is to timely detect and treat the early forms of misbehavior of children and prevent the risk of appearance of delinquent behavior contribute to the general picture.

4. CHILDREN AS VICTIMS

Generally speaking, victimology is a science about the victims, more specifically it is an independent, interdisciplinary, scientific discipline that studies phenomenology (victimography) and etiology (victim genesis / victimogenic factors) of victimization, the consequences suffered by the victimized person, the reaction of the institutions, bodies and organizations, so as by any formal and informal organization of assistance or support to the victim[33]. Children and adolescents can easily become victims of various forms of abuse or neglect. Data provided by the National Child Abuse and Neglect Data System of USA reveal that every day four to five children die as a result of abuse, 44% of them in the first year of their lives and 38% in the fourth or fifth year of life.[34]

As a result of their dependency on others, their vulnerability is more exposed and they can directly suffer various forms of ill-treatment, abuse, neglect, physical and sexual abuse in the families, in school or in any other place they usually stay or live. Aside of being directly subjected to abuse or violence, they can also be witnesses of various forms of abuse in the families, accordingly making them indirect victims. The consequences as a result of victimization can affect the victim in different ways but mainly, they are manifested as physical, emotional, social or psychological consequences. They can also be of various duration, some shorter, while as other can totally overwhelm the person and change his life for good, unless immediate measures are taken. Psychological consequences are those of most complicated nature that include cognitive, emotional stress but also forms of behavior disorder. The most tangible characteristics of an abused child can be seen in their results in school, mental problems and antisocial behavior. The Director of the Hindelang Criminal Justice Research Center at the University of Albany, New York, Cathy Spatz Widom, revealed in her report *"The Cycle of Violence"* a significant link between victimization in childhood and later involvement in violent crimes. The study found that those children who had been abused or neglected in their early age were prone to be arrested for a violent crime as juveniles or as adults. On average, abused and neglected children begin committing crimes at a younger age, they commit nearly twice as many offenses as non-abused children, and they are arrested more frequently. Her follow-up study suggests that the long-term consequences of childhood victimization may manifest in serious mental health concerns, alcohol and drug problems and occupational difficulties[35].

5. JUVENILE DELINQUENCY

The term has existed since the early times and the biblical period of the Western civilization. The expansion of the sole term "juvenile delinquency" commenced with the adoption of the first laws for juvenile courts in the United States entitled to impose protection but also measures of assistance not only for cases of criminal offense, but also for antisocial behavior or educational neglect of juveniles. Later the concept of juvenile courts with such extended jurisdiction was accepted by certain European legislators. Juvenile delinquency as a social phenomenon can be seen in its narrow and broader understanding. It embraces

[33] Бачановиќ, О. (1997), Полицијата и жртвите, Факултет за безбедност – Скопје, Универзитет „Св. Климент Охридски" - Битола

[34] Николиќ-Ристановиќ, В. (2019), „Од жртве до победника", Виктимолошко друштво Србије, Београд

[35] Widom, S. Cathy, Maxfield, G. Michael (2001), "An Update on the "Cycle of Violence", National Institute of Justice, Research in Brief, U.S. Department of Justice, Office of Justice Programs

various forms of negative, deviant and delinquent behavior whose manifestation could be defined as antisocial, socio-pathological and criminological. In a broader sense, it represents a violation of the social and moral norms, while as in its narrower sense a violation of the legislative norms. Delinquency is perceived as a consequence of disturbed family relations and frequent conflicts, physical, emotional and psychological abuse, personal features and hyperactivity, failure in school, unfavorable social environment and culture, inadequate socialization.

The frequent manifestation of the delinquency ranges from refusal to accept and live according to the house rules; disrespect towards the elders; stealing; participation in fights; cruelty and violence against animals and humans; vandalism and hooliganism; frequent reprimands and disciplinary responsibility in school; lies and manipulations; development of addiction to psychoactive substances; impulsivity "adrenaline rush"; lack of empathy and care of conscience.

In line with the above one should also have in mind that children by definition are immature and those who commit crimes are the most immature of all. Very often they do not have the mental capacity, matureness to apprehend the consequences of the committed crime and mainly fear about the immediate threat of violence or ridicule of their peers instead of considering the threat of a court sentence, remand.

6. CONCLUSIONS

As stated in the earlier sections of this paper, the line between a perpetrator of a criminal offence, a delinquent and a victim, is very thin. Once the control over the emotions and the behavior of the young person slips, it becomes very difficult to gain control over the situation and predict its development.

That is why it is of crucial importance to work on early detection and prevention of delinquent behavior of children, especially once they enter the age of puberty, adolescence. In this direction go the provisions of the United Nations Guidelines for the Prevention of Juvenile Delinquency, the so-called Riyadh Guidelines[36] for assisting and protecting young people since they cover the pre-conflict phase and contain standards and measures for the protection of minors in situations of social risk. Early prevention and intervention primarily concern the family, education, the community, and the media.

Once becoming a victim, the system should immediately redirect its attention towards the provisions envisaged with the Directive 2012/29/EU of the European Parliament and the Council establishing minimum standards on the rights, support and protection of victims of crime[37], where the protection of juvenile victims and their rights is precisely observed and neatly envisaged. On the other hand, the active involvement of the community with special programs, such as supervision and counseling of juvenile in question and his / her gradual return to the society i.e., resocialization plays an immense role.

The principle of opportunity or expediency and the alternatives to the formal court procedure (mediation, conciliation, compensation, alternative measures, as well as other measures by the services for protection of juvenile perpetrators), are solutions that can

[36] https://resourcecentre.savethechildren.net/library/united-nations-guidelines-prevention-juvenile-delinquency-riyadh-guidelines-ares45112 (accessed on 25/08/2021)

[37] https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421925131614&uri=CELEX:32012L0029 (accessed on 25/08/2021)

produce good results in exercising the purpose of the system: resocialization, reintegration and prevention of recidivism.

For implementation of the above mentioned, the pre-condition is to have in place well-organized services for assistance and care of children, as well as readiness of the family, school and other informal institutions to implement the appropriate pedagogical measures. The role of the volunteers, voluntary organizations, local centers and other community services that should act within the family is especially emphasized here. Early prevention is not only needed to detect and prevent development of behavioral disorder and possible delinquent conduct, but to promote the need for healthy development of a child. The contemporary observation of juvenile delinquency trends accepts the stance that the experiences a child gains from his early childhood determine his health, wellbeing and future adult conduct.

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DEVELOPMENT OF TERRORISM UNDER THE INFLUENCE OF THE MEDIA

Ivan Drobnjak
ivan.drobnjak@gmx.com
Vojo Laković

Abstract

Media is a complex term that implies a whole range of communication channels that influence people's behaviour and their habits, attitudes, patterns of behaviours and beliefs. The media include not only television, print media, radio and other traditional channels but also, in the last decade, an increasing number of social networks, websites and multimedia channels. Media can contribute to the spread of positive vibes among the population, and it is also a fertile ground for the infiltration of negative phenomena, such as terrorism.

The well-known fact is that the basic aspiration of terrorists and terrorist groups is to disrupt the normal way of life through the spread of fear and panic among the population, they are striving to gain publicity through a powerful media network and they want to show dominance over a wide audience. Their goal is affected by the growing occupation of the population with media information, the "addiction" and dependence of the population to the media information. On the other hand, the media are eager for sensationalist headlines in order to increase their growth and popularity with their final goal to raise their profit and position as a leadership on lists of users. Terrorist groups and individuals have recognized this and found a way to reach the broad masses in order to accomplish their mission.

***Keywords**: Terrorism, terrorist organizations, media*

INTRODUCTION

Media[38] today are, undoubtedly, a very powerful factor in creating the social and political scene and thus democracy in a society. Nowadays, the media create not only people's attitudes towards the sociological, cultural and political attitudes of a society, but also the behaviour of individuals. It is not without reason that some political leaders at the state and social level strictly control the content of the media with their careful analysis (the example of North Korea, South Korea, China, etc.).

The media, consciously or not, played a key role in introducing the concept of terrorism among the masses, because the word terrorism is associated with the event of September 11, 2001 and the famous attack on the "Twin Towers" in the United States, then the tragic-ended hostage crisis at the school in Beslan in 2004 as well as the military intervention of the anti-terrorist coalition in Afghanistan and Iraq, etc. The lists of terrorist actions were always accompanied by media sensations, constant reporting and huge analysis. Of course, terrorism is nothing new, nor did it begin with these events, it has existed since ancient times and since the beginning of the world. However, in the recent decades, the media have built an attitude towards terrorism as well as terrorists towards the media as a "window" into communication with the broad masses through the popularization of their socio-political goals. Terrorist leaders are aware of the fact that the media can harm their political goals through negative reporting, and they have accepted the media as a channel for placing and conducting their campaigns and gaining publicity in order to achieve their goals. Of course, the media (at least publicly) do not intend to support terrorist targets, but they are very susceptible to exploitation and manipulation by terrorist groups.

Terrorist organizations, through the use of the media, are achieving four main goals of their activities:

1. Promote their work and create fear in target groups
2. Gain support and trust from target groups by justifying their actions
3. Promote the authorities and their measures as tyrannical and counterproductive and
4. Mobilize and encourage as many of its supporters and future members as possible in order to increase resources and encourage new attacks due to rise of their numbers.[39]

[38] The word “medium” has multiple meanings, and the ambiguity of the term stems from different historical and conceptual uses of the word. Some of these meanings are completely unexpected and are not related to today's, established application of this term in written and spoken communication. The ancient Greeks used the term "media" to denote a geographical area in the area of today's northwestern Iran. The population of this area was called the Medes, and their language the Median language. The word "media" was also common in Latin sayings, whence this term etymologically originates. In modern social practice, it can mean an environment or space in which something exists or something happens (air, water), a person who mediates between reality, time and being (medium), but also has a meaning that refers to the technical channel of communication (print, radio, television, internet, media often means all forms of portable formats of textual or audio-visual content, such as books, letters, CD-ROMs, DVDs, USBs, iPhones, etc. A wide range of meanings of terms Today, however, the media are most often used to mark historical means for the transmission of communications Source: https://sr.wikipedia.org/sr-el/Mediji

[39] Schmid, Alex, 1989.: Terrorism and the Media, Terrorism and political Violence,1(4), str.553

1. Terrorism - concept and definition

The word terrorism comes from the Latin word „terror" which means horror, fear, and rule by intimidation, instilling fear and violence in order to rule. The term terrorism also implies the rule of violence of one minority over the majority in order to destabilize the government and change the existing social order in order to take over the power.

Terrorism is a form of organized individual and less often institutionalized political violence which causes a high degree of fear or horror among citizens by threatening to use physical or psychological force, which conveys a certain message in order to achieve political (criminal) goals, in a way completely inappropriate according to social and historical conditions, in an illegal, brutal, immoral and irrational way. [40]

Terrorism in modern conditions is violent, destructive, with a clearly defined goal to overthrow the ruling order, disrupt social peace and undertake the power.

There are many different definitions of the terrorism and what terrorism actually represents. We can say that different theorists and practitioners interpret terrorism differently, so we have such an example on the socio-political level, on the example of the world's largest power - the United States. For example, when terrorists bomb a civilian target, it is called a terrorist action, and when the United States bombs a civilian target in order to fight against terrorism, it is considered that they protect the national interests.

One thing is certain - terrorism has entered in every home and the consciousness of every individual as a global threat through the media. Well, although the definition of terrorism is a problem, we can all agree that terrorism is a problem.

1.1. Terrorism through history

Assyrians who poisoned the walls of enemy fortifications[41] are considered to have been the forerunners of terrorists, and the first terrorist attack is considered to be the demolition of the temple of the Philistines, a warlike non-Semitic people in southwestern Palestine who fought against the Israelis, by Samson (according to Professor Georg Schwarzenberger). On the other hand, the expert on nuclear terrorism, Louis Rene Beres, believes that the appearance of terrorism is older even than ancient Greece and Rome, and emphasizes the murder of Julius Caesar by Marcus Brutus in 44 BC as an example of terrorism. He also emphasizes the activities of the religious sects of the Sikarli and the zealot[42] struggle as an act of terrorism of the 1960s when this religious group killed non-Jews in public.[43]

We also find clarification of certain terrorist terms in the writings of well-known ancient philosophers, Aristotle and Plato. Aristotle[44] believed that there is no politics or political life if there are no more groups of different interests or if politics is conducted by one totalitarian regime. Plato[45] had a similar opinion, considering tyranny a "corrupt form of government."

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[40] http://www.defendologija.com/latinica/materijali/drustveni_aspekti_terorizma_30-06-07.htm

[41] *Usp.Terorizom, u: Drvo znanja, 48 (2001) str.37*

[42] A Jewish sect known as zealots (or zealots), which meant "fanatical warrior", "immoderate fighter"

[43] Louis Rene Beres, *Terrorism and Global Security: The Nuclear Threat*, Westview Press/Bolder, Colorado.

[44] Aristotle; 384. p. N. e. - 322. p. n. e., ancient Greek philosopher and orator, Plato's student and one of the most influential figures in the history of European thought

[45] Plato was an immensely influential ancient Greek philosopher and orator, a student of Socrates, and a teacher of Aristotle, and the founder of the Academy in Athens.

It can be said that political arbitrariness or tyranny was in some way the initiator of terrorist acts because it is in the nature of man to rebel against the tyranny of another man. Thus, in ancient Greece and Rome, individuals who opposed and liquidated the tyrant were proclaimed national heroes, just as Marcus Brutus was proclaimed a hero after the assassination of the tyrant Julius Caesar[46]. The Romans, according to Cicero, considered tyrannical murder as the greatest feat of courage.

Terrorism as a form of individual opposition to state and systemic organization especially escalated during the Middle Ages, and especially during the absolutist period and the period of monarchy rule, which was then replaced by a period of social development and reformist movements advocating the decline of absolute monarchies; political assassination became a justified means of exercising the freedom of a society. However, political assassination as a terrorist act became prohibited by the 1937 Geneva Convention on Terrorism.[47]

As absolute power is a political system that is unbearable to humans in terms of the tyranny of that power and bearing in mind that such a policy leads to the resistance of society, one can conclude a close connection between terrorism and politics and it can be said that the concept of terrorism is as old as politics.[48]

While in the past, terrorism was characteristic of a certain closed society or region, today technological progress affects the connection of terrorist groups trans-nationally and practically globally through their economic, financial, intelligence and motivational connections, so terrorist groups cooperate in the field of training, planning and the commission of terrorist attacks at the trans-national level. This is evidenced by the famous terrorist international - Hezbollah International.

Terrorist groups generally direct their terrorist activities towards a particular country or region, where they systematically place threats and create constant chaos and feelings of uncertainty and fear in that country or region. Terrorist groups operate on the principles of secrecy and illegality, have a hierarchical and complex structure and operate on the principle of threes or cells, under secret and illegal names[49], they are trained systematically and financed through sponsors or through self-financing.

The statements that terrorism is impossible to eradicate should be taken seriously. Although we have occasional successful security actions in the fight against terrorism, this victory is temporary because terrorism is so deeply rooted that it operates in different ways and in line with the technological advances, they are always "a step ahead" by recruiting their ideology and great IT professionals, media, etc.

2. Media and terrorism

The goal of terrorism is to intimidate and represent a military tactic in which the basis is the reaction of observers. Although some theorists claim that the basis of the terrorist mind is to intimidate the masses and create a sense of insecurity, in fact the goal of terrorists is murder. Well, although for terrorists the media represent a stage on which threats will

[46] Beres, op.cit.

[47] Robert A. Friedlender, The Origins of International Terrorism; Interdisciplinary prespectives, The John Joy Press, New York and McGraw-Hill Book Company, 1977.

[48] Denis Rižvić, Terorizam, na: www.novihorizonti.com

[49] The illegal name of the murdered Abu Abdullah Osama Muhammad bin Laden was "Jeronimo", and his son Hamza was nicknamed the "Prince of Terror"

create fear and panic among the masses, in fact the balance of their activities is the large number of dead. In his address after the terrorist attack on the United States on September 11, 2001, Osama Bin Laden said that the people of the United States would no longer feel safe and indeed it was, but the balance was 3,033 dead in the attack and great panic and fear, not only in the US but all around the world.

Some critics accuse the media of, consciously or unconsciously, willingly or unwillingly, encouraging and promoting terrorism through an active media network and spreading the views of terrorist groups. In fact, these critics see the media as a "stage" for terrorist groups. The famous statement of Conrad Russell from the FBI: "Terrorism is a real theatre, what terrorists want is a stage!"[50]

Terrorists carefully choose the actors and the stage for a certain play; we can say that a terrorist act actually happens only in order to attract the attention of the audience. The analysis of most terrorist attacks in the period from 1968 to 1980 indicates the real aspiration of terrorists to attract media attention in Western Europe. In fact, since the 1960s, it has become extremely important for terrorists that all their actions are covered by the media, and they announced their actions through the media and then took responsibility for them through the media (the example of the Basque terrorist organization ETA).

Terrorist groups are considered to operate on the principle of "theatre of terror" theory. The main goal of terrorist groups is not hostages or the terror that is being carried out against them, but a "show" for the broad masses of people who want to achieve the effect of fear and panic. That is actually the only goal of terrorist groups - to reach the audience with their performances that are placed through the media. Through the media, terrorist groups send certain messages to the public, and it is up to the public whether to condemn those messages (which most officials mostly do) or whether those messages will be approved by a certain group of the population, as a reaction to certain official policies and the like. Tomasevski concludes that "terrorism is always politically motivated" and that "terrorism is a means of using violence to provoke a political reaction and with a non-discriminatory choice of direct victims."[51]

That terrorism is indeed used for the purpose of achieving certain political goals is best seen in the example of the United States as a great political power and its attitude towards certain groups in the region that can be classified as terrorist according to the principles of their actions, but they do not percept it is as terrorist due to certain political goals in the region.

From all the above, we can conclude that terrorism is actually just a means of achieving the goals of certain groups (creating fear and panic is the real goal and not the victim) and that the media are actually an unavoidable strategy to manage the achievement of these goals.

D-r Anita Perešin[52] in her work "Mass Media and Terrorism" emphasizes how the media have a decisive influence on the public and the way they will address the terrorism,

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[50] Bill Winter, "Media Taken to Task for Terrorism Coverage", American Bar Association Journal, December 1980, vol. 66, p. 1510

[51] Tomaševski, K.: Izazov terorizma,Mala edicija ideja, NIRO Mladost, Beograd, 1983, str. 13–22, 32

[52] Dr Anita Perešin is currently a Senior Adviser at the Office of the National Security Council of the Republic of Croatia. Within the Croatian security sector, she was, among other duties, head of the Counter-Terrorism Department, advisor to the director of the National Security Council, and then sent to the NATO Security Office as a security policy coordinator.

because the media can transmit wrong information due to the desire for sensationalism and thus benefit terrorists. There is a symbiotic, interactive link between the media and terrorism, because the desire for sensationalist news ensures terrorists maximum presence in the media space, and thus the impact on public opinion is greater and more significant.

For terrorist organizations, the assessment of the success of their target depends on the presence in the media and the perception of the public, i.e., the publicity that was achieved in the media on that occasion. When analysing the success of one of their "attainments", this is one of the main criteria by which they are guided.

Terrorist groups use the media in several ways to achieve their goals:

- They are carrying out actions that will attract the attention of the media public;
- They choose the most attractive media time and locations in order to carry out their actions;
- They ensure their own propaganda and recruitment of new members through the selection of activities;
- They issue proclamations and give statements to the media;
- Ensure constant contact with the media;
- They take responsibility for certain terrorist attacks;
- They send messages through acts and targets with certain symbols.

The target group that terrorists want to join is the entire world public opinion with special emphasis on the population of the country that is against their goals, the ruling regime in these countries, social or national minorities whose rights they declaratively stand for, rival terrorist movements and their supporters. When creating their strategy, the media serve terrorists to place their war propaganda, to gather information as well as to declare taking responsibility aimed at legitimizing terrorist organizations and strengthening threats and blackmail towards third parties.[53]

Although it can be considered that terrorists entered the big door through the media through the event of September 11, 2001, this is not the day when they considered the media as a suitable means for "promotion". A 1986 document by a special government commission for counter-terrorism states that "Terrorists consider the role of the mass media in spreading their own messages around the world as one of the basic ones in achieving their goals."[54] Also, the Russian journalist Marat Gelman, who wrote the book "Russian Way - Terrorism and Mass Media in the Third Century" believes that the interest of terrorists in the media prevailed in the late nineteenth century with the advent of mass media such as steam engines and telegraphs but with their characteristics which were limited, their interest could not be accessed to the broad masses.

However, the event of September 11, 2001 changed the essence of terrorist activity, because it is no longer enough to kill one for example to thousands, but it is necessary to kill a thousand to intimidate millions of people. If they do not have a wide audience and huge publicity in public, terrorist actions are not considered as successful!

That's why leading US terrorism experts Douglas B. Johnson and John P. Martin argue that "modern terrorism is inconceivable without a media factor."[55]

[53] Paletz, D., Schmid, P. (1992). Terrorism and the Media. Sage Publications,Inc., Newbury Park, p.32
[54] Ciganov,op.cit,str18
[55] Ciganov,op.cit.

Terrorist organizations, which once made their demands directly through the media due to the hostage crisis, have now gone a step further. They establish and recruit their media central news agencies, television channels and the like. The role of these media is not only informational and propaganda with the aim of influencing public opinion, but these media are actively used to publish encrypted instructions to terrorists such as various warnings and drafts. In short, they use their media to organize their terrorist activities.

3. Suppression of media abuse for the purpose of terrorism

There is no doubt that the media, through their activities through connecting, communicating and financing terrorist organizations, as well as publicly presenting terrorist crimes, today represent a factor that gives terrorism a global reach, although it is clear that terrorism is one of the biggest security problems globally.

This requires a serious and systematic response at the international level in the form of legal instruments, and the leading factor in the legal fight against this post is the United Nations Security Council. Instruments adopted at European level under the auspices of the Council of Europe and the European Union depend on universal international legal instruments.

3.1. International documents aimed to combating the media abuse for the purpose of terrorism

The United Nations General Assembly has so far adopted thirteen key conventions and two protocols related to the fight against terrorism, while the Security Council has adopted a number of resolutions dedicated to this issue.

Conventions legally bind States parties, requiring them to criminalize certain conduct. The conventions also introduce the principle of „aut dedere aut judicare"[56] and establish mechanisms for international cooperation in the fight against terrorism, including extradition and international legal assistance.

The Council of Europe's activities in the field of counter-terrorism take place in three directions and include:

- strengthening legal measures against terrorism,
- protection of the basic values, and
- dealing with the causes of terrorism[57]

As a regional organization, the Council of Europe enables the implementation of the United Nations Security Council resolutions and the United Nations Counter-Terrorism Strategy and has so far adopted a number of conventions in this area, the most important of which are the provisions of the Declaration on Freedom of expression, information in the

[56] The principle of aut dedere aut judicare, "extradite or judge", implies that the State under whose jurisdiction a person suspected of having committed a particular international crime - for example a war crime - is located is obliged to extradite that person to the State requesting his extradition or to judge her for that act herself. The principle of aut dedere aut judicare is contained in several international treaties, of which the four Geneva Conventions of 1949 are certainly the most important to us now. Source: http://pescanik.net/slucaj-oric/

[57] Jankovic, D. (2010). International standards in the fight against terrorism. International Problems, 4, p. 602–628.

media in the context of the fight against terrorism adopted by the Committee of Ministers on 2nd March 2005.[58]

The Declaration strongly condemns all terrorist acts, emphasizing at the same time that the principles of freedom of expression and information constitute the basic elements of a democratic and pluralistic society, and the preconditions for its progress and development. In this context, it is emphasized that the free and unhindered dissemination of information encourages understanding and tolerance, which is conducive to the fight against terrorism. It is particularly emphasized that in the fight against terrorism, states must not adopt measures that would violate human rights and fundamental freedoms, including freedom of expression as one of the pillars of any democratic society.

In line with these principles, the Declaration sets out a series of recommendations for both states and the media, which seek to strike a balance between the restrictions imposed on the fight against terrorism and freedom of expression as fundamental human rights.

States are suggested not to impose additional restrictions on the media unless they are absolutely necessary and in a democratic society, not to equate media coverage of terrorism with providing support to terrorists, to allow journalists to, in accordance with the law, access relevant information, judicial documents, locations and procedures related to terrorism, to respect the independence and editorial policy of the media, to encourage professional training of their representatives in relation to security, and to provide them, when necessary, with adequate protection.

On the other hand, the media and journalists are suggested to act especially responsibly when reporting on terrorism so as not to contribute to the achievement of terrorist goals such as fear and publicity, to adopt and adhere to appropriate codes of ethics for reporting on the subject, to refrain from self-censorship, to deny the public information, to contribute to the prevention of violence and hate speech, to take care not to jeopardize anti-terrorist operations by reporting, to respect the victims of terrorists, but also the presumption of innocence, and to improve knowledge about maintaining their security when reporting.

In order to protect the basic principles on which the European Union is based, it has developed certain mechanisms for the fight against terrorism in the member states. The European Union's position on terrorism is most clearly expressed in the Counter-Terrorism Strategy adopted at the end of 2003.

The Strategy emphasizes that terrorism endangers human lives, causes high costs and endangers the openness and tolerance of society, which is why it poses a danger to the whole of Europe. The strategy is primarily aimed at preventive action by preventing potential terrorist attacks, protecting citizens and infrastructure, prosecuting terrorists, disrupting terrorists' planning, travel and communication channels, preventing terrorists from accessing funds and funds, improving capacity to minimize the consequences of terrorist attacks and providing help victims.

Decision-making and coordinated implementations of Union policies in the field of counter-terrorism are entrusted to various bodies and institutions, the most important of

[58] "Fight against terrorism: Council of Europe activities in the legal field", Council of Europe Counter-Terrorism Working Group, Strasbourg, http://www.coe.int/t/dlapil/codexter/ Source / leaflet / leaflet_terrorism_sb_la.pdf, 12 / 12/2014.

which are: the European Commission, the Council of the European Union and the European Parliament).[59]

The legal framework of the European Union for the fight against terrorism consists of formal and informal sources of community law. Formal, and primary, sources of community law are founding agreements, but secondary sources (decrees, directives and decisions)[60] also have a certain significance. Informal sources of community law include (opinions, recommendations, conclusions from meetings), as well as certain judgments of the European Court of Human Rights[61].

Conclusion

It is an indisputable fact that terrorism in the sense of propaganda is very attractive in order to achieve publicity and attention of the broad masses. Although we are aware that the goal of terrorist groups is to promote the spread of fear and insecurity in society, we claim that the real goals of terrorist groups are not so "naive", but quite the opposite - their goal is destruction, murder, and similar. Everything that classical terrorism used to imply now falls into the shadows under the onslaught of modern terrorism, in which terrorists with dark goals have access to the means of mass destruction that they are ready to use at any moment. All this is "affected" by their high technological equipment.

The paradox is that in modern society, with all the preconditions for the progress of society as a whole, the development of tolerance, democracy and justice, the progress of terrorism followed with the perspective of the new so-called "Asymmetric war" (use of nuclear weapons, long-range bombing, demolition of roads, refineries and industrial centres, depleted uranium bombs, etc.)

It can be concluded that in modern conditions, terrorist war can be equated with classical forms of military warfare in all parameters.

The fact is that media terrorism has become our usual everyday life, not only for the public, but also for the media, which, consciously and some unconsciously, make themselves the stage on which such modern terrorism takes place. Also, what is especially worrying is the fact that the media are very often observers of media terrorism. As such, unconsciously or not, they become helpers of terrorists, but also of the authorities, the same ones that should be controlled in a democratic society, and not unreservedly supported.

Contrary to their basic function, the media have become a weapon in the hands of terrorists and the authorities, a mass weapon that kills.

Of course, it is not necessary to stop reporting on committed terrorist acts, but it is necessary for the media to provide the audience with a broader story about the roots of terrorism and its negative aspects, i.e., about the unnecessary and harmful aspects of using violence to achieve a certain political goal.

So, the terrorist fight is taking place, as we have seen, through the media, and due to that fact, it is necessary to fight against terrorism to a large extent by the same means. The goal of the media fight against terrorism is to reach public opinion in the countries of origin

[59] A Secure Europe in a Better World – European Security Strategy, Council of the European Union, Brussels, 12 December 2003. http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf, 14.12.2014.

[60] Čavoški, A. (2006). Legal and political order of the European Union. Belgrade, Faculty of Law, Union University and Official Gazette

[61] Janković D. (2010). International standards in the fight against terrorism. International Problems, 4, p. 602–628.

of the terrorists. The purpose of the media fight against terrorism in these countries is to strengthen the attitudes of public opinion in the direction of disagreement with terrorist acts and to prevent logistical and political support for terrorists.

On the other hand, commercial networks and other large stations and media houses that have recognized their interests (material) in support of state policy should not be allowed to put themselves in the function of the current government and actively develop official propaganda. It brought them so much influence and profit that they unreservedly supported the decision of the White House to go to war against terrorism, and then under similar slogans against, for example; Iraqi dictator Saddam Hussein. Despite the fact that some arguments for this armed intervention turned out to be false, and that the Iraqi people consider the action of their liberation an occupation and that innocent people die every day in Iraq, large American media corporations still strongly support their government.

Unlike the United States, the United Kingdom, although a member of the anti-terrorist coalition led by the United States, has a completely different approach to the issue of media and terrorism, and this may need to be taken as an example.

There have been certain regulations for decades, primarily due to the situation in Northern Ireland, especially the State Secrets Act and the recommendations of the Department of Defense (Defense Advisory Notice System). Based on these regulations, the most prominent British media, such as Reuters and the BBC, recognized the need to introduce their own regulations that contain instructions to journalists on how to report on terrorism.

That is why it is no wonder that the BBC has such an old document, an instruction called "Terrorism and National Security". The preamble to the document states that "the basic task of the BBC is to monitor the terrorist situation - to tell the truth, quickly, carefully, completely, responsibly and avoiding speculation." Most of the instruction, no. 18, is dedicated to monitoring the problems and situations in Northern Ireland, and journalists are asked to approach them with double, triple responsibility. "The BBC urges its associates to view life in Northern Ireland comprehensively, not just in the context of conflict and terrorist acts. There are living people in that part of the UK and they do not have to be comfortable reading and hearing about their province just as a source of terrorism." Unfortunately, the attempts to accept the basic principles of this instruction of the professional organization at the international level in the journalistic environment did not find wide support. That is why the claim of the leading American experts on terrorism, Douglas I Martin, that "Modern terrorism is inconceivable without a media factor" survives.

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