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THE INFLUENCE OF BIOLOGICAL FACTORS IN GENESIS OF MASS MURDERS

In this paper, the authors, starting from the established division of mass murders in the criminological literature, analyze the available research results on cases of mass murders, that is, their etiology. Considering that the analysis of all possible factors that can constitute individual criminogenesis would require much more space, in this paper the emphasis is on the biological factors of crime. The authors start from traditional biological understandings in criminology, such as the study of the connection between physical constitution and crime, or the influence of genetic factors, which they complement with more modern approaches, such as the analysis of neurological, endocrinological and other biologically relevant conditions, i.e. abnormalities while simultaneously investigating their influence on the manifestation of aggression in general but also especially in the context of mass murders. The authors expect the work to be the contribution to the better understanding of the etiology of mass murders and generally violent crimes.

Keywords: mass murders, influence, biological factors, criminogenesis, violence

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1. Introduction

Mass murders always attract a lot of attention from both scientific-professional and the general public because of its dramatic occurrence, number of victims and other consequences. Along with serial murders, represent great challenge for explanation in each case. Although rare, especially in small environments like Serbia is, due to their dramatic and severe consequences, they are always the subject of different interpretations, both those that arise from the application of the rules of scientific methodology, and completely arbitrary ones that are unfortunately presented and by those who are expected to draw conclusions based solely on the rules of the profession. Both interpretations mainly refer to the question of the causes of such criminal acts, which are, in the sense of criminal law, classified as form of aggravated murder.

Searching for explanation is understanding of crime etiology which is complex process, not easy to achieve. However, when such event occurs general public expects quick explanation. In such ambient always is present dangerous of exaggerations, even from individuals who are professionals. Media tend to get some exclusives and use their mechanisms to achieve that goal. If the public doesn't have reliable information about an unknown issue, that is usually the case with mass murders, it is expected that different, usually wrong, assumptions will be made. Inadequate assumptions create stereotypes about the individuals who are most likely capable to commit such crime which further produces fear among citizens. In different words, unknown situations create panic reaction (Ilić, 2018: 145) and cases of mass murders are unexplored field so it is understandable why public expects answers on the most important question: why did it happen?

The answer is not easy to be given. As multidisciplinary approach in criminology teaches us, it is necessary to take into account all possible factors, individual and social, to analyze as much as possible the etiology of crime. The aim of this work is to provide the audience the most important findings in the field of biological approach in explanation of the causes of crime with special emphasis on violent crime and particularly mass murder. There wasn't so much research which typically cover issue of mass murder because of its rarity and different difficulties in the process of etiology explanation. These events are so specific and need to be explained individually but of course science provides definition and typology of mass murder that is starting point for further explanation.

Having in mind that there is a gap in domestic literature and scientific research in analysis of etiology of different forms of violent crime, mass murders at the first place, and especially biological factors of crime, the aim of this work is to shed a light to the importance of comprehensive and multidisciplinary approach in this field.

2. Definition and typology of mass murder

Discussion on mass murder as a topic requires at the beginning defining the violent crime as a type of criminal activity in which an attack on the victim or threatened is used to achieve a specific goal. Violent crimes can be divided into two groups: traditional forms and new ones (Ignjatović, 2019: 112). All types of murders belong to traditional forms of violent crime, but within the general scheme, multiple murders (multicide) deserve special attention to be made mostly because of the specificity of offenders who commit such crimes and necessity to understand its etiology. In literature some authors make distinction between: mass murder, serial murder and spree murder, as a different forms of multicide (Hagan, 2008; Fox & Levin, 2012; Siegel, 2008) while some others make distinction just between mass murder and serial murder (Barkan, 2009).

Mass murder as an example of multiple murder implies situation in which several victims die all at once or within a very short time frame (Barkan, 2009: 283). There is no clear definition of how many lives must be taken for an event to be called mass murder. Different approaches exist in this context, but many scholars think that at least four people must be killed for an event to be called mass murder (Alvarez & Bachman 2003; Hagan, 2008; Fox and Levin, 2012; Siegel, 2008). Actually, that definition is exactly the same as definition of the FBI's Behavioral Science Unit (BSU) that is used for defining mass killings (or massacres) (Fox & Levin, 2012: 19). Hagan emphasizes the importance of multiple killing (at least 4 victims) at one location on a single occasion (2008: 211). But for example, some authors prefer using a three-victim threshold (Holmes & Holmes, 2001, according to Fox & Levin, 2012: 19).

Other form of multiple murder is serial murder in which several victims die in a much longer time span, when comparing to mass murder (Barkan, 2009: 283). On the other side, spree murder is like serial murder, also form of repeated murders, where offender launches a swath of destruction, usually over a period of several days, wherein most of his activity surrounds planning or executing his crimes and evading the police (Fox & Levin, 2012: 19).

However, since 1980s some authors delt with attempts to create typology of multiple murder (Holmes and De Burger, Holms and Holmes, P.E. Dietz) (Fox & Levin, 2012: 22). There is disagreement about the value of creating typologies, theory always try to find some common characteristics between different cases of multiple murders and to create specific type of mass murder or serial murder but on the other side some who take a more investigative or crime-solving approach are not usually satisfied with that typology (Keppel & Birnes, 2003, according to Fox & Levin, 2012: 22). One of the possible classifications means

making distinction between two subtypes of mass murder: classic mass murder and family mass murder. The criterium is relation of the mass murderer to the victims (Douglas et al., 2006).

Despite weaknesses of typology, for example possible overlap between categories because of the dual motivation of the offenders, which is more likely when mass murder is committed by a team or group of offenders (Fox & Levin, 2012: 22), it is very important to have some systematic overview on this problem which is for sure helpful not just for the academics but certainly makes the work easier for practitioners as well. One of the most cited typology of mass murder, as well as serial murder, was given by Fox and Levin (2012) and the main criteria for that division is motivation of the offender. Interestingly, mass and serial murders have the same classification i.e. the same motivation as the basis of the action: power, revenge, loyalty, profit and terror. We won't provide here detailed explanation of all types of mass murder, only some basic features will be pointed out. When power is motivation, offender is a pseudo-commando, dressed in battle fatigues and armed with a semi-automatic weapon, which turns, for example, a shopping mall into a "war zone". Mass murderer whose motive is revenge takes drastic action of violence in order to pay back those who hurt him, for example after being fired from his job, a gunman returns to the work site and opens fire on his former boss and coworkers. Mass murder as act of loyalty is typical for somebody who sees himself as "savior" who undertake act of "mercy"; a depressed husband/father who kills his family and himself to spare them from a miserable existence and bring them to a better life in the hereafter. Profit as a motivation is typical for a band or armed robbers who executes the employees of a store to eliminate all witnesses to their crime. Finally, terror as motivation initiate action of terrorist groups (blowing up a commercial airplane) but it can be also part of some autocratic government's tactic when confronted with political dissenters. In both cases, those actions tend to send a political message (Fox & Levin, 2012: 23). A recent study of 318 public mass murders in the United States between 1966 and 2017 found that ideologically motivated offenders were the most patient, methodical, and thus most lethal, compared to other types of public mass violence, whereas disgruntled employee offenders, motivated by revenge, took the least amount of time in planning their attacks (Capellan et al., 2019; according to: Williams, 2021: 18).

Despite the heavy attention that mass murders receive from the news media, it is actually very rare event all around the world. The most publicized type of mass murder involves indiscriminate shootings of strangers in a public space by a lone gunman, but other kinds of mass killing actually are more common. Most mass killers are quite deliberate, not spontaneous, they do not just explode and

what is very important a majority of them target victims who are specially chosen, not because they are in the wrong place at the wrong time (family members, coworkers, neighbors...) (Fox & Levin, 2012: 136, 142). But despite the obvious connection between offenders (mass murderers) and their victims, in majority of cases mass murderers are unpredictable mostly because the possibility of making conclusion in advance toward future individual behavior is not based on some mathematic or other exact calculation, especially in such extreme cases. It is usually well planned, in secrecy, during a long time, as to prevent the possibility of disclosure. Also, unfortunately in majority of mass murders the officials and scientists are faced with limited availability of primary data, which are essential for understanding of concrete mass murder etiology. That limitation is present mostly because many mass killers do not survive their crimes (slain by his own hand or shot by police), which means lack of collecting data from the first hand (questioning concerning motive and state of mind) (Fox & Levin, 2012: 135).

Nevertheless, regardless of the numerous difficulties in explaining mass murders and their pronounced individuality, despite a systematically developed typology, it is important to point out certain possible explanations for this extreme form of manifestation of violence, which have their basis in human biology, but which certainly must not be viewed in isolation from influence of other possible factors (psychological, sociological...). Palermo (2007) described mass murder as a culmination of a continuum of experiences, perceptions, beliefs, frustrations, disappointments, hostile fantasies, and perhaps pathology, and in similar way, Holmes and Holmes (1998) described the mass murder as a unique combination of biology, sociology, and personal psychology, which accounts for an individual's personality, and thus, his or her behavior (Bowers at al., 2010: 63).

In this work focus is on biological approach which is reviving again in criminological science, based on the knowledge and possibilities of modern medicine and technology, but which traces its roots back to the 19th century (according to some authors even earlier), and the works of positivists, representatives of biological school.

3. The first biological explanations of criminogenesis

At the beginning it is necessary to start with traditional biological explanations in criminology which arise within the frame of positivism which is philosophical approach proposed by French sociologist Auguste Comte who advocated for use of empirical or scientific investigation for the improvement of society. In applying Comte's approach, criminological positivists emphasize a consensus world view, a

focus on the criminal actor rather than the criminal act, a deterministic model (usually biological or psychological in nature), a strong faith in the scientific expert, and a belief in rehabilitation of "sick" offenders rather than punishment of "rational" actors (Hagan, 2008: 117). Focus of the positivists were always on individual or\ and social characteristics that contribute to the commitment of the crime and in connection with that to the process of reducing those factors (Ilić, 2022:102). Positivist approach represents also the answer on the classical approach in criminology and its indeterminism that put at the first place the free will of the individual as the only important thing that influence potential criminal behavior. In other words, according to classicists, committing of crime depends only on individual free will.

Some authors emphasize that biologically-based explanation of violence began with the work of Lombroso and his focus upon the physical attributes and indicators of criminality (Brookman 2005, according to: Brookman & Robinson, 2012: 575). The others go more back in the past, indicating that one of the earliest biological explanations of crime was given by the phrenologists that concerned the size and shape of the skull and was popular from the mid-1700s to the mid-1800s. One of the representatives of the phrenologists, Franz Gall, thought that three major regions of the brain govern three types of behavior and personality characteristics: intellectual, moral, and lower. Phrenologists thought that skull dimensions provided good evidence of criminal tendencies (Barkan, 2009: 137). Their assumption were wrong of course, but they opened some new field of research that was closed.

Lombroso was representative (and founder) of the anthropological school in criminology (together with Garofalo and Ferri) but his main contribution was foundation of the criminology as a science. That's why Lombroso is considered more often as a pioneer in biological explanation of crime causes. Lombroso thought criminals were atavists, or throwbacks to an earlier stage of evolution, and said criminal behaviour stemmed from atavism. His evidence for atavist theory came from his extensive measurements of the bodies of men in Italian prisons that he compared to his measurements of the bodies of Italian soldiers, his control group. Lombroso concluded that prisoners (criminals) have abnormally long arms, abnormally large skulls and jaws and their bodies were very hairy (Barkan, 2009: 138).

On the other hand, Hagan provided more detailed clasiffication of early biological explanation, within the framework of positivist theories. First group of theorists consists of Lombroso, Garofalo and Ferri, which were already mentioned, and they represent concepts of „psyhical stigmata, atavism and biological inheritance that cause criminality". Second is Goring who represented the concept of „mental deficiency, then Goddard with concept of „feeblemindedness". Hooton represented the concept of „physical inferiority", Sheldon represented the concept of „somatotypes-mesomorphs" and finally Moniz, Christiansen and Jacobs

represented the concepts of „brain disorders, twin studies, XYY syndrome and physiological disorders" (2008: 118). However, some authors separate anthropological explanation in criminal etiology from the pure biological explanation by indicating that anthropological approach studies specific crime conditioning with organic structure of the individual, while on the other side, biological school distinguishes biological traits as a combination of anthropological and psychological traits that are at the base of the bio-psycho-constitutional type of the offender (Ignjatović, 2019: 30). Anyway, Barkan considered that Lombroso left a lasting legacy (2009, 138), to be continued search for biological explanation of criminal behavior which lasts even today and takes on new dimensions.

Unfortunately, at the early stages of researching the causes of crime, the separation of different possible causes of crime and emphasizing only one cause, regardless of whether it is mere anthropological, biological or some other factor, led to the fragmentation of criminal etiology and creation of special criminologies: criminal anthropology, criminal biology, criminal psychology, criminal psychopatology, and finally criminal sociology (Ignjatović, 2019: 30). The weaknesses of such an approach were quickly visible, because it is very hard to proove the influence of just one factor and simultaneously rejecting all others in concluding of causes of crime in individual cases. In other words monocausal approach in criminal etiology was replaced with multicausal. Yet, regardless of all the weaknesses of the monocausal approach, its contribution to the understanding of criminal etiology was important, because with focusing on just one trait (or group of traits) criminology was developing as a science and we became better in understanding the possible influence of each factor to human behaviour, and not only criminal. Bad side of multicausal approach is logically putting aside the investigation of concrete factors of criminal behavior, biological for example. Fortunately, today we have different new approaches and researchings within the framework of so called biocriminology that can shed a better light on understanding the criminal behavior in general or in the context of specific forms of crime, like mass murder or other form of multiple murder.

4. Early twentieth-century biologicaly explanations

We will start consideration of more specific biological explanations in criminal etiology with traditional theoretical approach which was focused on possible influence of physical constitution of individuals. These approaches appeared at the beginning of the twentieth century. There were two groups of theories which brought together crime and physical constitution: the theory of organically inferior individuals as criminals (E. Hooton) and explanation of individual criminal

activity in connection with human body (physical structure) (Kretschmer & Sheldon). Hooton claimed *(The American Criminal: An Anthropological Study, Cambridge, 1939*) that crime is result of degenerative features of body constitution so he made connection between specific degenerative feature and type of criminal activity (for example: short people are predestined to be fraudsters and forgers, short and fat people on the other side are usually rapists and perpetrators of other sexual crimes and what is the most important for the topic of this work: thin people commit more often murders and robberies) (Ignjatović, 2019: 68). Hooten concluded that the primary cause of crime is biological inferiority but the problem with his research, as well as with Lombroso's approach, is lack of adequate methodology, at the first place the assumption that all of the prisoners had committed crimes and that all control group subjects (free people) hadn't committed crime (Barkan, 2009: 139). Within the second approach Sheldon made his researches (*The Varieties of Human Physique: An Introduction to Constitutional Psychology, New York, 1940*) which resulted in indicating to three types of body builds: ectomorphic (tall and thin people), endomorphic (short and fat people) and mesomorphic (athletic type). Each body build is connected to special kind of temperament which further may lead to specific criminal behavior. Marriage couple of criminologists, Sheldon and Elenor Glueck, in their research (*Physique and Delinquency, New York, 1956*) found that criminal activity, and other forms of delinquency, are present the most in group of mesomorphic (Ignjatović, 2019: 68).Early biological positivism had a lot of weaknesses. For example, they suggest that one can genetically inherit a trait or propensity (to violate criminal law) that is socially defined and culturally relative. On the other hand, not all biological differences are inherited, many may be due to prenatal environment, injury and inadequate diet. Most modern biologists speak against notions of the inheritance of acquired characteristics, emphasizing instead selective adaptation and mutation (Hagan, 2008: 124). However, despite the problems, early biological perspective in criminology was very important for development of future similar approaches. In that sense, modern biological positivism replaces simplistic biological determinism with biological approaches that take into account the interplay of biological and socio-environmental factors (Shah & Roth, 1974, according to: Hagan, 2008: 125).

5. Contemporary biological approaches

The first wave of biological explanations of crime was followed during the 20th century by new attempts to link different biological factors and the tendency of the individuals to commit crimes. Some of these explanations have been

specifically used in determining the etiology of mass murders. Hagan as more recent biological approaches included: *brain disorders, twin studies, adoption studies, XYY Syndrome study* and other biological factors through different neurobiological, endocrinology and other studies connected to crime etiology analysis (Hagan, 2008). Barkan (2009) has somehow different classification of contemporary approaches. He also has a few highlights within the division: *influence of family, heredity and genes* (which consist of already mentioned twin and adoption studies, XYY abnormalities but also evolutionary biology approach), *impact of neurochemical factors*: hormones (testosterone and male criminality and PMS and crime by women) and neurotransmitters, *Diet and Nutrition, Pregnancy and Birth Complications* and *Early Puberty.* Also, Ignjatović separates *the influence of genetic factors* and other new approaches (2019:68-70). Within the genetic approach he emphasizes the importance of analyzing the family history (families Juke and Kallikak), especially when violent behavior is about, as well as the study of twins and adoptees (genetic determinism) and finally chromosomal abnormality (XYY). Despite some differences in enumeration of theoretical approaches by different authors, some common points of all the mentioned divisions can be observed. At this point, mentioned approaches will be just briefly explained, except few ones that we assume can be better applied to the explanation of mass murders.

5.1. Brain disorder

We will start with the issue of brain disorder. The work of phrenologists, in the context of how brain (i.e. different brain area) affects individual behavior, was continued in 20th century which led in 1930s to appearance of infamous lobotomy which means destruction of portions of the frontal lobes of the brain as a last resort for nonresponsive mental patients but it was used also on criminals as to be controlled brain malfunctions, particularly those that may trigger aggressive behavior (Hagan, 2008: 125,126). In some recent cases of mass murder, brain disorder of the offender was part of the discussion. Charles Whitman, the ex-marine who killed 14 and wounded 30 others at the University of Texas suffered from a walnut-sized amygdaloidal tumor, highly malignant tumor of the brain (a glioblastoma multiforme) which was found during the postmortem examination. The medical community started asking question about the connection between Whitman's act of mass murder and his brain abnormality (Fox & Levin, 2012: 228,229). What is it more to be expected with such brain abnormality: sudden, episodic attack of violence or longtime planned act as it was Whitman's act and that suggests maybe the conclusion that tumor changed Whitman's personality? We still don't have an answer.

Some other research indicate that the frontal cortex is likely responsible for certain personality characteristics and regulating socially acceptable behavior. The prefrontal cortex (PFC) has control over the limbic system which regulates emotion. When the PFC is not functioning properly, it results in an inability to control certain emotions, such as rage and anger (Raine, 2014, according to: Marr, 2020: 5).

Somehow connected to brain disorder are results of some research that show a higher prevalence of Autism Spectrum Disorders (ASD) and childhood head injuries among both serial and mass murderers compared to the general population, but such conditions may just have some influence on pathways to behavior but cannot be said to be causal (Williams, 2021: 18). It also might be questionable is there connection between posttraumatic stress disorder (PTSD), as a chronic mental state that possibly emerges after life or body integrity threatening events (Starčević et al., 2015: 78) and antisocial or criminal behavior. The results of some research show certain changes in brain functioning of individuals with PTSD, for example: results provide evidence of an association between a smaller amygdala, hippocampus, and prefrontal cortices volumes and PTSD therapy (Starčević et al., 2014: 4). Some of the most recent research showed a significantly higher risk of violent crime conviction in individuals with PTSD than in individuals without PTSD in general population which is new finding, because earlier research showed risk of violent crime conviction just in veteran population (Paulino et al., 2023: 438).

In the context of brain disorder, or more precisely central nervous system (CNS) functioning and long-lasting negative effects that in turn can lead to antisocial behavior, has to be mentioned problematic behavior of some women during the pregnancy: poor nutrition and the use of alcohol, tobacco or drugs (Barkan, 2009:147). One of the study conducted in Brazil showed that Fetal Alcohol Syndrome is common among criminal adolescents (Marr, 2020:3). Also, prenatal exposure of the brain to high levels of androgens can result in a brain structure that is less sensitive to environmental inputs and affected individual seek more intense and varied stimulation and are willing to tolerate more adverse consequences that individuals not so affected (Ellis, 1990, according to: Siegel, 2008: 101).

On the other side, poor or inadequate diet can lead to violence, according to the attorney of Dan White accused for double murder in late 1978 in San Francisco. The attorney claimed that his client committed murders because he ate too much junk food and because of that the sugar and various additives in the food supposedly deepened his depression and reduces ability to tell right from wrong. This defense tactic was successful, because he was convicted only of manslaughter (Barkan, 2009: 146). Finally, low level of sugar in blood can be dangerous too. When blood

glucose falls below levels necessary for normal and efficient brain functioning, a condition called hypoglycemia occurs. Different research studies linked hypoglycemia to outbursts of antisocial behavior and violence (Siegel, 2008:96).

Although there is a dearth of literature investigating the neuroanatomy of mass murderers, information gleaned from studies on single victim murderers suggests that those committing homicide generally exhibit measurable neuroanatomical abnormalities (Fox et al., 2016: 97). Some of the research findings indicate that homicide offenders' show reduced gray matter in brain areas critical for behavioral control and social cognition compared with subsets of other violent and non-violent offenders which means that unique brain abnormalities may distinguish offenders who kill from other serious violent offenders and non-violent antisocial individuals (Sajous-Turner et al., 2020). On the other hand, some of the findings from the research that was conducted on mass murders by Fox et al., show that, neurocognitively, mass murderers have better language, processing speed, reasoning, and verbal memory abilities than single victim murderers which means that mass murders are usually premediated crimes (2016: 100).

5.2. Genetic factors

The influence of genetic factors was analyzed first in case of rural New York family Juke, because about 140 of 1.000 Jukes were imprisoned during the 200 years. After that, Goddard researched family Kallikak, i.e. the descendants of Martin Kallikak who was the progenitor of the family and very interesting was fact that criminality was present significantly more in one set of Kalikak's descendants than in the other (Barkan, 2009: 141). On the other side, twin studies showed greater concordance (similar patterns with respect to criminality) among monozygotic than among dizygotic pairs of twins (Hagan, 2008: 126). *Chromosomal abnormality* or *XYY syndrom* is genetic anomaly that has been, since 1960s, associated with the aggressive behavior of men. During the time, XYY anomaly became a standard explanation for extreme forms of violence, after it was erroneously reported that mass murderer Robert Speck, who murdered eight nurses in their Chicago apartment, had an XYY anomaly. The truth is that very few violent criminals possess an extra Y chromosome but unfortunately men with XYY chromosome structure are stigmatized in mental and prison institutions (Fox & Levin, 2012: 147, 148).

On the other side, one study from Denmark showed that men with the XYY chromosome committed significantly more non-violent crimes than men without chromosomal abnormality (Ignjatović, 2019: 69), which shed completely

different light on possible connection between XYY chromosome structure and extreme violence. The truth is that XYY men are more likely to have low intelligence and because of that more likely to be arrested or imprisoned, but mainly for petty thefts (Carey 1994, according to: Barkan, 2009:143). *Summa summarum*, it doesn't mean that genetic is not important, the future will for sure bring better ways for researching the role of genetic in human behavior, but things need to be observed broader and what is good, even among biologists, there is an increasing recognition that the way in which genes are expressed depends also on social factors (Rafter, 2008, according to: Brookman & Robinson: 575).

5.3. Neurochemical factors

The influence of neurochemical factors is approach that appeared more recently in biocriminology. The human body is filled with many kinds of substances that act as chemical messengers to help its various parts perform their functions. Some of the functions include behavior and that's why biologists have tried to determine the role chemical substances might play in crime (Barkan, 2009: 143). One of the most important substances that can influence the human behavior are *hormones* that can be defined as secretion of endocrine glands that are passed into the bloodstream and are accumulated by target tissues, where they induce particular physiological or behavioral responses (Brain, 1994: 182). One of the hormone that is connected to aggressive behavior and violence is testosterone („male hormone"). Many scholars argue that variation in the amount of testosterone, is an important cause of male criminality and also explanation why men commit more crime than women and why some men commit more crime than other men (Barkan, 2009: 144). The fact is that bodily rhythms can have powerful effects on endocrine functioning and consequently on behavior (Brain, 1994: 221, 222) but of course it's difficult to equate testosterone level or level of some other hormone with amount of aggressiveness and, what is more important, with the way aggressiveness manifests.

In connection with that, some women suffer from the hormonal changes before menstruation appear (premenstrual syndrom or PMS) and because of the fact that this condition might lead to aggression and other offending, some researchers study whether crime by women tends to occur in their premenstrual phase. Because some studies showed connection between PMS and committed crimes, that finding was used in England in 1980s in several cases of murder as a defendant strategy which was successful because accussed women received probation instead of inprisonment (Barkan, 2009: 145). It seems that it is too much to

put the blame on PMS when it comes to serious acts of violence, but science has certainly confirmed that the increased hostility and irritability of some females evident in the PMS phase has a hormonal component.

It is important also to be mentioned the role of adrenomedullary hormones (norepinephrine and epinephrine) in agressiveness. One serious study (Woodman, 1983) found that subjects with convictions for only violent crimes have a higher ratio of norepinephrine (but not epinephrine) than either subjects with a mixed violence and property crime background or those with convictions for sexual offences. In other words, Woodman suggested that increased norepinephrine production is found in more aggressive personalities (Brain, 1994: 223).

Neurotransmitters are also form of neurochemical factors, chemical substance, and scientists study the influence some of it on aggression. Neurotransmitters have important role in the process of transmission of impulses between neurons, that consist human nervous system, across synapses (Barkan, 2009: 146). Recent research reviews in the field of behavioral genetics suggest that a propensity for extreme violence, such as homicide, is associated with polymorphisms that involve the detection, transportation, and catabolism of neurotransmitters, particularly dopamine and serotonin, that are manifest within adverse environments (such as family dysfunction) (Williams, 2021: 18). However, mentioned research found the influence of neurotransmitters on impulsive behavior that means it is still very questionable how neurotransmitters influence behavior of mass or serial murderers because such crimes are typically planned and methodical rather than episodic and impulsive (Fox & Levin, 2012: 149).

Different than neurotransmitters but also from affecting brain chemistry and therefore different behavior (aggressive) are some kind of psychiatric drugs. Present-day researchers continue to look to biology or chemistry in order to explain and predict homicidal behavior and with regard to mass murder, various psychiatric drugs, widely prescribed to treat depression and attention deficit disorder, have been suspected of altering brain chemistry in such a way to trigger extreme violence (the case of mass murder in Louisville, Kentucky, in September 1994, when Joseph Wesbecker killed eight of his co-workers and than committed suicide and the fact that he suffered of depression and was taking anti-depressant Prozak) (Fox & Levin, 2012: 148).

6. Special disorders and biological explanations

Searching for explanation in the context of psychiatric drugs easily can bring into the discussion possible connections between different mental illnesses

and mass murders. There are some findings in the literature on that topic, for example, that many public mass murderers have shown signs of trauma, paranoid thinking, and/or psychopathy and that in general, mass murderers show schizoid personality traits (Williams, 2021: 18,19). One of the cases of mass murder that were the subject of analysis in the context of psychopathology is a mass murder committed after midnight on July 20th, 2012, in Aurora, Colorado, when twenty-four-year-old James Eagan Holmes, dressed in a ballistic helmet, protective gear for his legs, throat and groin, black gloves and a gas mask walked into a crowded movie theater, threw a canister that released some kind of gas, and opened fire. Twelve people were killed and seventy others were injured. Dr. Metzner who did the analyze of Mr. Holmes stated that clinical presentation was consistent with the differential diagnosis of schizophrenia, schizoaffective disorder, bipolar disorder, social anxiety disorder, trichotillomania and obsessive-compulsive disorder. More important, it is emphasized that his depression and psychosis was a cause of substantial distress to him, which contributed to his decision to implement the planned shooting (Allely, 2020).

In analyzing the other case of mass murder (basically family type mass murder[1]), it was concluded that during the incubation phase, a clinical depression and psychopathological symptoms could be assessed and also it was clear that the psychopathological phenomena (depression, paranoid ideation, and symptoms) disappeared after mass murder commission, and the perpetrator itself experienced a relief from the emotional tension (Declercq & Audenaert, 2011: 142). In the most recent case of mass murder (mass shooting) that occurred on October 25th 2023 in Lewiston, Maine (USA), the media have been reported about possible medical condition of the suspect Robert Card in the context of psychiatric problems because he was hospitalized in mental institution in mid-July because he was acting "belligerently and possibly intoxicated". In some period before that, the shooting suspect told army personnel at Camp Smith, where he was situated, that he had been "hearing voices" and had thoughts about "hurting other soldiers"[2]. However, this case of mass murder will also be unexplored in the context of crime etiology, due to the letal outcome (allegedly suicide of the suspect). It fit to the common statistics on mass murders.

1 Mass murderer killed five people at their home: four family members and a friend of the family.

2 The gun that investigators believe the Lewiston mass shooting suspect, Robert Card, used to kill 18 people and wound 13 others was purchased legally just days before he was hospitalized and ordered to undergo a psychiatric evaluation. Miller, J. (2023, October 27th) Sources: Gun believed to be used in Maine shootings was purchased days before suspect's mental health episode, CNN, available at: https://edition.cnn.com/us/live-news/lewiston-maine-mass-shootings-10-27-23/index.html, accessed on 28.10.2023.

No matter on possible connection between psychiatrics problems and mass murders it would be wrongfull to simplify in that way the explanation of each mass murder case. Unfortunately, very often the general public cannot accept any other explanation for those crimes which then opens a polemic regarding the necessity of timely recognition the "abnormalities" of mass murderers (predators). Misidentification of predators with psychiatric patients brings trouble to individuals with real health problems, because they are stigmatized and perceived by the majority as time bombs that can explode at any moment and commit a predatory crime (Ilić, 2017: 142). Anyway, one of the possible roots of violent behavior and therefore the commission of mass murders is psychopaty as a condition which can be explained even from the biological point of view.

6.1. Biological explanation of psychopathy

One of the main topics that interest neuroscientists is connection between psychopathy and violence i.e. possibilities that provide modern techniques to research that condition. Psychopathy is a developmental disorder that leads to persistent antisocial behavior and one of the most powerful predictor variables for violence risk assessment. Some estimates suggest that psychopathic individuals could nevertheless be responsible for as much as 30% - 40% of all violent crime but only about 0,5 to 1% of the population are psychopaths (Nadelhoffer, 2010: 510).

There were a lot of traditional psychopathic research and scientists came to many important conclusions about the characteristics of psychopaths. Also, they developed and improved tests for assessing the presence of psychopathy, but here we won't analyze that aspect of psychopathy, the focus will be on research that conduct cognitive neuroscientists by using structural and functional imaging to study psychopathy. Some of the findings (manifested functional deficits) are: reduced amygdala and vmPFC activity during aversive conditioning tasks, reduced amygdala activation during emotional memory...but also have been found structural brain differences in psychopathic individuals (reduction in PFC gray matter volume) (Nadelhoffer, 2010: 512). Also, Kiehl claims that all psychopaths share common neurological traits that are becoming relatively easy to diagnose using functional magnetic resonance imaging (fMRI). The fMRI data collected in prisons in New Mexico during 2007, showed a robust and persistent pattern of abnormal brain function in psychopaths: namely, decreased neural activity in the paralimbic regions of the brain. These are the regions generally below the neocortex, including and adjacent to the limbic

structures (Keihl & Hoffman, 2011).

On the other side, some research deal with the issue of the neurochemistry of psychopaths as well as possible heritability of psychopathy. Nadelhoffer indicate some findings from the literature: noradrenaline plays an important role in the deficits associated with psychopathy and administering noradrenaline antagonists reduces the impact of aversive cues when making decisions. Also, according to two studies there is a genetic contribution to the psychopatic disorder (2010:513).

The findings from research conducted so far on the psychobiological bases of psychopathy reinforce the idea that psychopathic traits are associated with abnormalities in the way the brain processes emotional information collected from the environment, as well as which cognitive properties may help maintain these abnormalities or, in some contexts, explain them completely (Anderson et al., 2017 according to: Moreira et al., 2019: 157).

7. New approaches in bio-criminology

Research on the relationship between neurobiological factors and antisocial behavior has grown exponentially in recent decades. As a result, criminal behavior has been related to impairments in different (neuro) biological systems, such as genetics, hormones and brain functioning. The development of innovative techniques, for example brain imaging techniques and physiological measurements, can partially explain the increase in neurobiological studies on criminal behavior. Furthermore, a recent zeitgeist change seems to have led to a greater acceptance of neurobiology as an additional approach for the study of criminal behavior (Cornet, 2015).

Some new advances in data collection, for example: functional magnetic resonance imaging (fMRI), data analysis and pattern classification have put scientists in a better position to comprehend the complex relationship between brain deficits and violence, impulsivity, and other antisocial behavior (Nadelhoffer, 2010: 509). Yang and Raine conducted the first brain imaging meta-analysis of antisocial behavior, evaluating the relationship between prefrontal impairment and antisocial/violent/psychopathic behavior across 43 independent studies. Results demonstrated that antisocial behavior was significantly associated with reduced prefrontal structure and function. Specifically, increased antisocial behavior was particularly associated with structural and functional reductions in the right orbital frontal cortex (OFC), left dorsal lateral prefrontal cortex (DLPFC), and right anterior cingulated cortex (ACC). They also noticed that the reduction in the right prefrontal cortex (OFC and ACC) is associated with emotional deficits and poor

decision-making in antisocial individuals, while the reduction in the left DLPFC is more linked to antisocial features of impulsivity and poor behavior control (2009: 86). One of the most recent research in the context of biological explanation of crime is within the genetically informed neuroimaging. In concrete, it is about relationship between violence and the MAOA gene[3] which is in turn partly responsible for the catabolism of serotonin (5-HT) and norepinephrine (NE). Some studies showed that mutation of the MAOA gene may influence hyper-aggression and elevation of serotonin and in conjunction with certain environmental catalysts such as childhood abuse – confers an added risk in males for both antisocial behavior and reactive or impulsive violence (Nadelhoffer, 2010: 513-515).

8. Conclusion

Although biological explanation of crime and especially violent crime is just one possible way of understanding the complex question of crime etiology, it is necessary to take it into account as to better understand criminal behavior. The most popular approaches in analyzing the criminogenesis in contemporary criminology are dominantly oriented on social factors but results of such research cannot provide complete picture of individual etiology of crime. In contrary, human biology is something that can be explored in many ways, by using different modern devices. In connection with that, it seems that the long-standing fear of the misuse of science for the purpose of crime control has subsided significantly, opening the door to the accelerated development of various research approaches within bio-criminology that could help in better understanding of human behavior. Different authors still warn that biological approaches are extremely limited in their explanatory capacity due to a failure to acknowledge the interactional nature of much violence and the power of the situation (Brookman & Robinson, 2012:575) but beside that we cannot ignore the fact that biology influence our behavior. Neurological factors, genes or body chemistry, everything has to be considered in each case as to better understand the core of criminal behavior and find the best way of treatment the offenders.

Mass murders are even more complex for understanding. These events are fortunately rare but in many cases scientists cannot explore etiology of such extreme crimes because the offenders don't survive. But just because of their rarity and mortality of offenders, each case of mass murder has to be analyzed in unique way, every possible aspect that might be important. According to findings

3 MAOA gene encodes the enzyme monoamnine oxidase A

that we have tried to represent in this work, bio-criminology can provide possible answers on many questions. Authors in the field of criminology have to be open-minded for such research that can be complete when combined with other factors (psychological and social).

Finally, what is the most important outcome of dealing with biological causes of crime (mass murders)? In some cases, usually when offence is committed, but sometimes even before it, by the process of correcting some biological deficiencies the society could make progress in crime prevention. Preventive activity has to be the most important task of all subjects which job is dealing with crime issue. It is much better to prevent than to treat.

References

- Allely, C.S. (2020). The contributory role of psychopathology and inhibitory control in the case of mass shooter James Holmes. *Aggression and Violent Behavior*, *51*. https://doi.org/10.1016/j.avb.2020.101382.
- Barkan, S. E. (2009) *Criminology: a sociological understanding*. New Jersey: Pearson Prentice Hall.
- Bowers, T. G., Holmes, E. S. & Rhom, A. (2010) The Nature of Mass Murder and Autogenic Massacre. *Journal of Police and Criminal Psychology*, *25*(2), pp. 59-66, https://doi.org/10.1007/s11896-009-9059-6
- Brain, P. F. (1994). Hormonal aspects of aggression and violence. In: Reiss, Miczek, Jr., K. A. & Roth, J. A. (eds.) *Understanding and preventing violence, Volume 2: Biobehavioral influences*. Washington, USA: National Academy Press, pp. 173–244.
- Brookman, F. & Robinson, A. (2012) Violent crime. In: Maguire, M., Morgan, R. & Reiner, R. (eds.) *The Oxford Handbook of Criminology*. Oxford, United Kingdom: Oxford University Press, pp. 563-594.
- Cornet, L. (2015) Using basic neurobiological measures in criminological research, *Crime Science,* 4:7, https://doi.org/10.1186/s40163-015-0018-5
- Declercq, F. & Audenaert, K. (2011) A case of mass murder: Personality disorder, psychopathology and violence mode, *Aggression and Violent Behavior*, 16, pp. 135-143. https://doi.org/10.1016/j.avb.2011.02.001
- Douglas, J. E., Burgess, A. W., Burgess, A. G. & Ressler, R. K. (2006) *Crime Classification Manual: A standard system for investigating and classifying violent crimes*. San Francisco: Wiley. https://doi.org/10.1016/j.avb.2007.02.003
- Fox, J. A. & Levin, J. (2012) *Extreme killing: understanding serial and mass murder*. Los Angeles: SAGE Publications.
- Hagan, F. E. (2008) *Introduction to Criminology: Theories, Methods, and*

Criminal Behavior - 6th Edition. Los Angeles: SAGE Publications.
- Ignjatović, Đ. (2019) *Kriminologija.* Belgrade: University of Belgrade, Faculty of Law.
- Ilić, A. (2017) *Media and Crime: Criminological Aspects*. Doctoral dissertation. University of Belgrade: Faculty of Law.
- Ilić, A. (2018) Media Reporting on Refugees and Related Public Opinion in Serbia. In: Kury, H. & Redo, S. (eds.) *Refugees and Migrants in Law and Policy: Challenges and Opportunities for Global Civic Education*. Cham, Switzerland: Springer, pp. 137-161. https://doi.org/10.1007/978-3-319-72159-0_6
- Ilić, A. (2023) The analysis of some problems in achieving the rehabilitation purpose of punishment. *Journal of Criminology and Criminal Law*, *61*(1), pp. 93-115. https://doi.org/10.47152/rkkp.61.1.5
- Keihl, K. A. & Hoffman, M. B. (2011) The criminal psychopath: history, neuroscience, treatment, and economics. *Jurimetrics*, pp. 355-397.
- Moreira, D., Azeredo, A. & Barbosa, F. (2019) Neurobiological findings of the psychopathic personality in adults: One century of history. *Aggression and Violent Behavior*, *47*, pp. 137–159. https://doi.org/10.1016/j.avb.2019.03.005
- Nadelhoffer, T. (2010) Brain and crime – what neurosciences teach us. In: Herzog-Evans, M. (ed.) *Transnational Criminology Manual*, *Volume 1*. Nijmegen, Netherlands: Wolf Legal Publishers (WLP), pp. 507-523.
- Paulino, A., Kuja-Halkola, R., Fazel, S., Sariaslan, A., Du Rietz, E., Lichtenstein, P. & Brikell, I. (2023) Post-traumatic stress disorder and the risk of violent crime conviction in Sweden: a nationwide, register-based cohort study. *Lancet Public Health, 8*(6), pp. 432-441, https://doi.org/10.1016/S2468-2667(23)00075-0
- Sajous-Turner, A., Anderson, E. N., Widdows, M., Nyalakanti, P., Harenski, K., Harenski, C., Koenigs, M., Decety, J. & Kiehl, K. A. (2019) Aberrant brain grey matter in murders. *Brain Imaging and Behavior, 14*(5), pp. 2050-2061. http://doi: 10.1007/s11682-019-00155-y.
- Siegel, L. J. (2008) *Criminology: The Core,* Third Edition. Belmont: Thomson Learning, Inc.
- Starčević, A., Postić, S., Radojičić, Z., Starčević, B., Milovanović, S., Ilanković, A., Dimitrijević, I., Damjanović, A., Aksić, M. & Radonjić, V. (2014) Volumetric Analysis of Amygdala, Hippocampus, and Prefrontal Cortex in Therapy-Naive PTSD Participants. *BioMed Research International*, pp. 1-6. http://doi.org/10.1155/2014/968495
- Starčević, A., Dimitrijević, A., Aksić, M., Stijak, L., Radonjić, V., Aleksić, D. & Filipović, B. (2015) Brain changes in patients with posttraumatic stress disorder and associated alcoholism: MRI based study. *Psychiatria Danubina*,

27(1), pp. 78-83.
- Williams, D. J. (2021) Forensic Behavioral Science of Serial and Mass Murder with an Addition of Leisure Research: A Descriptive Synthesis. *Forensic Sciences*, 1, pp. 16-24. http://doi:10.3390/forensicsci1010004
- Yang, Y. & Raine, A. (2009) Prefrontal Structural and Functional Brain Imaging findings in Antisocial, Violent, and Psychopathic Individuals: A Meta Analysis. *Psychiatry Research: Neuroimaging***,** *174*(2), pp. 81-88. http://doi:10.1016/j.pscychresns.2009.03.012

Online Sources
- Marr, C. (2020). Neurological Abnormalities' Impact on Crime and Behavior. *UTSA Journal of Undergraduate Research and Scholarly Works*, *7*. Available at: https://rrpress.utsa.edu/server/api/core/bitstreams/7f4a2f8b-9acc-433c-920b-a8fc3a20462f/content, accessed on 4.09.2023.
- Miller, J. (2023, October 27th) Sources: Gun believed to be used in Maine shootings was purchased days before suspect's mental health episode, CNN, Available at: https://edition.cnn.com/us/live-news/lewiston-maine-mass-shootings-10-27-23/index.html, accessed on 28.10.2023.

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UTICAJ BIOLOŠKIH ČINILACA U GENEZI MASOVNIH UBISTAVA

U ovom radu autori, polazeći od ustaljene podele masovnih ubistava u kriminološkoj literaturi, analiziraju dostupne rezultate istraživanja o slučajevima masovnih ubistava, odnosno njihovoj etiologiji. S obzirom na to da bi analiza svih mogućih faktora koji mogu konstituisati individualnu kriminogenezu zahtevala mnogo više prostora, u ovom radu akcenat je na biološkim faktorima zločina. Autori polaze od tradicionalnih bioloških shvatanja u kriminologiji, poput proučavanja povezanosti fizičke konstitucije i zločina, ili uticaja genetskih faktora, koje upotpunjavaju savremenijim pristupima, kao što su analiza neuroloških, endokrinoloških i drugih biološki relevantnih stanja, odnosno abnormalnosti, istovremeno istražujući njihov uticaj na ispoljavanje agresije uopšte ali i posebno u kontekstu masovnih ubistava. Autori očekuju da će rad biti doprinos boljem razumevanju etiologije masovnih ubistava i uopšte nasilnih zločina.

Ključne reči*: masovna ubistva, uticaj, biološki činioci, kriminogeneza, nasilje*

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SEXUAL HARASSMENT: TABOO TOPIC AT UNIVERSITIES – LEGAL FRAMEWORK IN NORTH MACEDONIA

According to the Istanbul Convention sexual harassment is a form of unwanted verbal, nonverbal, or physical behavior of a sexual nature with the aim or consequence of violating the dignity of a person, especially when an intimidating, hostile, degrading, humiliating, or offensive environment is created. Because of the specificity of the academic environment, the intention is every member of the academic community to be aware that universities should prohibit sexual harassment and sexual violence and that such conduct violates both the law and university policies.

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The main subject of the paper is the danger of sexual harassment in an academic context. In doing so, the legal frame of sexual harassment in the Republic of North Macedonia is reviewed with special emphasis on its determination in an academic context. The aim of the paper is to give an overview of the legal framework in North Macedonia regarding sexual harassment, also to conclude whether and which Macedonian public and private universities mention sexual harassment in their legal documents, and to test the knowledge among students about this phenomenon (using a segment of the research "Sexual Harassment at universities in North Macedonia), because recognizing and knowing is the first step in the process of prevention.

Key words: sexual harassment, university, victim, Republic of North Macedonia, students

1. Introductory remarks

Sexual harassment is one of the forms of gender-based violence. It is a world phenomenon and complex social problem that people in every society face. Such a phenomenon is not new at all and it can be found in history although maybe the term "sexual harassment" is relatively new, and the awareness for this type of behavior awaken at the end of the '70s of the last century. In 2017 the movement #Metoo raised awareness for sexual harassment as a global epidemic present in all life spheres (Stanojoska, Ilijevski & Shushak Lozanovska, 2022).

The efforts for defining sexual harassment in the theory have existed for more than thirty years, during which several different general definition approaches have emerged. Unfortunately, there is no single generally accepted definition in all contexts. The existing definitions can be categorized on the basis of a subjective-objective prism, through which two directions of a possible definition of sexual harassment are hypothetically distinguished. One is through definition with "objective" characteristics that are predetermined (Till, 1980), and the second is defined through the "subjective" inner feelings of the harassed person (Howald at all, 2018).

The first all-embracing concept of sexual harassment using the category of gender was proposed in 1980 (Till, 1980). He distinguished five possible forms of sexual harassment: gender harassment, sexual seduction, sexual bribery, sexual coercion, and sexual violence. These types of behavior were ordered by degree of severity in terms of impacts.

At its core, sexual harassment is unwanted and threatening, and often involves the exploitation of power differentials. It is a form of abusive behavior.

Sexual harassment is not about physical attraction or emotional need. It is about power or control and how that power is abused. Usually, such behavior is designed to humiliate and control someone. Whether a particular act or course of conduct constitutes sexual harassment depends on a review of all the circumstances, including the frequency, location, and severity of the conduct, i.e. whether the behavior is physically threatening or humiliating, as opposed to just an offensive statement, and whether it unreasonably interferes with the person's work environment, educational environment, etc.

The research conducted by the European Union Agency for Fundamental Rights (FRA, 2014) on violence against women has shown that sexual harassment remains a widespread and common experience for many women in the European Union. Depending on the type of incident recorded, it is estimated that 83 to 102 million women (45-55% of women) in 28 EU Member States have experienced at least one form of sexual harassment by the age of 15. It also becomes apparent that many women do not talk to anyone about their experiences of sexual harassment, and very few report the most serious incidents to their supervisors at work or to the authorities. Sexual harassment occurs in a variety of settings and uses a variety of means, including the Internet. The results of the FRA survey show that the sexual harassment of women involves a range of different perpetrators and involves the use of "new" technologies. The research shows that sexual harassment mostly affects younger women and that it is more often perceived and experienced by women with higher education and women from the highest professional groups.

Almost six out of ten of the world's countries lack adequate laws against sexual harassment in higher education and schools. When considering specific types of sexual harassment, the number of adult women not protected under the law increases. For sexual harassment in education, 1.5 billion women are not protected (55% of the population) (Tavares & Wodon, 2018:11).

The focus of exposure to sexual harassment in academia has traditionally been on student exposure, in particular in USA, where also most of the research into sexual harassment has been conducted. The prevalence of sexual assaults on students (primarily women) at universities in USA is well-documented. Data suggest 22% of college women have experienced dating violence and nearly 20% have experienced completed or attempted sexual assault since entering college. Sexual violence victimization is very common among college and university students in the USA. Research estimates that 20–25% of female undergraduates experience attempted or completed rape during their college careers (Bondestram & Lundqvist, 2020).

In a survey of sexual harassment at a Spanish public university on a sample of 1521 students, the results show that 15.9% of the students had experienced at least one episode of sexual blackmail behavior and 17.1% of the students had

experienced at least one episode of verbal sexual harassment (Ferrer-Pérez & Bosch-Fiol, 2020).

In a sample of university students in Italy, the frequency of harassment was 38.3% among men and 44.2% among women, with a minority of students exposed to harassment in 2/3 domains, with few gender differences. Harassment was related to mental distress for both women and men, although the symptoms were different in the two genders. Male students with harassment exposure more often perceived their health as „not good" and reported symptoms of depression, whereas women reported panic symptoms, even after adjustment for social factors and previous sexual violence (Bastiani at all, 2019).

New types of exposure are established in studies, and they relate in particular to online sexual harassment, where prevalence is alarmingly high in studies that analyse this within the research field as a whole. Among college students, 43% report some experience receiving harassing messages. Across the entire sample, 34% of participants reported feeling anxious and 37% of participants reported feeling depressed as a result of an online interaction (Lindsay at all, 2015: 9).

In the research about sexual violence at universities in Serbia, conducted by the Victimology Society in Serbia from 271 student, 17% have responded that they have been victims to sexual violence. From them, around one third (31.4%) have been victimized in the year preceding the research, and 204 students have responded that have been victims to verbal sexual harassment during their studies. Most of them have been victims to non-verbal sexual harassment, then to physical sexual harassment, online sexual harassment, sextortion, and five students have answered that they have been raped or someone attempted to rape them (Nikolic – Ristanovic & Copic, 2022 :61).

The article analyses the Macedonian national legal framework about sexual harassment, gives an overview of the code of ethics or other ethics university documents at universities in North Macedonia. The third part is where we analyze the results of the research about sexual harassment which was conducted at Macedonian universities in 2021. At the end of the paper, we give certain recommendations based on the conclusions.

2. Legal framework for sexual harassment in the Republic of North Macedonia

Due to the fragmented nature of the national legislation dealing with equality and non-discrimination, the provisions on sexual harassment in the Republic of North Macedonia can be found "scattered" in different laws.

- Law on prevention and protection from discrimination

The definition of sexual harassment is provided in Art.10, Paragraph 2 of the Law on Protection of Discrimination. According to this Law, harassment is an unwanted treatment of a person or group of people on discrimination grounds that has the purpose or effect of violating dignity or creating a threatening, hostile, humiliating, or intimidating environment, approach, or practice. Sexual harassment, on the other hand, is any form of unwanted verbal, non-verbal, or physical behavior of a sexual nature, which has the same purpose. (art. 10, Law on prevention and protection of discrimination of RNM)

According to the legal provisions every person who believes that has been discriminated against, including harassment, can submit a complaint to the Commission for Protection against discrimination, which acts according to its legal powers. The Law contains misdemeanor provisions for violating the provisions of the Law and provides for fines.

- Law on Labor Relations

Sexual harassment (which creates a "hostile working environment") has been regulated by the Law on Labor Relations. Article 9, act 4, defines *gender harassment* as any "verbal, nonverbal or physical behavior of a gendered nature that aims at or represents a violation of the dignity of the candidate for employment or the worker, and that causes fear or creates a hostile, humiliating or offensive behavior" (Law on Labor Relations of RNM). Regarding the definition of the gender harassment, it is worth mentioning that the use of the term "gender" instead of "sexual" harassment and "gender" behavior instead of "sexual" behavior (nature), although for some it may be lack of linguistic character, contributes to a misunderstanding of what types of behaviors this type of harassment implies. It is interesting to mention that despite the definition and regulation of this type of harassment as discrimination, the labor legislation also overlooks a guarantee for the prevention of this type of harassment. In addition to judicial protection in cases of discrimination, the law on labor relations also provides for misdemeanor sanctions for legal entities and the responsible person in the legal entity, in order to ensure that no worker is a victim of harassment and sexual harassment. Additional protection for victims in the proceedings is the fact that the burden of proof, that no discrimination or harassment occurred, falls on the defendant(s). (art. 11, Law on Labor Relations of RNM) fines.

- Law on protection from harassment at the workplace

The subject and the purpose of the Law on protection from harassment at the workplace is to define the obligations and responsibilities of employers and employees in relation to the prevention of psychological and sexual harass-

ment at the workplace. The terminology again remains the same as in the Law on Labor Relations, so this law also defines gender harassment as "any verbal, non-verbal or physical behavior of a gendered nature, which aims at or represents a violation of the dignity of the candidate for employment or the employee, and which causes a feeling of fear or creates discomfort, humiliation" (art. 5, Law on Protection against Mobbing at the Workplace of RNM). The law provides for the measures and procedures for the protection and prevention of harassment in the workplace and determines the place and time of possible psychological and sexual harassment.

- Law on equal opportunities for women and men

Sexual harassment is also prohibited according to Article 3 of the Law on Equal Opportunities for Men and Women, and according to Article 4 it is defined as "any form of the unwanted verbal, non-verbal or physical behavior of a sexual nature, the purpose or consequence of which is a violation of the dignity of a person, especially when an intimidating, hostile, degrading, humiliating or offensive atmosphere is created" (Law on equal opportunities for women and men of RNM).

Law for prevention and protection from violence against women and domestic violence

As a law, which can be said to be in accordance with European standards and The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention), the glossary itself, defines both sexual harassment and the realization of this behavior via the Internet.Sexual harassment, according to this law, means any verbal, non-verbal, or physical behavior of a sexual nature that has the purpose or consequence of violating the dignity of the person, especially when it creates a threatening, hostile, degrading, humiliating, or insulting environment. Sexual harassment via the Internet is any verbal, non-verbal, or other behavior of a sexual nature, which has as its purpose or consequence, a violation of dignity or the creation of a threatening, hostile, humiliating, or intimidating environment, approach, or practice, through electronic means of communication (Art. 3, Law for preventing and protection from violence against women and domestic violence of RNM).

- Child Protection Law

The Child Protection Law does not explicitly define sexual harassment, however, it stipulates that all forms of sexual exploitation and sexual abuse of children are prohibited, including harassment, child pornography, and child prostitution. Despite the mentioned forms, the Law does not provide special measures for prevention and protection. (art. 12 paragraph 2, CPL of RNM).

Criminal Code

One of the few forms of sexual harassment that are covered and criminalized by the Criminal Code is the crime of Satisfying sexual passions in front of another.

As part of chapter nineteen, more specifically from the group of crimes that violate sexual morality, the gratification of sexual passions in front of another is performed by the person who performs sexual activity in front of another in a public place or performs sexual activity in front of a child or who leads a child to him or before another to perform such an action. (art. 190, CC of RNM)

With the Amendments to the Criminal Code, a separate article 190-a is incriminated, which defines "sexual" as "gender harassment" and at the same time this crime is committed by "the one who, with a verbal or physical action, or by using electronic devices for communication, has a direct or indirect, real or symbolic meaning of stating, indecent offer, luring, expression of sexual passion or other action that clearly reminds of sexual intercourse or other sexual acts equated with it, will disturb a person who is subordinate to him or is in a relationship of dependence with him, another person at work or in a public place or a person who is vulnerable due to age, illness, disability, drug addiction, pregnancy or severe physical or mental disability, and thereby will injure his dignity, causing a feeling of discomfort, annoyance, humiliation or fear". It is envisaged that the prosecution of the crime will be undertaken on a proposal, and the punishment with which the perpetrator is stopped is a fine or imprisonment for up to one year. (Art. 23, Law on amending and supplementing the CC of RNM). The more severe type of this crime will exist if the offender is a person is in position of power, and in this case the punishment is prison from six months to up to three years.

From the above we can agree that the Republic of North Macedonia has an extensive legal framework that defines and prohibits sexual harassment, defining it as a misdemeanor, as a crime, or as an act of violation of rights and obligations within a working relationship. In terms of the scope of the legal texts, it can be said that they are essential and more adapted to the definitions arising from the international legal framework. However, the existing legal regulations indicate that the mentioned laws were adopted or amended spontaneously, without a strategic approach to the problem and without knowledge of the entire legal system, hence they are characterized by the nontechnical problem arising from the fact that different laws use several different terms, whose mutual relations (sameness or difference) are not explicitly determined. Some of the laws operate with the term sexual harassment, and some with the term gender harassment, and in that context, no one has given an adequate explanation as to how and in what way the choice for one of the two offered terms was reached.

The term gender harassment as such is also used in the Amendments and Supplements to the Criminal Code, which has brought us to a situation where the Criminal Code itself is not in terminological correlation, for example with the Law on Prevention and Protection from Discrimination and the Law on Prevention and Protection from violence against women and domestic violence, but also with the Istanbul Convention itself, the signing of which initiated a large part of the proposed amendments to this systemic law.

The legal solutions in all analyzed legal texts is perhaps an additional topic for analysis because again the emphasis is placed on the will of the victim to decide to report and continue the process. Sexual harassment survivors struggle with a wide range of emotions that make coming forward difficult: fear of revictimization, distortion of allegations, and generally not being believed, and in such a way, these victims don't receive the necessary institutional support, which is only one aspect of the overall support that a person who has been victimized should receive. Serious commitments are needed to approach justice, first of all, strategic steps in the protection of victims, ex officio prosecution for these types of crimes, as well as strict sanctioning of perpetrators.

3. Code of ethics or other ethics documents at the Universities in Republic of North Macedonia

Taking into account the specificity of the academic environment, there is a need for developing specific institutional mechanisms that will regulate the problem of sexual harassment at the faculties and the institutes. In that direction, of particular importance for the definition and the social regulation of sexual harassment in an academic context are the ethical codes of the universities, the regulations for the work of the faculties, as well as special regulations for protection against sexual harassment, which unfortunately do not exist in the annals of the legal acts of faculties in the Republic of North Macedonia.

The Code of Ethics of the University "St. Cyril and Methodius" in Skopje, adopted in May 2021, in article 14 paragraph 1 clearly foresees the prohibition of any form of harassment among the members of the university community. Additionally, paragraph 3 as unacceptable is categorized as *any sexual harassment,* defined as a form of harassment characterized by unacceptance or refusal from the other side, including repeated unwanted verbal or physical suggestions of a sexual nature to another person, physical assault, repeated unwanted telling of jokes and remarks with a sexual connotation, including references to gender and sexual orientation, ridicule and ridicule with a sexual connotation, exposure

of sexually offensive and disturbing material, and solicitation of sexual favors in exchange for certain action or inaction from a position of authority.This code of ethics also provides that casual communication, well-intentioned jokes, and criticism, as well as sexual and other intimate relationships between members of the academic community, based on consent and mutual respect, are considered an area of privacy and do not in themselves constitute a violation of the same.

Any member of the university community has the right to submit a report of harassment, committed by a member of the academic community, no later than 8 (eight) days from the day of learning about the committed violation, to the commissions for the implementation of the Code of Ethics, and in writing needs to explain the case with all the necessary data and evidence about the persons, time, place, and possible witnesses of the committed violation and signed by the applicant.

If the Ethics Commission determines that there is a violation, it makes a decision proposing to the Senate of the University to issue a written reprimand or a public reprimand. The written reprimand is delivered to the perpetrator of the violation, and the public reprimand is published at a session of the University Senate and in the University Gazette. These imposed measures do not exclude liability in accordance with other regulations.

In the **Code of Ethics for the employee at the University "Goce Delchev" in Shtip**, adopted in 2011, the term sexual harassment is not mentioned. Still, it states that the teaching and the associate staff, may not directly or indirectly exploit, abuse, bully, blackmail, or discriminate against students, nor treat them in an inappropriate manner or in any other way that insults their dignity.

On the other hand, with the Code of Ethics for the students of "Goce Delchev" University in Shtip, adopted in 2009, the right to protection against discrimination and harassment is guaranteed.

Harassment, according to this code, is considered any inappropriate behavior towards other individuals that hurts their special dignity, interferes with the performance of work tasks, or leads to a decrease in the quality of life of individuals. It is a behavior characterized by the absence of access from the other party, which creates or contributes to the creation of unpleasant and hostile working and educational conditions, which intimidates, insults, or humiliates individuals. Additionally, sexually suggestive proposals, solicitations, or favors are considered misconduct under this Code of Ethics, as is the threat of a sexual proposal, solicitation, or favor to any student.

At this University, the Rector's Office determines the responsibility and imposes measures for violation of ethical principles.

The Code of Ethics at FON University, adopted in 2011, declares any sexual harassment as morally unacceptable, defining it as multiple references to

sexually colored jokes to a certain person, commenting on gender orientation, insulting and mocking, sending sexually harassing materials, requesting sexual favors in exchange for a certain favor or obtaining a privileged position with a certain authority.

The Code stipulates that every member of the university community has the right to report harassment and the person who has reported the harassment must not be subjected to any pressure.

The Senate of the University appoints a Commission on Ethical Issues, which can issue a reprimand, public reprimand, and public condemnation to the person who violated the ethical rules regulated by this code, and the procedure is initiated by a proposal that can be submitted by any member of the academic and university community.

The Code of Ethics at Business Academy Smilevski (BAS), determines that obscene words, insults, and verbal, mental, physical sexual, and/or electronic (cyber) harassment are not allowed in their academic community. In doing so, it defines sexual harassment any verbal, non-verbal, or physical behavior of a sexual nature, which aims at or constitutes a violation of the dignity of a member or members of BAS, and which causes a feeling of fear or creates discomfort, humiliation, etc.

In case of violation of the ethical values of this code, including sexual harassment, the Court of Honor established by the BAS Teachers' Council is put into operation. Members who have felt a violation of the prescribed ethical values can apply in writing to the Court of Honor. The report on the violation of ethical values in written form by mail, courier, or in person is submitted to the professional and administrative service, which will forward the report to the Court of Honor ex officio. The Court of Honor decides on each case individually.

The University "Mother Teresa" has defined sexual (gender) harassment in its Guidelines for Protection against Harassment at the Workplace and defines it as any verbal, non-verbal, or physical behavior of a gendered nature, which constitutes a violation of dignity, and which causes a feeling of fear or creates discomfort, humiliation.

The Guidelines explain in detail the procedure for reporting and acting upon a report of harassment, but the lack of its application is seen in the fact that it refers to permanent or temporary employees of the university, as well as job candidates, but does not refer to protection from disturbing the students studying in this university.

The International University "Vision", similar to the previous one, with the Regulations on Protection against Harassment at the Workplace, defines gender harassment as any verbal, non-verbal, or physical behavior of a gendered nature, which aims at or represents a violation of the dignity of the candidate for

employment or of the employee, which causes a feeling of fear or creates discomfort, humiliation. The behavior, according to this regulation, is considered sexual harassment at the workplace, if it has not stopped after a written warning from the harassed person, that the behavior of the perpetrator of the harassment bothers him and that he will consider it harassment at the workplace. However, even here the protection remains reserved for employees and not for students.

The rest of the universities, unfortunately, have not regulated this issue in their acts or such acts are not publicly available, which is the same as if they didn't exist at all.

From the analysis of the available documents, in which some of the universities regulate the issue called sexual harassment, it is more than clear that these are more declarative protection provisions that are predominantly reserved for the employees of the universities, rather than for the students themselves. An additional problem is that in some of them there is no good reporting methodology that will motivate students to overcome the barrier and encourage them to report sexual harassment. And of course, again, the burden is placed back on the victim.

For those reasons, we consider this way of regulating this issue in an academic context as inadequate and practically inapplicable. Hence, it becomes clear that it is necessary for universities to recognize the importance of protecting students from sexual harassment and other sexist discrimination and to develop special Regulations in which they will elaborate the provisions of the ethical codes or precisely define the terms sexual or gender harassment, as well as measures to prevent and procedures to protect persons from sexual harassment. All this is with the ultimate goal of building and preserving academic freedom, equal opportunities, and respect for the integrity and human dignity of all participants in the higher education process.

4. Research Methodology and Results

The authors conducted empirical research in 2021 where the sample included 330 students from nine Universities in the Republic of North Macedonia. The data gathering was organized online by using the Qualtrics Platform between June and the beginning of September, and between the end of September and the end of December. The link for the survey was sent to potential respondents by e-mail. The questionnaire included 31 (thirty-one) question (open and semi-open questions) and was divided into five parts (demographic information, questions regarding recognizing of sexual harassment, questions about victimization, about their negative emotions, and questions about their reaction.

The sample included 330 respondents, which is why we have to conclude that it is not representative, the conclusions cannot be generalized, but it is an important step in research and analysis of sexual harassment in the academic environment.

The age of the sample is between 19 and 25 years of age, with 58.5% females and 18.5% males. The gender distribution of the sample is in accordance to the gender structures of universities in North Macedonia, where 54% of the students are females (State Statistical Office of North Macedonia, 2017).

Ethnically most of the sample is from Macedonian ethnic origin (65.5%), afterwards Albanian (5.8%), Turkish (2.7%), and other.

Regarding to the year of studies we had 16 (sixteen) respondents on graduate studies (Master and PhD), and 226 from undergraduate studies (3.6% - first year of studies, 30.3% - second year, 13.9% - third year, 17.9% - fourth, 2.2% - fifth, and 0.6% - sixth).

In the following section, we have included only the results of a few questions which are relevant to the legal framework of sexual harassment and its incrimination in the Criminal Code of North Macedonia.

Table No. 1. Which of the following actions can be specified as form of sexual harassment?

	F	**%**
Physical acts of sexual assault	170	51,5
Verbal harassment of a sexual nature (including jokes about sexual relations, sexual orientation or other sexual characteristics)	160	48,5
Offers for sexual services	158	47,9
Conditioning employment or other services with services of a sexual nature (whether implied or explicitly stated)	165	50,0
Unwanted touching or physical contact	189	57,3
Unwanted courtship	99	30,0
Unsolicited communication with explicit photos, emails or messages	170	51,5
Forced sexual intercourse	170	51,5
Sexual comments, stories and fantasies in the workplace, school or other inappropriate places	122	37,0
Showing private parts of the body	169	51,2

The question *Which of the following actions can be determined as a form of sexual harassment*? was a multiple-choice question. Most of the respondents (189 or 57.3%) consider that unwanted touching or physical contact is an act of sexual harassment. Afterwards, 170 respondents, or 51.5% of the total number, consider that physical acts of sexual assault are an action which can be determined as a form of sexual harassment, and the same number of respondents mention forced sexual relations with someone, as well as unwanted communication with explicit photos, emails or messages as such actions.

Conditioning employment or other services with services of a sexual nature (whether implicit or explicitly indicated) is an act of sexual harassment for 165 respondents, and for approximately the same number of respondents, 169 of them, showing intimate parts of the body is such an action.

Verbal harassment of a sexual nature (including jokes referring to sexual relations, sexual orientation, or other sexual characteristics) is recognized as an act by 160 respondents, and offers of sexual services are an act of sexual harassment for 158 respondents, or 47.9%.

The number of those who believe that acts of sexual harassment also include comments about sexual relations, stories, and fantasies at the workplace, school or other inappropriate places are slightly smaller. And only 99 respondents identify unwanted flirting as such.

These results show that students recognize certain forms of sexual harassment, and what in most cases is less recognized as sexual harassment are the sex comments, but what is the most interesting is that sexual harassment is mixed with other sexual offences.

Table No. 2. Do you think that the students know enough about sexual harassment and know how to recognize it?

	F	**%**
Yes, they know enough	45	13,6
They partially know	93	28,2
Don't know enough	55	16,7
Don't know at all	2	,6
I can't evaluate	18	5,5
No answer	117	35,5
Total	330	100,0

The analysis of the answers presented in Table no. 2 gives the impression that the students do not know enough about the phenomenon of sexual harassment

and do not know how to recognize it. Only 45 respondents are categorical that their knowledge is sufficient. In contrast, 93 respondents consider that they partially know, and 55 that they do not know enough. Two respondents think that they do not know at all, and part of the respondents, or 5.5% of them cannot evaluate.

Table No. 3. Why does sexual harassment happen?

	F	**%**
Myths and stereotypes about the sexes (genders)	71	21,5
Gender-dominated environments	88	26,7
A sense of dominance and power	172	52,1
Social norms	47	14,2
Misuse of the position	149	45,2
I don't know	11	3,3
Other	10	3,0

From the analysis of the answers to the question Why does sexual harassment happen? the dominant view is that the reason for it is the feeling of dominance and power, as well as the abuse of the position, which about 50% of the respondents agree with. Only 88 respondents believe that sexual harassment occurs in gender-dominated environments, 71 respondents believe that the problem lies in myths and stereotypes about genders, and 47 respondents attribute the problem to social norms. 3.3% of the respondents do not know why it happens, and some of the respondents additionally stated that the problem of sexual harassment also occurs due to psychological problems, complexes, etc.

Similar views are expressed in the works of Conrad and Taylor who argue that sexual harassment is an act of power, as well as in Catharine MacKinnon who concludes thatmen engage in offensive sexual behavior primarily as a way to realize or express their power, and not desire. (Merkin, 2012: 155)

5. Conclusion

Sexual harassment is an important, complex, and widespread social problem present at universities worldwide (Lindsay at all, 2015: 9; Tavares & Wodon, 2018:11; Bastiani at all, 2019; Bondestram & Lundqvist, 2020; Ferrer-Pérez & Bosch-Fiol, 2020). The problem of sexual harassment is located in

an androcentric environment as unfortunately universities still are, environment which is hierarchically structured. Although universities in North Macedonia are mentioning in statements that sexual harassment will not be tolerated the statement itself is not enough. We should show zero tolerance for sexual harassment. Building confidence and encouraging the students to report cases of sexual harassment is more than needed. Campaigns and education of students can raise awareness of sexual harassment issues and avoid any circumstances that lead to sexual harassment.

If the Macedonian universities want to prevent sexual harassment, they should come up with the best solution to stop and prevent this problem. In order to maintain the image of the universities and ensure the trust of the students:

- Each university should have its own strategy to prevent sexual harassment. The main goal should be to encourage dialogue and raise the level of awareness of the community on how to prevent sexual harassment;

- The universities should design and implement action protocols for dealing with sexual harassment that include preventive actions. This can be done by removing the taboo around the problem and providing support to those affected by it. Such measures are related to the atmosphere against violence at the universities, including calling on rectors, deans, directors of institutes, and heads of departments to act responsibly and take a direct stand against expressions and acts of sexual discrimination and harassment.

- There should be more financial support for researching the problem at universities, because at the moment there is a lack of scientific research of this problem. Universities should be bastions of freedom of speech, individual rights, and academic freedom;

- Better legal documents at universities - in the Republic of North Macedonia, there is no legal regulation covering sexual harassment at universities. Although some provisions are found in individual laws, it is not enough to cover the broad area of sexual harassment. The universities in the Republic of North Macedonia do not have a legal procedure for reporting sexual harassment. Some of the universities have partially provided it in the Codes of Ethics, and unfortunately, other universities have either not regulated it at all in their acts or such acts are not publicly available;

The segment of the research we have used has shown that students do not recognize all the forms of sexual harassment and they mix them with other sexual deviant and criminal acts. This situation should be alarming, and state and university authorities should work on information campaigns about the phenomenon, and the new crime incriminations.

Bibliography

- Bastiani, F., Romito, P. & Saurel-Cubizolles, MJ. (2019) Mental distress and sexual harassment in Italian university students. *Arch Womens Ment Health,* 22, pp.229–236. https://doi.org/10.1007/s00737-018-0886-2
- Bondestam, F., Lundqvist, M. (2020). Sexual Harassment in Higher Education: A Systematic Review. European Journal of Higher Education, 4, pp. 397-419. https://doi.org/10.1080/21568235.2020.1729833
- Ferrer-Pérez, V., Bosch-Fiol, E. (2020). Sexual harassment at a Spanish public university: an examination of victims' experiences by gender and campus status. Journal of Gender Base Violence, , 4(1), 41-58. https://doi.org/10.1332/239868019x15764491770571
- FRA - European Union Agency for Fundamental Rights. (2014). Violence against women: An EU-wide survey—Main results. Luxembourg: Publications Office of the European Union. https://doi.org/10.1163/2210-7975_hrd-9992-2014010
- Lindsay Brown M., Booth J., Messing J., Thaller J., (2015) Experiences of Online Harassment Among Emerging Adults: Emotional Reactions and the Mediating Role of Fear. Journal of interpersonal violence, 31(19), 3174-3195. https://doi.org/10.1177/0886260515584344
- Merkin, S., (2012). Sexual Harassment Indicators: The Socio-Cultural and Cultural Impact of Marital Status, Age, Education, Race, and Sex in Latin America, Intercultural Communication Studies XXI, available at: https://web.uri.edu/iaics/files/15RebeccaSMerkin.pdf. , accessed on 13 July 2022
- Nikolic – Ristanovic, V., Copic, S. (2022). Seksualno nasilje nad studentima na fakultetima u Srbiji. Beograd: Viktimolosko drustvo Srbije – VDS, 2022
- Tavares, P., Wodon Q. (2018). Ending Violence Against Women and Girls. Global and Regional Trends in Women's Legal Protection Against Domestic Violence and SexualHarassment. Washington D.C.: The World Bank. DOI:10.13140/RG.2.2.34651.49446
- Till, F. J., (1980). Sexual Harassment: A Report on the Sexual Harassment of Students. Washington, DC: U.S. Department of Education.
- UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 19: Violence against women, 1992, available at: https://www.refworld.org/docid/52d920c54.html, accessed on 30 March 2022
- Етички кодекс за студентите на Универзитетот „Гоце Делчев" – Штип, Универзитетски гласник, бр. 18 од 10 мај 2011 година; available at: https://www.ugd.edu.mk/documents/ugd/eticki_kodeks_za_studentite.pdf, accessed on 30 March 2022

- Етички кодекс на Бизнис академија Смилевски, available at: https://bas.edu.mk/dl/vaznidokumenti/BAS_Etichkikodeks.pdf, accessed on 30 March 2022
- Етички кодекс на Универзитетот „Гоце Делчев" – Штип, Универзитетски гласник, бр. 18 од 10 мај 2011 година; available at: https://www.ugd.edu.mk/documents/ugd/eticki_kodeks_za_vrabotenite.pdf, accessed on 30 March 2022
- Етички кодекс на Универзитетот „Св. Кирил и Методиј" во Скопје, Универзитетски гласник, бр. 549 од 10 мај 2021 година; available at: http://www.ukim.edu.mk/dokumenti_m/248_Eticki_kodeks.pdf, accessed on 30 March 2022
- Етички кодекс на ФОН Универзитетот од 30.05.2011 година, available at: https://fon.edu.mk/content.aspx?cid=161, accessed on 30 March 2022
- Закон за еднакви можности на жените и мажите, Службен весник на РСМ, бр. 6 од 13.01.2012 година;
- Закон за заштита на децата, Службен весник на РСМ, бр. 23 од 14.02.2013 година;
- Закон за заштита од вознемирување на работно место, Службен весник на РСМ, бр. 79 од 31.05.2013 година;
- Закон за работните односи-пречистен текст, Службен весник на РСМ, бр. 167 од 28.09.2015 година;
- Закон за спречување и заштита од дискриминација, Службен весник на РСМ, бр. 258 од 30.10.2020 година;
- Закон за спречување и заштита од насилство врз жените и семејното насилство, Службен весник на РСМ, бр. 24 од 29.1.2021 година.

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ENVIRONMENTAL POLICIES IN SERBIA AND THE VIOLATION OF THE RIGHTS OF THE CHILD***

Several aspects of the rights of the child depend on environment quality and conservation. Therefore, the breach of environmental provisions may result in the violation of the rights of the child, either through criminal offences against environment, or through long-term application of environmental policies that are harmful for the rights of the child or do not take into consideration the needs and best interest of the child. The authors analyse normative framework of the Republic of Serbia, including ratified international conventions as well as national legislative and strategic documents, pertinent to both children's rights and environmental protection. The authors also analyse the data obtained from relevant reports describing current state of both - environmental and children's rights protection in Serbia. The authors conclude that the rights of the

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child are not given enough attention in documents regulating environmental protection and sustainable development in the Republic of Serbia, particularly when it comes to children from marginalized groups living in substandard settlements.

Key Words: child's rights, environmental protection, international standards, human rights, ecology

1. Introduction

Protection of the rights of the child is closely interrelated with environmental preservation. Namely, the violation of the right of the child to a healthy environment can have devastating and life-threatening consequences (Banić, 2021a: 5). According to the reports of World Health Organization, each year, between 1,7 and 5,9 million deaths of children under the age of five are related to environmental pollution that could have been prevented (Banić, 2021a: 5). For example, air pollution is the direct cause of 570.000 deaths of children under the age of five due to respiratory infections such as pneumonia (Banić, 2021a: 5).

Several aspects of children's rights depend on environmental quality, including: the right to life, the right to development, the right to health, the right to adequate standard of living and the right to a clean, healthy and sustainable environment, as well as the right to health and the right to non-discrimination, as highlighted in General Comment No. 26 (2023) on children's rights and the environment with a special focus on climate change. This dependence of children's rights on environmental conditions implies that the violation of environmental protection provisions may result in the violation of the rights of the child. In some cases, the link between environmental harm and the violation of human rights (including the rights of the child) is explicit, whereas in others it may be indirect and hardly visible, which is the reason why environmental criminal offences are frequently referred to as "victimless crimes" (Batrićević, 2013: 113-132; Marinković, 2015: 219).

Violation of the rights of the child through the breach of environmental provisions occur not only through criminal offences against environment, but also through long-term application of environmental policies that are harmful for children's rights or do not take into consideration the needs and the best interest of the child. The impact of environmental harm on victim's health and well-being may sometimes be difficult to prove in the cases of environmental criminal offences, but the situation is even more complicated if negative environmental consequences affecting children are detected but still not estimated as sufficiently serious to be treated as criminal offences (or misdemeanours). The fact that these

cases of negative environmental impacts are not considered criminal offences (or misdemeanours) means that there will be no state reaction to them.

2. Theoretical Background

In this paper, the rights of the child and environmental protection are defined in accordance with relevant international legal documents ratified by the Republic of Serbia, as well as in lieu of the Constitution of the Republic of Serbia and national legislation regulating the protection of the rights of the child, on the one hand and environmental protection, on the other. National strategic documents of the Republic of Serbia, from which the conclusions about public policies in the field of the protection of the rights of the child and environmental conservation are drawn, are also analysed in this paper. Moreover, the findings from the reports of relevant international bodies pertinent to both – the rights of the child and environmental protection in Serbia and in the Western Balkans as well as reports and findings of relevant national state bodies are also discussed in this paper.

The term *"child"* is defined in accordance with both - relevant international legal sources, and national legislation of the Republic of Serbia. According to Article 1 of UN Convention on the Rights of the Child[1] (hereinafter: CRC), the term *"child"* refers to *"every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier"* (Article 1, CRC). According to Family Law of the Republic of Serbia[2] (hereinafter: FL), adulthood is obtained at the age of eighteen (Article 11, Paragraph 1, FL), which is in harmony with CRC.

CRC proclaims four general guiding principles that are underpinning the rights of the child: 1) the principle of non-discrimination, 2) the principle of the best interest of the child, 3) the principle of life, survival and development and 4) the principle of inclusion and participation. These principles have to be taken into consideration in the process of interpretation and implementation of CRC in all spheres of a child's life, including those that are related to or depend on environmental conservation and protection.

In Article 3 of CRC, it is declared that *"in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child*

1 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990). See also: Law on Ratification of the United Nations Convention on Child's Rights, Official Gazette of SFRY – International Agreements, No. 15/1990 and Official Gazette of SFRY – International Agreements, No. 4/1996 and 2/1997.

2 Family Law, Official Gazette of the Republic of Serbia, No. 18/2005, 72/2011 and 6/2015.

shall be a primary consideration" (Article 3, Paragraph 1, CRC). Consequently, CRC obliges States Parties to *"undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her"* as well as to "*take all appropriate legislative and administrative measures"* for that purpose (Article 3, Paragraph 2, CRC). CRC also obliges States Parties to apply *"all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention"*, emphasising that the Parties to the Convention should implement these measures *"to the maximum extent of their available resources and, where needed, within the framework of international cooperation"* (Article 4, CRC).

The concept of the rights of the child and the best interest of the child is applied in national legislation of the Republic of Serbia in accordance with the principles declared by CRC, even though there are still some practical issues that need to be improved (compare: Petrović *et al.,* 2015 25). First, the Constitution of the Republic of Serbia[3] (hereinafter: CRS) proclaims that children have all human rights in accordance with their age and maturity (Article 64, Paragraph 1, CRS). CRS also declares that children have to be protected from psychological, physical, economic and any other form of abuse (Article 64, Paragraph 3, CRS). Finally, CRS prescribes that the rights of the child and the protection of children are regulated by the law, which, in this case is the aforementioned FL.

Accordingly, FL obliges everyone to take into consideration the best interest of the child in all activities that are related to children (Article 6, Paragraph 1, FL). The same provision declares that the state has the obligation to undertake all necessary measures in order to provide the protection of the child from neglect, physical, sexual and emotional abuse as well as from any form of abuse (Article 6, Paragraph 2, FL). According to the FL, the state also has the duty to respect, protect and improve the rights of the child (Article 6, Paragraph 3, FL). FL is also familiar with the concept of the right of the child to development and proclaims that every child has the right to the best possible living and health conditions for his or her regular and complete development (Article 62, Paragraph 1, FL). The right to education is also guaranteed by FL, highlighting that every child has the right to education in accordance with his or her capabilities, goals, and aspirations (Article 63, Paragraph 1, FL). All these rights are related to the environmental conditions, and cannot be properly enjoyed without a healthy environment, which is further explained in this paper.

3 Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 98/2006 and 115/2021.

Several international legal documents have been adopted with the purpose to guarantee the protection of the right to healthy environment (Rakočević, 2014: 45). The Republic of Serbia has ratified most international sources of law relevant to environmental protection and its environmental legislation is predominantly in accordance with international standards in this area. For the purpose of this paper, the term "environment" is defined in accordance with Law on Environmental Protection of the Republic of Serbia[4] (hereinafter: LEP) (see also: Joldžić, 2019) that considers the environment as the assembly of natural and human-made values whose complex mutual relations create the surrounding, i.e., the space and conditions for life (Article 3, Paragraph 1, Point 1, LEP).

When the definition of the right to a healthy environment is concerned, it is important to mention that the Republic of Serbia proclaims it on the constitutional level. Namely, CRS declares that everyone has the right to a healthy living environment as well as the right to be promptly and completely informed about its condition (Article 74, Paragraph 1, CRS). Moreover, CRS emphasises that everyone is responsible for environmental protection, and particularly the Republic of Serbia and its autonomous province (Article 74, Paragraph 2, CRS). Lastly, CRS also obliges everyone to conserve and improve the environment (Article 74, Paragraph 3, CRS).

3. Methodology

Two methodological approaches are applied in this paper. Normative method is applied for the purpose of interpretation of relevant national and international legislation pertinent to the rights of the child and environmental conservation as well as on strategic documents setting directions and goals for future normative and practical steps in these areas. Qualitative study is applied on relevant reports with the aim to obtain the information about current courses in policies regarding these two areas in the Republic of Serbia as well as to identify key challenges in these fields.

4. Results

4.1. Introductory remarks

The analysis of the information gathered by the methods is aimed at estimating whether the rights of the child are sufficiently taken into consideration in

4 Law on Environmental Protection, Official Gazette of the Republic of Serbia, No. 135/2004, 36/2009, 36/2009, 72/2009, 43/2011, 14/2016, 76/2018, 95/2018 and 95/2018.

relevant legislative, strategic and policy documents dedicated to environmental protection in the Republic of Serbia. These findings are also compared with the data obtained from relevant reports describing the current state of both – environmental protection and the protection of the rights of the child in Serbia. The groups of children that are particularly affected by environmental degradation are identified in accordance with both – legislative and strategic documents on the one hand and reports of relevant stakeholders on the other. At the beginning of the analyses, the groups of children that are particularly affected by environmental degradation are identified and the need for their special protection is pointed out. After that, the rights of the child that are most frequently and most severely violated due to environmental degradation are highlighted, together with the causes of such situation and the focus on the need to improve it. These rights and their violations are viewed from the perspective of General Comment No. 26 (2023) on children's rights and the environment with a special focus on climate change, which is the latest document providing insight into the area of children's rights from the aspect of environmental protection or, in other words, "through ecological lens".

4.2. Children particularly affected by environmental degradation

Public policies of the Republic of Serbia identify several groups of citizens as particularly exposed to the risk of marginalisation and exclusion: persons with disabilities, children, young persons, women, elderly persons, members of Roma national minority, persons without elementary education, unemployed persons, refugees, internally displaced persons, and inhabitants of rural areas (Stevanović, 2013: 93). Furthermore, relevant national strategic documents classify some groups of children as especially vulnerable, particularly in the terms of their health: young persons without parental care, children involved in the life and work on the streets, children living in educational institutions, poor children, children and young persons that are not within in the educational system, young persons in need of special support, internally displaced children and child refugees (Stevanović, 2013: 93; Stevanović, 2014). This means that the Republic of Serbia recognizes that some groups of children and young persons are under health risk, but without emphasising the direct link between health risk of these groups of children and environmental pollution and degradation.

On the other hand, in Part I, point A, paragraph 8 of General Comment No. 26 (2023), it is mentioned that environmental degradation particularly affects the enjoyment of human rights of specific groups of children including: children with

disabilities, indigenous children, and children working in hazardous conditions. Due to specific difficulties that the Roma Population in the Western Balkans are facing when it comes to the right to housing, Roma children are particularly susceptible to negative impacts of environmental harm and should be recognized as such. Namely, according to Best Practices for Roma Integration Regional Report on Housing Legalisation, Settlement Upgrading and Social Housing for Roma in the Western Balkans, published by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) in 2014 (ODIHR, 2014) *"The housing situation of the great majority of the Roma population in the Western Balkans is characterised by inadequate conditions. They live in substandard shelter that does not meet adequate living standards, as defined by the international community. The most prominent housing problems faced by Roma are their lack of security of tenure, the informal and illegal nature of their settlements, which makes them susceptible to forced evictions, and their substandard housing conditions, which undermine their health, education and (adequate) access to basic services and infrastructure."*

Also, findings published by several entities (including state bodies and non-governmental organisations) in Serbia, confirm the presence of children who are especially vulnerable to devastating impacts of environmental degradation – children who are not only working but also living in substandard Roma settlements. As it is explained in Best Practices for Roma Integration Regional Report on Housing Legalization, Settlement Upgrading and Social Housing for Roma in the Western Balkans, published by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) in 2014: *"The location of Roma settlements on the periphery of cities without proper infrastructure to sustain a decent living also contributes to low school attendance and increased school dropout rates among children, as well as poor access to primary health care"* (ODIHR, 2014: 40). In Serbia, these settlements are also predominantly located in the suburbs of larger cities such as: Belgrade, Leskovac, Niš, Novi Sad, Vranje, Požarevac etc., which makes a rather large number of people almost completely isolated from the rest of the inhabitants of these cities. For example, it is estimated that the total number of substandard Roma settlements in Serbia is 702, with altogether 167.975 inhabitants (OHCHR, 2020: 5-6).

In Serbia, similarly to other Western Balkan countries, the inhabitants of substandard settlements mostly have limited access to: safe water, sewerage network, electricity and sustainable sources of income. Their predominant source of income is collecting of secondary raw materials, and they are often exposed to social exclusion, discrimination, marginalization, and increased risk from various health problems, particularly during COVID-19 pandemic (OHCHR, 2020: 5-6). This is confirmed by the aforementioned Best Practices for Roma Integration

Regional Report on Housing Legalization, Settlement Upgrading and Social Housing for Roma in the Western Balkans, published by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) in 2014, claiming that: *"They (the inhabitants of substandard settlements in the Western Balkans) suffer from specific obstacles that aggravate their housing conditions, such as racism and discrimination, both from public officials and society at large. Burdensome rules, restrictions, and discriminatory practices in the implementation of housing policies, in turn, limit their access to social housing"* (ODIHR, 2014: 15).

A report entitled as Breaking the Cycle of Roma Exclusion in the Western Balkans, published by World Bank Group in 2019 confirms that some efforts have been made to improve the living and working conditions of Roma in substandard settlements, especially in Bosnia and Herzegovina and in Serbia, accentuating that the progress in not yet at the sufficient level (World Bank Group, 2019: 8). The Report says that: *"Many Roma live in slums or informal settlements and experience severe overcrowding; ethnic gaps persist in access to essential services, although there has been progress in some countries. The expansion of access to services, such as electricity, piped water inside the dwelling, connections to public sewerage or wastewater tanks, and waste collection, has been inclusive in Bosnia and Herzegovina and Serbia, but there are still large gaps, and some areas remain underserved. The lack of secure land titling in informal settlements contributes to shortages in housing and services among many marginalized Roma"* (World Bank Group, 2019: 8).

Best Practices for Roma Integration Regional Report on Housing Legalization, Settlement Upgrading and Social Housing for Roma in the Western Balkans, published by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) in 2014 (ODIHR, 2014) states that: *"In the Western Balkans region, the provision of housing for Roma in isolated locations and in segregated housing compounds has reinforced their social and economic exclusion, and promoted the formation of ghettos"* (ODIHR, 2014: 15).

In the context of the protection of the rights of the child in Serbia, it is important to mention that in its Concluding observations on the combined second and third periodic reports of Serbia (2017), Committee on the Rights of the Child emphasized that in these settlements children do not have access to basic services, including safe drinking water and sanitation, which makes them particularly vulnerable to severe health problems (UN Committee on the Rights of the Child, 2017) Annual Progress Report of the European Commission for Serbia for 2022 confirms that: *"Almost 20% of the population of the Roma settlements that were mapped have no or irregular access to safe drinking water, while over 55 % have no or irregular access to sewer networks, and 14.5 % have no or irregular access*

to electricity. These shortcomings were exacerbated by the COVID-19 pandemic" (European Commission, 2022: 47)

Also, a report entitled as Climate Landscape Analysis and its Impacts on Children in Serbia, published by UNICEF in Serbia in 2021 highlights that: *"Despite the fact that children, particularly those who are members of vulnerable groups, have been and will continue to bear the brunt of CE hazards in Serbia, such as air pollution and flooding, the climate change and environmental degradation (CE) agenda in Serbia does not sufficiently address their needs"* (UNICEF in Serbia, 2021).

4.3. The Right to Education

Part III Point C, paragraphs 31-38 of General Comment No. 26 (2023), which refers to the right to education, highlights the important role that education has in a child rights-based approach to the environment. However, it should be noted that not all children have equal access to relevant educational resources. This primarily refers to children who live in substandard Roma settlements, who, in some cases leave school at early age, who are often exposed to discrimination at school, and who do not have the possibility to attend distance-learning programs due to the lack of internet access and necessary technological equipment. A report entitled as Breaking the Cycle of Roma Exclusion in the Western Balkans, published by World Bank Group in 2019 states that*:"Across the region (the Western Balkans), the coverage of education among Roma is narrow, and ethnic gaps are wide. Though there was some improvement in 2011–17, gaps between Roma and their non-Roma neighbours remain substantial, especially in upper-secondary and tertiary education"* (World Bank Group, 2019: 2). The same report highlights that: *"The financial costs are a main barrier to enrolment in compulsory school and higher levels of education, but child marriage is also an important barrier among Roma females"* (World Bank Group, 2019: 4). Segregation of Roma students in the schools in the Western Balkans still seems to be a problem, and the Report points out that: *"Across countries, most Roma students report that they attend integrated schools, although a large share still attend majority Roma schools, possibly signalling lower-quality education in the latter"* (World Bank Group, 2019: 4).

The number of Roma attending all levels of education has increased in the last years and fewer Romani children are sent into special schools. However, attendance rates and attainment rates among Romani children are still lower than among their non-Romani peers and segregated schooling for Romani children still exists (World Bank Group, 2019: 4; see also: Batrićević, Kubiček, 2020).

Finally, the importance of adequate environment and housing as a precondition for education is highlighted in Best Practices for Roma Integration Regional Report on Housing Legalization, Settlement Upgrading and Social Housing for Roma in the Western Balkans, published by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) in 2014, claiming that: *"Having an affordable home provides stability for families and positive 'spin off effects', for instance helping children to achieve better results in school"* (ODIHR, 2014) However, this cannot be achieved without appropriate housing and healthy living conditions.

This problem is also addressed in Serbia Progress Report for 2022, published by the European Commission, highlighting the following facts: *"Roma students in elementary and secondary education continued to receive scholarships through affirmative measures. School drop-out rates remain high, especially for Roma girls, although the multiple indicator cluster surveys (MICS) show a reduction of 7 %. Only 7.4 % of Roma children up to 5 years of age attend preschool. During the COVID-19 pandemic, Roma children, mainly from informal settlements, struggled to take part in online education for lack of access to the technical resources. The transition rate to secondary schools for Roma students is 52.6 %, while the completion rate is 61 % - an increase of 20 %, compared to the previous MICS. Segregation in education needs to be addressed. Roma students are still overrepresented in special schools and classes"* (European Commission, 2022: 47).

4.4. The right to adequate standard of living and the right to a clean, healthy, and sustainable environment

Part III Point D, of General Comment No. 26 (2023) pertaining to adequate standards of living in accordance with Article 27 of CRC emphasizes that children have the right to a standard of living adequate for their physical, mental spiritual, moral and social development. As it has already been mentioned when commenting Part I, point A, paragraph 8 of General Comment No. 26 (2023) (which refers to vulnerable groups of children), it should be noted that children living in substandard Roma settlements in the Western Balkans do not live under adequate standards, especially when it comes to availability of adequate housing drinking water, sanitation, healthy and safe food, protection from diseases, clean, healthy and sustainable environment.

4.5. The right to non-discrimination

In Part III Point G Paragraph 50 of General Comment No. 26 (2023), referring to the right to non-discrimination, several groups of children exposed to the

risk of discrimination are enumerated, including children who are the members of national minorities and children who live and work under hazardous conditions.

All Western Balkans countries seem to be facing the problem of Roma discrimination. According to a publication The Wall of Antigypsyism – Roma in The Western Balkans, published by Civil Rights Defenders in 2017*:" The discrimination that Roma face in all spheres of life, be it in employment, in access to health care or in education system, is not only interrelated, but mutually reinforced and creates over time a nearly unsurmountable barrier between non-Roma and Roma in terms of participation in the public or political life of a country"* (Civil Rights Defenders, 2017: 7). Therefore, it should be highlighted that combating this form of discrimination in the Western Balkans Region is to be one of the most important means to affirm the right of the child to non-discrimination, particularly in the area of education, but in other fields of life as well.

In paragraph 51, also referring to the right to non-discrimination, the states are advised to collect relevant data to identify the impacts that environmental-related harm may have on children, particularly on those children who are most at risk and implement appropriate measures as required. Perhaps it would be useful to suggest a general form or guidelines, according to which these data could be collected, suggesting the state bodies or non-governmental organizations that would oversee collecting such data and creating accessible data basis and the measures that are considered suitable and appropriate for these situations should also be enumerated. The only example given in the Comment (Paragraph 51) is the following: "States should review emergency protocols to include assistance and other support for children with disabilities during climate-related disasters". Apart from children with disabilities, that are mentioned in this example, perhaps some more detailed examples of measures should be given to address children from other groups that have been identified as particularly vulnerable.

4.6. The best interest of the child and precautionary principle in environmental protection

In the Part III Point H Paragraphs 52-55 of General Comment No. 26 (2023), referring to the best interest of the child, it is suggested that the laws, regulations, agreements, policies, standards, and guidelines, plans and strategies budgets, international agreements and development assistance should take into consideration the best interest of the child in the context of making decisions that affect the environment. With that purpose, it is suggested that the states should follow the procedure that ensures that the best interest of the child is given the

appropriate amount of attention and respect. However, the practice in the Republic of Serbia has shown that the general interest to protect the environment from harmful impacts of some activities such as, for example, mining and building mini hydro power plants is not always taken into consideration.

In Part II, point D, paragraph 15 of General Comment No. 26 (2023), referring to precautionary principle, it is emphasized that decision-makers are responsible for assessing whether an activity affecting the environment would be harmful for children. Moreover, the states are expected to develop adequate measures to prevent environmental harm including *"eliminating childhood exposure to pollution and toxic substances…"* Unfortunately, it seems that relevant entities in the Republic of Serbia are not applying appropriate measures to minimize air pollution. Almost 10 years ago, Health and Environment Alliance (HEAL) warned that citizens all over the country breathe in the air that is harmful to health and relevant reports show that for example, concentrations of PM2.5 and PM10 are much higher than what the European Union and the World Health Organization (WHO) consider acceptable (HEAL, 2014).

This trend continued and no efforts have been made to improve the situation. Therefore, Belgrade and other cities in Serbia are often among the most polluted ones in the world, particularly due to PM pollution, which causes severe health problems (including lung cancer, COPD, IHD, stroke, respiratory diseases, cardiovascular diseases, and acute lower respiratory tract disease) affecting not only adults but very small children as well (World Health Organization Regional Office for Europe, 2019: 11). The facts are also relevant to Part III, point B of General Comment No. 26 (2023), referring to the right to the highest attainable standard of health, where environmental pollution is being identified as major threat to children's' health, as explicitly recognized in Article 24 (2) (c) of the CRC.

5. Discussion / Policy Implications

The results of the analysis of international and national legislative and strategic framework on the one side and reports on the situation in the field, on the other, indicate that there are some serious concerns in Serbia regarding the respects of children's rights that are related to environmental protection. Based upon these findings, it can be assumed that the rights of the child are not given enough attention in documents regulating environmental protection and sustainable development in the Republic of Serbia. This particularly refers to the children from marginalized groups living in substandard settlements.

The findings presented in this paper confirm that children inhabited in substandard Roma settlements are constantly exposed to negative impacts of environmental pollution and the risk of disease, particularly in the context of COVID-19 pandemic, and are deprived of the right to healthy living and working environment and safe and accessible drinking water. Such living conditions represent direct threat to their life, survival and development, which are all mentioned in Part III Point A, of General Comment No. 26 (2023). They are also relevant to Part III, point B paragraph 29 of General Comment No. 26 (2023), referring to the access of children to health care facilities, safe and clean drinking water and sanitation, adequate housing, food and healthy working conditions as well as to Part III Point D of General Comment No. 26 (2023), pertaining to adequate standards of living in accordance with Article 27 of CRC.

These issues have been highlighted in the reports of non-governmental organizations and of the European Commission, but despite their conclusions, no progress has been made in this field. Similar can be concluded for the issue of clean, healthy, and sustainable environment, since it is directly linked to adequate standard of living. Namely, adequate standard of living cannot be achieved in non-hygienic, unhealthy, and unsustainable environment, which is obviously the case in substandard Roma settlements.

The importance of adequate environment and housing as a precondition for education is highlighted in several sources presented in this paper and it can be concluded that, despite some efforts across the Western Balkans Region, there are still some serious concerns regarding the housing and accommodation of Roma children which, consequently, affects the accomplishment of their right to education. In this context, the impact of environmental degradation is indirect, since it represents only a part of the negative impacts they are exposed to, including poverty, lack of access to the internet, distance from schools etc.

It has already been emphasized that all Western Balkans countries appear to be facing the problem of Roma discrimination. However, there seems to be the lack of awareness between the discrimination of Roma children and the violation of their right to healthy living environment. Although they are recognised as particularly vulnerable in relevant strategic documents, the causes of their vulnerability and victimisation from discrimination are not directly linked with their exposure to negative environmental impacts. To be more exact, the fact that Roma children are dwelling in substandard settlements, often segregated from the rest of the city is considered as the violation of the principle of non-discrimination, but it is not sufficiently emphasized that this form of segregation contributes to their exposure to negative environmental impacts. The same refers to children working as secondary raw materials collectors, children that work on landfills etc.

6. Conclusion

Normative framework of the Republic of Serbia regulating the issue of environmental protection is harmonized with international standards, but a series of alterations and amendments is planned for the laws pertinent to the protection of the rights of the child. The most important one refers to the adoption of a comprehensive Law on the Rights of the Child and Ombudsperson for Children, which is still a draft document (Coalition for Monitoring Child Rights, 2022). The adoption of this law would provide a more detailed and comprehensive protection of the rights of the child, including a more efficient mechanism for prevention and reaction to their violations. According to Coalition for Monitoring Child Rights, the adoption of this comprehensive law would contribute to the harmonisation of the entire legal system related to children, better coordination of all sectors involved, and it would facilitate the harmonization of current legislative frameworks in all sectoral laws in line with the solutions contained in that law (Coalition for Monitoring Child Rights, 2022). This emphasis on multisectoral approach to the protection of the rights of the child is of crucial importance since it would enable the positioning of a bridge between the area of children's rights and environmental protection. To be more exact, more intense intersectoral cooperation would include meetings of representatives of different sectors and exchange of information, experiences, and ideas in order to provide for better protection of the rights of the child.

Also, actual policies and practice should be more adjusted to specific needs of children, as a group that is particularly vulnerable and susceptible to environmental impacts. Like the concept of "child friendly justice" there seems to be the need for the introduction of a term "child friendly ecology" in present environmental policies. To be more exact, strategic documents arranging the fields of environmental protection, sustainable development, energetic efficiency, urbanisation, and related areas should have special sections dedicated to the protection of children's rights within their scope of application. For example, they should contain provisions that prescribe special measures designed to provide the protection of the rights of the child in the following contexts: the regulation of the future of substandard settlements, the sustainable development of urban areas and traffic infrastructure (see: Batrićević, Stevanović, 2023), labour conditions in waste management and recycling industry, the prevention of discrimination and segregation of Roma children and the provision of their access to education, including the education in the area of ecology and environmental protection etc.

Another significant measure is the raising of public awareness about the importance of environmental issues in general (Batrićević *et al.,* 2018), and particularly in the context of the protection of the rights of the child. This should be the task

of all relevant institutions, organisations and individuals as their representatives and it should be completed via media, social networks, education, scientific conferences, and other available channels of communication. It is particularly significant to highlight the fact that children should be included in this process of public awareness raising, particularly within the education system and through the content that is adjusted to their age and maturity. Education about the right to a healthy environment, sustainable habits, obtaining accurate information about the condition of the environment are particularly challenging and should be approached with due attention (Banić, 2021b). In this area as well, the cooperation between all sectors involved and a multidisciplinary and intersectoral approach are of substantial importance.

References

- Banić, M. (2021a) *Analiza zakonodavstva Republike Srbije iz perspektive prava deteta na zdravu životnu sredinu*. Beograd: Centar za prava deteta.Banić, M. (2021b) *Prava deteta na zdravu životnu sredinu u Republici Srbiji.* Beograd: Centar za prava deteta.
- Batrićević, A. (2013) Ekološka krivična dela – zločini bez žrtve? *Temida*, *16* (1), 113-132. https://doi.org/10.2298/TEM1301113B
- Batrićević, A., Joldžić, V. Paunović, N., Stanković, V. (2018) Ekološka svest i ekološka kultura: od ideja do realnosti. *Socijalna misao*, *25*(1), 125-141.
- Batrićević, A., Kubiček, A. (2020) Obrazovanje romske dece u Srbiji izazovi i perspektive. *Socijalna misao, 27*(1), 27-44.
- Batrićević, A., Stevanović, I. (2023) Traffic Pollution in the Cities: Ecological Aspects of Urban Safety. In: Batrićević, A., Obradović, D. (Eds.) International scientific thematic conference Traffic, Criminality and Urban Safety, Palic, 14-15 June 2023. Belgrade: Institute of Criminological and Sociological Research, 287-300.
- Civil Rights Defenders (2017) *The Wall of Antigypsyism – Roma in The Western Balkans*, available at: https://crd.org/wp-content/uploads/2018/03/The-Wall-of-Anti-Gypsyism-Roma-in-Western-Balkans.pdf, accessed on 20.09.2023.
- Coalition for Monitoring Child Rights (2022) *Serbia 2022 Progress Report - Written submission from the coalition for monitoring child rights in Serbia*, available at: https://cpd.org.rs/wp-content/uploads/2022/04/Written-submission_Coalition-for-Monitoring-Child-Rights-in-Serbia-April-2022.pdf, accessed on 20.09.2023.
- Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 98/2006 and 115/2021.
- Convention on the Rights of the Child opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

- European Commission, (2022). *338 final Commission Staff Working Document, Serbia 2022 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022 Communication on EU Enlargement policy*, available at: https://www.stat.gov.rs/media/358410/serbia-report-2022-1.pdf, accessed on 04.10.2023.
- Family Law, *Official Gazette of the Republic of Serbia,* No. 18/2005, 72/2011 and 6/2015.
- Health and Environment Alliance (HEAL) (2014). *Briefing: Air Pollution and Health in Serbia Facts, Figures and Recommendations,* available at: https://www.env-health.org/IMG/pdf/heal_briefing_air_serbia_eng.pdf, accessed on 04.10.202Joldžić, V. (2019) Legal protection of values, rights and obligations established by the ecology (environmental) law, with special emphasis on misdemeanor norms. *Journal of Criminology and Criminal Law, 57*(3), 43-56.
- Law on Environmental Protection, Official Gazette of the Republic of Serbia, No. 135/2004, 36/2009, 36/2009, 72/2009, 43/2011, 14/2016, 76/2018, 95/2018 and 95/2018.
- Law on Ratification of the United Nations Convention on Child's Rights, Official Gazette of SFRY – International Agreements, No. 15/1990 and Official Gazette of SFRY – International Agreements, No. 4/1996 and 2/1997.
- Marinković, N. (2015) Ekološki kriminalitet. *Revija za kriminologiju i krivično pravo, 53*(2-3), 217-229.
- OSCE's Office for Democratic Institutions and Human Rights (ODIHR) (2014). *Best Practices for Roma Integration Regional Report on Housing Legalization, Settlement Upgrading and Social Housing for Roma in the Western Balkans*, available at: https://www.osce.org/files/f/documents/4/c/115737.pdf, accessed on 04.10.2023.
- OHCR (2020) *Report - Mapping of Substandard Roma Settlements according to Risks and Access to Rights in The Republic of Serbia with Particular Attention to the COVID-19 Epidemic*, available at: https://serbia.un.org/sites/default/files/2020-12/web-mapiranje_podstandardnih_romskih_naselja-27-11-eng%20%28002%29.pdf, accessed on 25.01.2023.
- Petrović, M., Stevanović, I., Golić Ružić, M., Anđelković, M. (2015) *Drugi i treći alternativni periodični izveštaj o primeni Konvencije o pravima deteta u Republici Srbiji (2008-2014).* Beograd: Centar za prava deteta
- Rakočević, V. (2014) Krivična djela protiv životne sredine i uređenja prostora u crnogorskom krivičnom zakonodavstvu (novi oblici). *Revija za kriminologiju i krivično pravo, 52*(2), 43-65.
- Social Inclusion and Poverty Reduction Unit of the Government of the Republic of Serbia and the United Nations Human Rights Team, Office of the United Na-

tions High Commissioner for Human Rights (OHCHR) (2020). *Mapping of Substandard Roma Settlements according to Risks and Access to Rights in The Republic of Serbia with Particular Attention to the COVID-19 Epidemic,* available at: https://serbia.un.org/sites/default/files/2020-12/web-mapiranje_podstandardnih_romskih_naselja-27-11-eng%20%28002%29.pdf, accessed on 04.10.2023.

- Stevanović, I. (2013) Deca uključena u život ili rad na ulici kao žrtve iskorišćavanja i zloupotreba. *Temida, 16*(1), 93-112. https://doi.org/10.2298/TEM1301093S
- Stevanović, I. (2014) *Deca koja čekaju.* Beograd: Institut za kriminološka i sociološka istraživanja.
- Strategy of Sustainable Urban Development of the Republic of Serbia until 2030, Official Gazette of the Republic of Serbia, No. 47/2019.
- UN Committee on the Rights of the Child (2023). *General comment No. 26 on children's rights and the environment with a special focus on climate change,* available at: https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-26-2023-childrens-rights-and , accessed on 04.10.2023.
- UN Committee on the Rights of the Child (CRC) (2017). *Concluding observations on the combined second and third periodic reports of Serbia*, CRC/C/SRB/CO/2-3, available at: https://www.refworld.org/docid/58e76fc14.html accessed on 02.10.2023.
- UNICEF in Serbia (2021). *Climate Landscape Analysis and its Impacts on Children in Serbia*, available at: https://www.unicef.org/serbia/media/18361/file/CLAC%20Report%20ENG.pdf accessed on 02.10.2023.
- World Bank Group, European Union (2019). Breaking the Cycle of Roma Exclusion in the Western Balkans, available at: https://documents1.worldbank.org/curated/en/642861552321695392/pdf/Breaking-the-Cycle-of-Roma-Exclusion-in-the-Western-Balkans.pdf accessed on 04.10.2023. https://doi.org/10.1596/31393
- World Health Organization Regional Office for Europe (2019). *Health impact of ambient air pollution in Serbia a Call to Action*, available at: https://serbia.un.org/sites/default/files/2019-10/Health-impact-pollution-Serbia_0.pdf accessed on 04.10.2023.

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SPECIAL MEASURES AND REGISTERS FOR SEX OFFENDERS – NORMATIVE FRAMEWORK IN SERBIA AND COMPARATIVE LEGAL ANALYSIS[1]

In recent years the attention of the wide audience and academics has been directed toward sexual offending in general and child sexual abuse. On the one hand, there is a pressing need to protect the youngest and enable the realization of the best interests of the child, and on the other, there is also a need to adequately address the moral panic caused by these brutal crimes against minors. With the aforementioned challenges, it is easy to forget that sex offenders also enjoy human rights that must not be violated, regardless of the importance of the goal that is being pursued. Bearing in mind the above, the article is devoted to the analysis of the Serbian substantive legal framework that defines the application of special measures and the registration of sex offenders, and

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to the comparison of this framework with the laws in the United Kingdom and France. The aim of the paper is to point out the possibilities for improving current Serbian legislation in order to achieve the most comprehensive protection of children while respecting relevant European standards and maintaining the rule of law.

Keywords: sex offenders, sex offender register, supervision, human rights.

1. Introduction

Criminal laws throughout the world recognize the category of criminal offenses against sexual freedom, with classic criminal offenses such as rape and illicit sexual acts, while in most countries, including Serbia, the most serious sex crimes are those that include the victimization of minors. However, the mechanisms of protection against child sexual abuse, due to the complexity of this phenomenon, in modern times go beyond the criminalization of certain behaviors, so some specific measures that could be implemented during and after the implementation of the criminal sanction are also being considered. Additional obligations for Serbia and other European countries were conditioned by the ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse[2] (hereinafter: Lancerot Convention), which requires states to establish and implement comprehensive measures both in terms of reacting to child sexual abuse that has already occurred, and in the domain of the prevention of this malignant phenomenon (Miladinović-Stefanović, 2014: 568). Special measures for sex offenders thus range widely: from entering the personal data of convicted persons into a special database, a certain level of informing the public about the activities of offenders and the application of individualized treatments, all the way to active supervision and certain limitations of the rights of convicted persons.

The Parliamentary Assembly of the Council of Europe (PACE) adopted Resolution 1733(2010) on Reinforcing measures against sex offenders, on 21 May 2010, which emphasizes the importance of recognizing the specific danger of sexual offenses and providing the most comprehensive protection to both children and other categories of victims. It states that the "register of sex offenders" is a mechanism that ensures the notification of authorized subjects about the personal

2 Law on Ratification of the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse, *Official Gazette of RS - International Treaties*, No. 1/2010.

data of convicted sex offenders: such as name, address and date of birth, whereby the offenders are obliged to inform the authorities of all data changes. It is noted that the register could make a key contribution to the supervision of convicted persons, especially if it is used as a part of complex work with this population and that it can help future detection of suspects. Although the Resolution calls for the closest possible cooperation between European countries in order for the authorities to obtain information about the whereabouts of offenders, and with the aim to prevent the employment of former sex offenders in the sector that implies working with children and other vulnerable categories, the Resolution emphasizes that it does not plead for the introduction of a central European register, but that each country is authorized to form a register in accordance with its circumstances and regulations. Also, it was pointed out that the data from the registers should not be publicly available, and that the recording and provision of data must be fully harmonized with the legislation related to human rights and the protection of personal data. The necessity of organizing campaigns to raise awareness about the phenomenon of sexual abuse is highlighted.

The Council of Europe has also adopted Recommendation regarding the assessment, management and reintegration of persons accused or convicted of a sexual offense CM/Rec (2021)6, 20 October 2021, in which it was stated that sexual offenses cause negative consequences for victims and society, and that therefore organized reaction must be based on adequate risk assessment, individualized treatment and interventions aimed at the reintegration of offenders. The concept of "risk assessment" is particularly significant, which implies a series of formalized procedures undertaken by adequately trained experts in order to take into account the personal characteristics of the offender and assess the risk of future sexual offenses. Furthermore, the term "risk management" requires the application of measures and interventions both during the implementation of institutional sanctions, as well as during probation and subsequently, with the aim of preventing future offenses and enabling the reintegration of offenders. The recommendation states that dealing with sex offenders must be based on the cooperation of different agencies, in order to place the problem of sexual offenses in a comprehensive context and take into account the psychological, social, health, housing and other needs of the offender. It is particularly significant that the responsibility of official actors is insisted upon when undertaking actions related to risk management, so that they are obliged to regularly review their actions. The recommendation also contains a part related to the protection of victims, and the possibility of informing victimized persons about the whereabouts of offenders.

The World Health Organization defines child sexual abuse as any involvement of a child in sexual activities that the child does not fully understand, is unable

to give consent to, or for which the child is not developmentally prepared, or that violates the laws or some rules of society (WHO, 1999: 15). It is difficult to estimate the prevalence of sexual abuse because of the dark figure of crime which is extremely high in this area. Issues related to the detection and reporting of sexual abuse become particularly complex when children are involved (Mitrović, Grbić-Pavlović, Tomašević, 2022: 106), while it should also be borne in mind that sexual abuse of children often takes place in the privacy of home and that the perpetrators are persons close to the child (Stevanović, 2005). Studies indicate that in the USA, around 16% of males and between 25% and 27% of females were sexually abused as children (Perez-Fuentes et al., 2013), while a meta-analytic study that included results from 24 countries around the world found that the rate of victimization by sexual violence ranges between 8% and 31% when it comes to girls, and between 3% and 17% when it comes to boys (Barth et al., 2013).

It is indisputable that sexual abuse can cause negative consequences on health, sanity and personal development (Browne, Finkelhor, 1986), so, especially considering the prevalence of this phenomenon, the creation and implementation of adequate responses are of great societal impact. Therefore, the European documents plead for a comprehensive approach to the problem of sexual abuse, where the focus should not be only on mechanisms for direct monitoring and controlling the behavior of sex offenders. On the contrary, on the one hand, the Lancet Convention is dominantly related to the sanctioning of child sexual abuse through criminalization, prosecution and punishment, and on the other hand, the documents listed above draw attention to the obligations and responsibility of the state in suppressing sexual abuse through the application of prevention.

2. Special measures for sex offenders in Serbia

The Law on Special Measures for the Prevention of Criminal Offenses against Sexual Freedoms against Minors[3] (hereinafter: Marija's Law) has entered into force in 2013. Marija's law includes certain novelties related to the prosecution and sanctioning of perpetrators of sexual offenses, as well as novelties related to the treatment of these persons after the execution of the criminal sanction. The colloquial name "Marija's Law" was created in memory of eight-year-old Marija Jovanović, a victim of a crime. It should be emphasized that the scientific and professional public were not actively involved in the process of creating the law, and that even at the current moment they are not thoroughly informed about the

3 *Official Gazette of the RS*, No. 32/2013.

effects of its application. The adoption of the law was conditioned, among other reasons, by the need to respond to serious crimes that triggered general outrage, which is also characteristic of many other countries that passed laws on sexual offenses. It is common knowledge that intensive, and unfortunately sensationalist, media coverage of sexual offenses can exert a dominant influence on public attitudes, and contribute to the strengthening of stereotypes and prejudices, which is then reflected in the creation of public policies and legislative reforms (Galeste, Frodella, Vogel, 2012).

Marija's law has established a special database of persons convicted of child sex abuse and at the same time the mandatory application of special measures against certain categories of sex offenders. Juvenile sex offenders are not included in this database.

The legislator enumerates the criminal offenses that require entry into the register and the application of specific measures, which include: rape, sexual intercourse with a child, illicit sexual acts, enticing a minor to prostitution and the use of a computer network or *means of electronic communication* to commit sexual abuse of children, as well as other criminal acts. In the literature, doubts are justifiably expressed as to why certain criminal acts were omitted from the list, such as incest and human trafficking (Miladinović-Stefanović, 2014), especially considering the extremely vulnerable categories of the youngest, such as street children, who are directly exposed to the risk of being trafficked and afterward becoming victims of sexual exploitation (Stevanović, 2014: 12).

Marija's Law also defines certain special legal consequences that occur as a result of a conviction for sexual abuse of a minor, which will not be the focus of our interest on this occasion. However, it should be emphasized that the legal consequences of the conviction, in the form of a ban on obtaining public positions and a ban on establishing employment related to working with minors, are expected to last for 20 years from the judgment declaring the convicted person guilty of sexual offenses, under Art. 6 of Marija's law. At the same time, the Criminal Code of the Republic of Serbia[4] (hereinafter: CC), which was designed as a codification in the field of criminal law, provides that the legal consequences of a conviction consisting in the prohibition of the acquisition of certain rights can be prescribed for a maximum duration of up to ten years, according to Art. 96 para. 3 CC.

What is a significant novelty compared to the period before the adoption of Marija's Law is the introduction of special measures and special register for sex offenders whose victims were minors. Article 7 of Marija's Law provides that,

4 *Official Gazette of the RS*, No. 85/05, 107/05, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19.

after serving the prison sentence for the enumerated offenses, special measures are to be implemented in the form of: mandatory reporting to the police and the Directorate for the Execution of Criminal Sanctions; a ban on visiting places where minors gather (kindergartens, schools, etc.); mandatory visits to professional counseling centers and institutions; mandatory notification of authorities on changes of residence, place of residence or workplace and mandatory notification of traveling abroad, whereby these measures are implemented no longer than 20 years after the prison sentence has been served. Measures are reserved only for those sentenced to prison terms, so the question arises as to why special measures are not applied in the case of conviction to other criminal sanctions, given that the legislator stressed, in Art. 2, that the measures should prevent the perpetrators of criminal offenses against sexual freedom from committing those acts.

After four years from the beginning of the implementation of the measures, the court *ex officio* decides on the need for their further implementation, whereby the person to whom the measures refer can also submit a request for review after every two years from the beginning of the application of the special measures. The court repeats this procedure every four years.

Article 8 of Marija's Law stipulates that the measure of mandatory reporting implies the duty of the sex offender to report personally and on a monthly basis to the unit of the police in his place of residence, as well as to the organizational unit which functions under the Department for the Execution of Non-Custodial Sanctions and Measures. The organizational unit is actually one of 25 Commissioner's Offices that cover the territory of the Republic of Serbia. Also, according to Art. 11, the sex offender is obliged to personally notify the police and the Commissioner's Office about the change of his residence, place of residence or workplace, while the same obligation exists in the event of traveling abroad, of which the police must be notified no later than three days before the planned trip, according to Art. 12 of Marija's Law.

It could be said that, through Art. 10 of Marija's Law, a new treatment/safety measure was introduced into the already existing system of treatment/safety measures in Serbian criminal legislation. Thus, the perpetrator of the enumerated sex offenses is obliged to visit professional counseling centers, and to be treated according to the program determined by the Commissioner from the relevant Commissioner's Office. It should be underlined that this new measure, regardless of its specific character and preventive orientation, is automatically applied to every sex offender sentenced to prison. It is possible that the intention was that this new measure would actually substitute the conditional sentence with protective supervision which, if the conditions are met in every individual case, is applied to those who have not been sentenced to an effective prison sentence.

Some objections have been raised in the literature regarding the establishment of such a special treatment measure, given that it remains unclear whether it is a treatment/safety measure or a legal consequence of a conviction. Namely, Marija's law itself practically stipulates that treatment measures created by it are not a legal consequence of a conviction, because the legislator enumerates the legal consequences of a conviction without including treatment measures, while these special treatment measures cannot be treatment/safety measures created by CC, given that safety measures in CC are criminal sanctions that can be imposed exclusively by the court (Ristivojević, 2012: 185).

It should be underlined that Marija's Law did not directly deal with the possibilities of misuse of modern technology and *electronic communication* when committing child sexual abuse, although it is undeniable that offenders are very inventive in finding new opportunities for committing criminal offenses (Škulić, 2022: 10) and that reaching for the modern science is to be expected. It should also be borne in mind that regular reporting to the police does not affect the possibility of undertaking illegal activities in the online sphere.

If the convicted person ignores the obligation to respect the prescribed restrictions, that is, if he/she does not fulfill the prescribed duties, he/she could be charged with a misdemeanor and convicted to a prison sentence for a period of 30 to 60 days.

When it comes to keeping data in the register, it should be emphasized that it contains a large number of personal data and that data storage is permanent, meaning that the possibility of deleting existing entries is excluded. The following data relating to the convicted person will be recorded: name and surname, unique master citizen number, residential address, employment data, data for physical identification and photographs, DNA profile, data on the criminal offense and the imposed sentence, data on the legal consequences of the conviction and data on the implementation of special measures, in accordance with Art. 13 of the Marija's law. However, at the same time, it is foreseen that the data from the register is available only to a limited group of subjects. Thus, the data from the register, the management of which is the responsibility of the Directorate for the Execution of Criminal Sanctions, can be made available to: the court, the public prosecutor and the police in connection with criminal proceedings, that is, the Commissioner's Office when it is necessary to carry out tasks within their competence. Upon a request, the data can be disclosed to a state authority, company, other organization or entrepreneur, if the legal consequences of the conviction are still ongoing and if there is a justified interest based on the law, while state and other authorities, as well as legal entities or entrepreneurs engaging with minors are required to request information on whether the person who is supposed to engage with minors

is registered in a sex offender database, under Art. 15 of Marija's law. Data can also be shared with foreign governments if this is in accordance with relevant international agreements. Therefore, according to Serbian law, data on sex offenders enjoy a confidential character, and there is no possibility of their exposure to the general public, which is in accordance with European standards, as well as with practices in almost all European countries.

To summarize, in Serbia, special measures for the purpose of monitoring and treating sex offenders are applied by force of law, that is, without prior assessment of their justification by the court, although there is an obligation to periodically check the validity of their further application. Also, the possibility of removing personal data previously entered in the register is not foreseen, whereby the content of the register is not available to the lay public.

3. Special measures for sex offenders in the United Kingdom

In the United Kingdom of Great Britain and Northern Ireland (hereinafter: United Kingdom), after serving a prison sentence or other criminal sanction, most sex offenders are under supervision defined by the *Multi-Agency Public Protection Arrangements* (Guidelines for Multi-Agency Public Protection Arrangements, hereinafter: MAPPA). In fact, MAPPA implies the creation of an individualized program that will be applied to a specific sex offender, after a comprehensive assessment of risk of re-offending and with the cooperation of several agencies. Depending on the complexity and scope of the required measures, there are three levels of the regime that is to be applied, where the first two levels require a lower level of cooperation between representatives of several public agencies, while the third level requires the application of complex measures and close cooperation of representatives of the probation, health services and other systems who take care of offenders and supervise them.MAPPA was introduced through the Criminal Justice Act 2003. This document defines how the police, penal institutions and the probation service cooperate when it comes to monitoring and providing support to sex offenders. The Ministry of judicial affairs periodically publishes the MAPPA rules, and they must be applied to: 1) offenders who, under the Sexual Offences Act 2003, are obliged to periodically notify the police of their address and other personal data, 2) violent offenders who have been sentenced to imprisonment for more than 12 months or treatment in a closed institution and 3) other offenders for whom a high risk of re-offending has been determined. In each specific case, it is defined which public agency

will be the main coordinator of MAPPA implementation, so that, for example, it could be the Probation service for those who are on probation. The coordinator makes sure that the measures are designed in a timely manner.

It should be noted that certain rules are also provided for the protection of victims of sexual offenses. Thus, under certain conditions, these persons are to be informed about the release of the offender from the penitentiary, and measures can be applied with the aim of preventing contact between the victim and the sex offender.

What is particularly interesting when it comes to England and Wales is the possibility of applying civil law measures/civil orders in order to control the behavior of sex offender. Thus, when it comes to restrictive measures, there may be an application of orders consisting of the prohibition of approaching certain places such as schools or recreational centers, and it may also be prohibited to approach individualized victims. A controversy was caused by the application of civil orders related to various prohibitions and especially the Internet ban. These measures are known as SHPOs (Sexual Harm Prevention Orders) and are imposed by the court based on the Sex Offences Act 2003. The measures can last up to five years with the possibility of extension, and if the offender were to act contrary to the measures, there is a possibility of imprisonment for up to five years.

When it comes to special registers, the Violent and Sex Offender Register (hereinafter: VISOR) was established by the Sex Offences Act 2003. The data of all persons who have served a prison sentence of at least 30 months, both for sexual offenses and for serious violent offenses, are permanently entered in the register. When it comes to convictions lasting between six and 30 months, the personal data are kept for ten years, while in the case of those sentenced to a prison sentence of fewer than six months or sent to outpatient treatment, the data is kept for seven years. Finally, for offenders who were given only warning measures, data is stored in VISOR for two years, or during the probation period for those persons who are subject to probation measures. For juvenile offenders the data is kept for shorter periods of time. Due to objections that the permanent recording of data, without the possibility of erasure, is against the concept of respecting human rights, and after the judgment of the Supreme Court in 2010, the possibility of erasure has been foreseen after 15 years from the initial recording (Padfield, 2016: 56). VISOR contains personal data, data on convictions, data on residential address and employment, as well as data on bank accounts and finances of convicted persons. The database can be accessed by the police and agencies participating in the implementation of MAPPA. Therefore, the data from the register is not publicly available, but there is a possibility that citizens who are concerned about the safety of children or other vulnerable persons may request access to the data in order to check whether a certain person is registered

in it. The inquiry is sent to the police. The above is regulated by an act called *UK's child sex offenders disclosure scheme*, also known as Sarah's Law. Registered offenders are obliged to notify the police of all changes in personal data within three days from the date of the change. They are also obliged to notify the police if they plan to travel abroad, as well as to declare all the details related to their trip outside the UK's borders.

4. Special measures for sex offenders in France

During the 1990s, media interest in the child sexual abuse began to expand in France, which led to the adoption of a large number of amendments to laws at the beginning of the 21st century (Herzog-Evans, 2016: 68). The focus is on mandatory treatment, which can continue even after serving a prison sentence or other criminal sanctions, but also on the application of complex measures aimed at monitoring sex offenders. The application of measures is conditioned by the assessment of risk of re-offending. The risk must be adequately assessed, and the invasiveness of the measures should be proportional to the risk.

Between 2005 and 2008, amendments to the law were adopted that have enabled the application of surveillance, electronic monitoring and preventive detention of previously convicted sex offenders, even though they have not committed a new crime and that the sentence has been served. The very fact that the person was already convicted of a sex crime and that the risk of re-offending was assessed as high, constitutes the possibility for the application of certain restrictive measures.

The public and academics were not particularly disturbed by the application of various surveillance measures, but instead directed their interest toward the justification of preventive detention (Herzog-Evans, 2016: 81). However, the possibility of applying new and additional measures called into question compliance with Art. 7 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR) in the cases of offenders who had committed offenses before the entry into force of criminal law amendments. It is debatable whether the introduction of special measures for sex offenders negates the principle of legality, which guarantees the impossibility of applying a punishment that was not foreseen at the time when the crime was committed. However, when it comes to the entry of personal data into the subsequently established sex offender register, the European Court of Human Rights has stated that this measure is not retributive but preventive in nature[5], and that as such it

5 Gardel v. France, Application no. 16428/05, Judgment 17 December 2009.

does not contravene Art. 7, para. 2 of the ECHR, which stipulates that a heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed.

It is stated in the literature that neither an individual's danger nor the risk of recidivism can be precisely defined and measured, and there are no exact methods for making these assessments. In practice, it is usually considered that people with severe personality disorders are suitable for the application of invasive protective measures (Herzog-Evans, 2016). During the implementation of the treatment, the offender is treated by two medical doctors, one who works directly with him and the other who communicates with the officials, which enables the protection of privacy and preservation of the relationship of trust between the patient and the doctor.

Experts also state that sex offenders in France are not subject to significantly different measures compared to those applied to other offenders on probation, so measures will most often be about reporting to the police regularly, reporting changes in personal data and mandatory attendance of specific treatments (Herzog-Evans, 2016: 81). What is specific to sex offenders is the insistence on the application of measures that prevent contact with certain categories of persons. Statistical data from 2010 indicate that protective measures of a restrictive nature are applied primarily in the case of those convicted of serious crimes such as rape, while in the case of other sex offenders, the prevalence of measures is significantly lower (Herzog-Evans, 2016). It should be noted that in France, regardless of the legislative possibilities, the courts do not look favorably at the imposition of various restrictive measures and preventive detention. Also, unlike England and Wales, there is no possibility of applying restrictive measures from the domain of civil law. Unlike the United Kingdom, there is no possibility of a general ban on the use of the Internet, because the ban can only be imposed if the offender has misused the Internet to download illegal materials or to contact vulnerable persons.

What is particularly interesting when it comes to France is the possibility of imposing preventive deprivation of liberty in the cases of persons who could be released from prison after serving a prison sentence of 15 years or more for child sexual abuse and for other serious crimes (Wyvekens, 2010). Namely, if it is determined that there is still a significant risk of re-offending, that is, if a certain personality disorder has been diagnosed, these persons could be detained in a closed institution. Thus, the offender is locked up in a medical-judicial institution where he will stay permanently during the duration of the measure and where he will be provided with medical, social and psychological support. No later than one year before the planned release, the appropriate Commission shall assess the personality of the convicted person. For the evaluation to be carried out thoroughly,

a six-week stay in an inpatient facility qualified for the evaluation may be applied. Preventive detention will be applied only if it turns out that there is a high level of risk of re-offending, and that other measures, such as electronic surveillance, would not be sufficient to protect public safety. What is extremely important is the precisely defined obligation of the Commission to determine whether during the execution of the sentence there were conditions for the application of rehabilitative measures that would have a positive effect on personal development. Therefore, the question arises whether the offender was enabled to reach a certain level of personal progress through the application of appropriate treatment. This is of crucial importance from the point of view of respect for human rights, because otherwise would imply inhumane treatment and punishment. If the offender is still dangerous, but detention is not necessary, the Commission will refer the case to the judicial authority for deciding on supervision measures. In fact, the Commission only proposes that preventive deprivation of liberty could be applicable in the individual case, while the above-mentioned matter is decided by the court, which will discuss it in a public manner, while allowing the offender to hire his own medical expert. The court, for its part, must also determine whether the convicted person was allowed to participate in a rehabilitation program during the implementation of the prison sentence. The offender has the right to appeal the decision. Preventive detention is set for a period of up to one year, after which additional extensions may follow. The convicted person is authorized to request a review of the validity of the measure of preventive detention after the three-month imprisonment. After the end of preventive detention, if there is still a risk of re-offending, electronic monitoring may be imposed for up to two years. During the implementation of such supervision, the convict is also permanently subjected to appropriate treatment. If the person avoids treatment or if he does not comply with the established obligations, he can be placed in an institution again, based on the opinion of the medical experts. The above is determined by the provisions of the criminal procedural legislation (Code de procédure pénale, Art. 706-53-14).

Amendments to the criminal law in 2004 established a database of sexual and violent offenders. Namely, it is foreseen that the personal data of those convicted of rape and various forms of child sexual abuse, but also for other serious crimes such as murder, must be recorded. The register is managed by the Ministry of justice, while supervision is carried out by the court. The goal of recording data is to prevent re-offending, that is, to identify the perpetrators of serious offenses. The data is kept for 30 years for prison sentences of ten years or more, while in the remaining cases the entries are deleted after the expiration of 20 years. The law stipulates that registered persons are obliged to inform the police about their residential address once a year, that is, they are obliged to inform the police about a

change of address within 15 days from the date of the change. Persons sentenced to prison terms of ten years or more must inform the police about their address every six months. If the offender does not comply with the stated obligations, he may be sentenced to imprisonment for up to two years, or a fine of up to EUR 30,000.00.

The register of sexual and violent offenders is not public. The register can be accessed by a limited number of subjects, so that the data can be used by the court, the police, and the appropriate state authorities and employers when it comes to checking data related to persons who will profesionally engage with minors. It should be emphasized that the person whose data is recorded is entitled to request the public prosecutor to order the modification or deletion of data from the register, and that in case of disagreement between the public prosecutor and the offender, the court will decide on the matter. However, if offenders were convicted of child sexual abuse and sentenced to more than ten years, then it will be necessary to obtain the opinion of medical experts on the sanity of the given person before data deletion is allowed.

5. Final considerations and conclusion

In Serbia, since 2013 persons convicted for sexual offenses against minors fall under a special regime. This specific regime includes the recording of data in a separate register, specific legal consequences of the conviction, but also the application of certain special measures aimed at monitoring the behavior of sex offenders and providing the necessary support. The purpose of Marija's Law is to prevent offenders from re-offending, so the main goal of the law is to protect children and guarantee their best interests. Although such a goal is undoubtedly legitimate and above all socially significant, it seems that the mechanisms and resources through which it will be realized have not been precisely defined. In addition to the above, Marija's law may open up certain questions regarding the respect for the human rights of sex offenders.

Marija's law is mostly focused on measures of a predominantly supervisory nature that are applied to persons convicted of child sexual abuse after the execution of a prison sentence. In this respect, Serbia does not differ significantly from the United Kingdom and France, nor does it deviate from the ideas advocated by international and European documents in the field of responding to sexual crimes and child sexual abuse. What makes Serbia different from the mentioned countries is the absence of criteria based on which offenders are selected when implementing special measures. Namely, Marija's law foresees the application of special and preventive measures toward sex offenders who were sentenced to prison.

These measures are to be implemented in the period after serving the sentence. In France, the need to apply preventive measures is decided immediately before the offender leaves institutional accommodation, so that specific measures are not applied automatically. In the United Kingdom, there is a mechanism defined through MAPPA which is put into function in relation to the tacitly enumerated categories of offenders, whereby the extent and type of special measures that will actually be applied depend on complex assessments of the overall circumstances of each individual person and case. In addition, in France, the decision on the application of the measures is made by the court after a comprehensive discussion.

Thus, one gets the impression that Marija's Law has introduced a *sui generis* new treatment/safety measure that is automatically applied to all sex offenders whose victims are children, regardless of the court's decision and the assessment of individual circumstances, provided that the offenders were previously sentenced to prison. The question arises whether this solution is, on the one hand, formally and legally correct, and on the other hand, whether it is appropriate. Undoubtedly, the legal character and nature of the special measures applied to sex offenders who have served a prison sentence are unclear, given that it seems that certain hybrid safety measures or a concept similar to probation with protective supervision have been created. It should be also borne in mind that in Serbia the criminal sanction is to be imposed only by the court after criminal proceedings initiated and carried out in accordance with the law, under Art. 12 of the Criminal Procedure Code[6], whereby the structure of the system of criminal sanctions is defined exclusively by the Criminal Code.

Also, the question arises as to why the application of special measures against sex offenders who were not sentenced to prison, even though they were declared guilty of child sexual abuse, is automatically excluded. The only effect that Marija's law produces against these persons is the collection of their personal data in the register, while the application of any other measures is absent. If the goal of Marija's Law is to prevent child sexual abuse, then its application should include all persons who manifest a certain risk of re-offending. It seems that one should be careful in establishing the assumption that an offender who has not been sentenced to an effective prison sentence will not need support or supervision in order to abbey the law in the period after the implementation of the criminal sanction.

The above leads us to another problem, which is the absence of more precise criteria for deciding on specific measures that should be applied to sex offenders. Namely, it is indisputable that in Serbia Commissioners use their practical and

6 *Official Gazette of the RS*, No. 72/11, 101/11, 121/12, 32/13, 45/13, 55/14, 35/19, 27/21 and 62/21.

professional knowledge in this domain, and that they perform their professional activities according to modern scientific trends and standards. Also, it should be borne in mind that although Marija's law applies to sex offenders, their treatment and preparations for release should not be significantly different compared to other convicted persons. Considering that there is an obligation to report to the Commissioner, and that the release preparation program is carried out in prisons and later through the creation of a post-penal assistance program, the above implies that, if all the resources of the prison, the community and the Commissioner's Office are used, resocialization and reintegration could be achievable. In their work, prison staff and Commissioners use relevant instruments for risk assessment, so, although it is not precisely defined by Marija's law, the risk assessment procedure is part of the standard operating procedures. Also, the Commissioner is obliged to, in accordance with Art. 59 of the Law on the Execution of Non-Custodial Sanctions and Measures,[7] draw up a program for a person who is monitored under Art. 7 of the Marija's law. Nevertheless, this procedure should be precisely defined by Marija's Law, although until further notice we can use the provisions of the Law on the Execution of Non-Custodial Sanctions and Measures, specifically Art. 10, para. 2 according to which the individual treatment program is drawn up based on an assessment of the personality, personal circumstances, state of health, professional qualifications, risk assessment and needs of the convicted person and in cooperation with him. The individualized program also contains the methods, procedures and deadlines for its implementation, stakeholders and other data important for fulfilling the purpose of sanction, as well as the undertaken obligations or measures determined by the competent authority.

On the other hand, if it is borne in mind that in the United Kingdom very extensive and detailed guidelines on risk management are being periodically published, while in France psychiatrists and other specialists are officially involved in the process of risk assessment, it seems that Marija's Law is pretty vague on the topic of *modus operandi* that should be applied toward sex offenders. In this sense, the level of cooperation between the criminal justice system and the health and mental health care system in France should also be taken into account. Namely, in this country there is a complex system of assessing and deciding on the need for psychiatric treatment, either inpatient or outpatient, where the final treatment decision is made by the court after getting acquainted with the opinion of medical experts (Fovet et al., 2020). Also, in the United Kingdom, it is possible to impose various restrictive measures through civil orders, but these are also decided by the court after the appropriate initiation of complex proceedings. The

7 *Official Gazette of the RS*, No. 55/14 and 87/18.

crucial difference between Serbian law on the one hand and French and British law on the other is that the other two legislations pay significant attention to risk assessment. Therefore, neither in France nor in the United Kingdom, not a single measure is applied automatically, but only when it is assessed that in a given case, a concrete measure or intervention is needed. In addition, both France and the United Kingdom recognize judicial mechanisms for controlling the application of any, especially restrictive, measure, which is not the case in Serbia.

Then, in Serbia, there is a noticeable absence of defining the measures and obligations of state bodies and institutions in the exercise of supervision and support for sex offenders. Truth be told, the literature points out that the United Kingdom, and to some extent France, are increasingly focusing on a managerial approach in controlling offenders, while the individual relationship between civil servants and offenders, as well as relationships of mutual trust and support, are increasingly pushed into the background (Fernando, 2021: 3). However, in England and Wales in particular MAPPA also contains a section relating to the responsibilities of officials and the support measures they should provide or arrange to offenders. Thus, on an annual level, the MAPPA is revised as a series of complex regulations that relate to the obligations of the probation service, the social welfare service, the police and others. For example, in England and Wales there are also strategic documents related to the provision of social housing, although the problem of providing accommodation for ex-offenders has not been adequately addressed in this country either. It is indisputable that offenders cannot be reintegrated into society if they have nowhere to stay, so according to MAPPA local authorities are obliged to cooperate with competent agencies in finding accommodation for them (Her Majesty's Inspectorate of Probation, 2020:19). In Serbia, on the other hand, the Law on the Execution of Non-Custodial Sanctions and Measures refers to the provision of various types of support for offenders, without defining which specific resources the Commissioner will rely on in order to actually provide that support. Other objections have also been justifiably highlighted, such as the fact that it is uncertain how it could be practically controlled whether the sex offender respects the ban on visiting places where minors gather (Ćorović, 2016: 422).

Finally, the regulations of the United Kingdom, just like the documents adopted by the Council of Europe, also deal with the protection of victims of sexual offenses, which in Serbian legislation remains somewhat neglected. Although this is not a subject to which Marija's Law directly applies, we should take into account the possibilities for improving the position of victims and the protection that would be provided to them even after the criminal proceedings have ended. In this sense, certain amendments to the Law on Juvenile Offenders and the Criminal Protection

of Minors would be welcome[8], given that it mostly refers to protection in the context of criminal procedure. It should be especially noted that the literature points out that the already existing opportunities for the protection of minors as victims in criminal proceedings are insufficiently used in practice (Kolaković-Bojović, Drobnjak, Banić, 2021: 203), as well as that the issues in connection with the protection of minor victims after the ending of the criminal proceedings and beyond their procedural role are almost completely neglected. The above is connected with a limited understanding of the role and human rights of victims, given that the state must not only focus on criminal prosecution and retribution, but also on the victim's needs for healing and recovery (Bjelajac, Banović, 2020: 216).

Furthermore, in the compared legal systems, there is the possibility of erasing data once entered into a special sex offender register, which can be a particularly important issue if one takes into account the recent practice of the European Court of Human Rights. In this sense, it should be borne in mind that in France there is no category of permanent registration in the database of sexual and violent offenders, and that the data of offenders convicted of the most serious crimes are deleted after 30 years. In the United Kingdom, on the other hand, after the judgment of the Supreme Court, there is still the possibility of permanent registration, but even in the case of those convicted of the most serious offenses after 15 years have passed, a review of the validity of registration can be requested, so that the previously recorded file may be deleted. It would make sense to introduce the possibility of erasing entered data in Serbia as well, although the fact that the data entered in the Serbian register is inaccessible to the wider public does not make the current consideration of this issue a problem of urgent importance.

Therefore, the key recommendation for future amendments to Marija's Law would refer to specifying the criteria based on which special measures would be applied to sex offenders after the conviction. In addition, the relevant rulebooks should define a number of issues related to the determination and availability of resources through which the Commissioner's Offices would perform its complex tasks, and specify the mechanisms for the cooperation of this institution with other state bodies and the civil society.

References

− Barth, J., Bermetz, L., Heim, E., Trelle, S. & Tonia, T. (2013) The Current Prevalence of Child Sexual Abuse Worldwide: A Systematic Review and Meta-Analysis. *International Journal of Public Health*, 58, pp. 469-483.

8 *Official Gazette of the RS*, No. 85/05

- Bjelajac, Ž. & Banović, B. (2012) Osvrt na traume i potrebe žrtava trgovine ljudima. *Zbornik radova sa Međunarodne naučne konferencije "Organizovani kriminalitet — Izazov XXI veka"* (pp. 203-206). Novi Sad: Pravni fakultet za privredu i pravosuđe.
- Browne, A. & Finkelhor, D. (1986) Impact of Child Sexual Abuse: A Review of the Research. *Psychological Bulletin,* 1(99), pp. 66-77. https://doi.org/10.1037/0033-2909.99.1.66
- Ćorović, E. (2016) Mogućnosti tzv. Marijinog zakona u suzbijanju pedofilije. *Facta universitatis - series: Law and Politics*, 3(14), pp. 415-426.
- Fernando, R. (2021) Desistance from crime and probation supervision: Comparing experiences of English and French probationers. *Probation Journal*, 68(2), pp. 224-242. https://doi.org/10.1177/02645505211012062
- Fovet, T., Thibaut, F., Parsons, A., Salize, H., Thomas, P. & Lancelevée, C. (2020) Mental health and the criminal justice system in France: A narrative review. *Forensic Science International: Mind and Law*, 1. https://doi.org/10.1016/j.fsiml.2020.100028.
- Galeste, M., Fradella, F. & Vogel, B. (2012) Sex offender myths in print media: Separating fact from fiction in U.S. newspapers. *Western Criminology Review*, 13, pp. 4-24.
- HM Inspectorate of Probation (2020) Accommodation and support for adult offenders in the community and on release from prison in England, available at: https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2020/07/FINAL-Accomodation-Thematic-inspection-report-v1.0.pdf, accessed on 08.03.2023.
- Herzog-Evans, M. (2016). Legal Constraints on the Indeterminate Control of 'Dangerous' Sex Offenders in the Community: The French Perspective. *Erasmus Law Review*, 9(2), pp. 67–82. https://doi.org/10.5553/ELR.000060
- Kolaković-Bojović, M., Drobnjak, T. & Banić, M. (2021) *Formativna analiza - Izveštaj o postojećem zakonodavnom i normativnom okviru u oblasti pravosuđa po meri deteta u Srbiji i njihova primena u praksi.* Beograd: International Rescue Committee Serbia.
- Miladinović-Stefanović, D. (2014) Krivičnopravna zaštita maloletnih lica od seksualnog iskorišćavanja i zlostavljanja - evropski standardi i pravo Republike Srbije. *Zbornik radova Pravnog fakulteta u Nišu*, 68, pp. 567-584. https://doi.org/10.5937/zrpfni1468567M
- Mitrović, Lj., Grbić-Pavlović, N, & Tomašević, S. (2022) Međunarodnopravni standardi kojima se reguliše zaštita od seksualnog zlostavljanja i iskorištavanja djece u digitalnom okruženju. *Revija za kriminologiju i krivično pravo*, 2, pp. 105-118. https://doi.org/10.47152/rkkp.60.2.4

- Padfield, N. (2016) Legal Constraints on the Indeterminate Control of 'Dangerous' Sex Offenders in the Community: The English Perspective. *Erasmus Law Review,* 2, pp. 55-66. https://doi.org/10.5553/ELR.000062
- Pérez-Fuentes, G., Olfson, M., Villegas, L, Morcillo, C., Wang, S, & Blanco, C. (2013) Prevalence and correlates of child sexual abuse: a national study. *Comparative Psychiatry*, 54(1), pp. 16-27. https://doi.org/10.1016/j.comppsych.2012.05.010.
- Ristivojević, B. (2012) Negativna kriminalno-politicka kretanja u materijalnom krivicnom zakonodavstvu Srbije od donosenja KZ: temeljno opredeljenje zakonodavca ili incident**,** *Crimen*, 2, pp. 170-190.
- Stevanović, I. (2005) Krivičnopravna zaštita dece – žrtava zlostavljanja i zanemarivanja u Srbiji. *Temida,* 8(2), pp. 21-32.
- Stevanović, I. (2014) *Deca koja čekaju*. Beograd: Institut za kriminološka i sociološka istraživanja.
- Škulić, M. (2022) Krivičnopravna reakcija na dečiju pornografiju/pornografiju maloletnih lica - plasiranu/nastalu zloupotrebom računarske mreže/komunikacije drugim tehničkim sredstvima. *Revija za kriminologiju i krivično pravo*, 2, pp. 9-57. https://doi.org/10.47152/rkkp.60.2.1
- ViSOR National User Group (2013) *ViSOR Standards: Version 3.1.* ViSOR Product Management Team, http://library.college.police.uk/docs/college-of-policing/VISOR-standards-2013.pdf, accessed on 11.02.2023.
- WHO (1999) *Report of the consultation on child abuse prevention.* Geneva: World Health Organization.
- Wyvekens, A. (2010) The Retention of Preventative Detention in France: Social Defence as Trompe-L'Oeil (or the Emperor's New Clothes). *Déviance et Société*, 34(4), pp. 503-525. https://doi.org/10.3917/ds.344.0503.

Legislation

- Law on the Execution of Criminal Sanctions, Official Gazette of RS, No. 85/05.
- Law on the Execution of Non-Custodial Sanctions, Official Gazette of RS, No. 44/14 and 87/18.
- Law on juvenile offenders and criminal protection of minors, Official Gazette of RS, No. 85/2005.
- Law on Special Measures for the Prevention of Criminal Offenses against Sexual Freedoms against Minors, Official Gazette of RS, No. 32/2013.
- Criminal Code, Official Gazette of the RS, No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

- Criminal Procedure Code, *Official Gazette of the RS*, No. 72/11, 101/11, 121/12, 32/13, 45/13, 55/14, 35/19, 27/21 and 62/21.
- The Criminal Justice Act 2003, United Kingdom.
- The Sex Offences Act 2003, United Kingdom.
- Code de procédure pénale, France.
- Resolution 1733(2010) on Reinforcing measures against sex offenders, Parliamentary Assembly of the Council of Europe (PACE), 21 May 2010.
- Recommendation regarding the assessment, management and reintegration of persons accused or convicted of a sexual offense, CM/Rec (2021)6, 20 October 2021.
- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, CETS 201, Lanzarote, 25 October 2007.

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POSEBNE MERE I REGISTRI ZA SEKSUALNE PRESTUPNIKE-NORMATIVNI OKVIR U SRBIJI I KOMPARATIVNOPRAVNA ANALIZA

Poslednjih godina pažnja opšte i naučne javnosti usmerena je ka reagovanju na krivična dela protiv polnih sloboda, pri čemu su krivična dela na štetu maloletnih lica posebno akcentovana. Osmišljavanje mera krivičnopravne reakcije omeđeno je, sa jedne strane, legitimnom potrebom da se najmlađi zaštite i da se omogući ostvarivanje najboljeg interesa deteta, a sa druge strane potrebom da se odgovori na sve glasnije zahteve javnog mnjenja koje burno reaguje na vesti o brutalnim zločinima kojima su viktimizovana maloletna lica. Uz navedene izazove lako se može zaboraviti da i seksualni prestupnici uživaju ljudska prava koja ne smeju biti povređena bez obzira na impozantnost cilja koji se nastoji ostvariti. Imajući u vidu navedeno, rad je posvećen analizi srpskog pozitivnopravnog okvira koji definiše primenu posebnih mera i registrovanje seksualnih prestupnika, te komparaciji datog okvira sa zakonskim rešenjima prisutnim u Ujedinjenom Kraljevstvu i Francuskoj. Cilj rada jeste da se ukaže na mogućnosti za unpređenje rešenja priustnih u važećem srpskom zakonodavstvu kako bi se postigla što sadržajnija zaštita dece uz uvažavanje tekovina vladavine prava i evropskih standarda.

***Ključne reči**: seksualni prestupnici, registar seksualnih prestupnika, nadzor, ljudska prava*

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CRIMINAL OFFENSE OF EMBEZZLEMENT IN THE SERVICE IN THE CRIMINAL LAW OF BOSNIA AND HERZEGOVINA - CRIMINAL LAW AND CRIMINAL PROCEDURE ASPECT (NORM AND CASE LAW)

The focus of the authors' interest is the criminal offense of embezzlement in the service, which we classify in the catalogue of corrupt criminal offences, by its nature, operationalization method, consequences and other specificities. In addition, it is a criminal offense from the catalogue of premeditated criminal offenses, so the paper pays due attention to the interconnection and cumulative conditionality of objective and subjective elements, that is, the action of execution and the subjective component. Special attention is directed to the discovery of the existence of this criminal offense, i.e. the realistic discovery possibilities and capacities, then the objective-subjective concept based on the legal description of this criminal offense, and the aspect of gathering the necessary evidence in connection with establishing the existence of the criminal offense and guilt, considering the restrictive legal requirements. The complexity of discovering and proving this criminal offense arises from the very nature of this criminal offense and certain specificities that are directly

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related to the way it is operationalized. The criminal law autonomy and independence, as well as the clear differentiation of this criminal offense in relation to other related criminal offences, are emphasized in order to avoid (possible) wrong identifications, and with the aim of a better and more comprehensive understanding of the very nature of this criminal offence.

Key words: Embezzlement, criminal offense, detection, appropriation, proof.

1. Introduction

The criminal offense of embezzlement in the service deserves special attention from the professional and scientific public, even though it is a classic or traditional criminal offense in the criminal law of Bosnia and Herzegovina, which is not only characteristic to the modern, i.e. recent times, but a criminal offense that exists and originates practically from the appearance of the first forms of abuse in the context of the proper, legal, efficient and purposeful functioning of the service. From the (most) primitive forms of abuse to date, this criminal offense was present in different historical periods of human activity and existence, but the phenomenological forms of manifestation, i.e. operationalization of criminal activities, changed, modified and adapted to the current political, economic, social, cultural and other conditions, circumstances and specificities.

Special interest and attention of the scientific, professional and general public regarding timely, efficient and legal detection and proving of this criminal offense are present and expressed due to the fact that this criminal offense, given its nature, method of execution, destructive component and other criminal law determinants and specifics, is systematized into a catalog of criminal offenses of corruption, that is, corruption crimes. When it comes to determining the catalog of corruption crimes, we recall that in 2015 the High Judicial and Prosecutorial Council of Bosnia and Herzegovina adopted the List of corruption crimes from all criminal laws in Bosnia and Herzegovina, which, in addition to other criminal offenses, also incorporates the criminal offense of embezzlement in service[1]. Acknowledging that corruption as a complex legal and social phenomenon is

1 For more details, see: Akcioni plan za borbu protiv korupcije 2018-2019, Visoko sudsko i tužilačko vijeće Bosne i Hercegovine, available on *https://pravosudje.ba/vstvfo-api/vijest/download/64903*, accessed on 2 July 2023, Svetlana Bijelić, Sabina Sarajlija, Priručnik za izradu elemenata optužnica za koruptivna krivična djela, Visoko sudsko i tužilačko vijeće Bosne i Hercegovine, Sarajevo, 2019, pg. 11.

recognizable by its extremely destructive effect and unpredictable consequences that successively destroy society and the state, it is necessary to observe the criminal offense of embezzlement in the service through the prism of corrupt punishable behavior that, with reason, requires from the legislator adequate legal answers and solutions of material and procedural nature.

Corruption, as a legal and social phenomenon, even today represents a challenge for modern criminal law, and the legislator is faced with a challenging, complex and demanding task in relation to the prescription of adequate legal norms, with the aim of achieving appropriate criminal justice results in the end. In the sense of criminal procedure, special attention is primarily focused on the aspect of timely, efficient and legal detection and proving of the existence of a criminal offense and guilt, appreciating restrictive legal requirements of procedural nature, and it is particularly important to emphasize the legislator's intention to ensure the necessary protection of human rights and freedoms (humanization tendency) which is practically operationalized by adequate and proper application of the catalog of rights and universal guarantees of the suspect or accused person in all stages of the criminal proceedings.

2. Specifics of detecting the existence of criminal offense

Having respect for the appearance of new and the modification of existing phenomenological forms of criminality, it is more and more complex and demanding to detect the existence of a specific criminal offense, that is, to gather initial or primary information that indicate the existence of a specific criminal offense, as well as to establish the existence of the evidentiary standard, the grounds for suspicion, which must be satisfied in order to initiate and conduct an investigation. In every historical stage of the development of society, the perpetrators of crimes tried to find the most appropriate ways, that is, certain modalities for committing crimes, trying to „outsmart" the criminal prosecution authorities (Karović, 2018:.836). Abuse of new achievements in all areas directly enables criminality to be one step ahead of the criminal prosecution authorities, from which it follows that a continuous search for appropriate or proportionate legal solutions and answers that can meet expectations in terms of an efficient and energetic fight against all forms of crime is necessary (Karović, Simović, 2020:2019).

Discovery of the existence of the criminal offense of embezzlement in the service begins with the collection of initial or primary information that indicate the existence of grounds for suspicion that a criminal offense has been committed. Given the legal nature and other specifics of the criminal proceedings in Bosnia and Herze-

govina, and above all the concept of investigation, the legislator prescribed that it is necessary to satisfy the existence of grounds for suspicion that a certain criminal offense has been committed, in order to initiate and conduct an investigation by the competent prosecutor. By analyzing the legal text, it can be observed that the legislator did not determine or define the meaning of the term „ground for suspicion" in the catalog of basic terms, even though it is a term or evidentiary standard that deserves special attention in the investigation as the first stage of the preliminary procedure. The grounds for suspicion that a specific criminal offense has been committed is the (lowest)lower level of suspicion, which is practically based on indirect factors (indicators) that point to the existence of a specific criminal offense.

Like any other criminal offense, this criminal offense also has its own criminal law autonomy and independence, which follows from the legal description of the criminal offense, that is, the objective-subjective characteristics of crime. Detection of this criminal offense is complex, but also specific as the consequences of the commission of this criminal offense are not noticeable, evident and recognizable in the material world immediately after the commission, as is the case with some other criminal offenses (e.g. murder, sexual crimes etc.), which makes it difficult to gather initial information relating to certain irregularities, deviations from regulations or risky behaviors, in a timely manner, which would serve as a reason for determining the existence of grounds for suspicion that a criminal offense has been committed. Concealment is, therefore, a general characteristic of offenses against official duty (Feješ, Lajić 2014: 267). This practically means that untimely detection of the existence of this criminal offense certainly favors the perpetrator of the crime, which remains undetected for a certain period of time after commission. Practically, this non-detection enables his further continuous or successive appropriation.

Acquiring of illegal property benefits (for oneself or for others) by appropriating money, securities or other movable property entrusted to one's service or in general at a function in the institutions of Bosnia and Herzegovina (at all levels), in the phenomenological sense of manifestation, deserves special attention of practitioners. In addition, it is interesting and important to focus special attention on the motive of the perpetrator of this criminal offense, which may be connected or conditioned with certain socio-pathological phenomena, or more precisely with personal preferences of the perpetrator (e.g. drug addiction, gambling, alcoholism, etc.). The motive of embezzlement is self-interest, and the phenomenon most often occurs where the same person simultaneously performs incompatible work functions - disposal with movable property and business control (Bošković, 1999: 280).

As a rule, initial knowledge of the existence of a criminal offense most often have a certain number of persons who are directly or indirectly connected

with or involved in business processes and activities, that is, persons who, by the nature and affinity of jobs and tasks, know the methodological concept of the work of a certain service, the way of organization and functioning of the service, prescribed authorizations for individual working positions as well as other specific circumstances related to the nature of the regular work process in a certain service or work in general.

However, the aggravating circumstance is that the perpetrator of this criminal offense is aware of the existence of incriminating activities, and that by his actions, that is, by his inaction (omission) in connection with the proper, purposeful and legal performance of tasks and duties under his jurisdiction, he uses available possibilities and tries to cover up in every way illegal activities with the intention of avoiding criminal prosecution (e.g. corrections of the content of certain documents - changes, additions, then forging of certain documents, for example – forgery of payment orders, etc.). In addition to the above, it is quite realistic to expect that the perpetrator of this criminal offense will use every opportunity to justify spotted irregularities or risky behaviors in the early detection stage in a certain way with objective circumstances, in order to present his own behavior, that is, his actions as acceptable and habitual.

In view of the above, the question arises as to how it is possible to detect the existence of this criminal offense, the ways of cognition, how to establish the existence of grounds for suspicion, and how to initiate and conduct an investigation by the competent prosecutor as the first stage of the preliminary procedure. The report is often the first source of cognition about the possibility of existence of a criminal offense and the possible perpetrator and participants, as well as available evidence that supports a certain suspicion in a different range of probability or possibility (Simović, M., Simović, V., Govedarica, 2021: 29). The detection of the existence of this criminal offense is most often achieved through operational work of authorized officials, inspection bodies, authorized entities for audit and business control, by associates and colleagues, through internal control by direct managers within certain service, by reporting by the injured party, as well as by collection of initial information by the prosecutor.

During the performance of regular duties and tasks by authorized officials, the prosecutor does not have a supervisory role over their work, until establishing the existence of grounds for suspicion that a specific criminal offense has been committed, in which case the law prescribes the obligation of authorized official to inform the competent prosecutor[2]. Authorized officials have a real possibility

2 For more details, see Article 218 of the Criminal Procedure Code of Bosnia and Herzegovina (supervision of the prosecutor over the work of authorized officials).

to gather initial or primary knowledge pointing out to existence of grounds for suspicion that a certain criminal offense was committed, through their own operational work or indirectly through cooperation or exchange of information and data with other entities, bodies, agencies or individuals. Certain intelligence findings are preliminarily verified, so that the prosecution does not needlessly burden itself with unverified operational information. External sources of information most often refer to: notifications from citizens, information from the media, reports from legal entities, reports from witnesses, anonymous reports, reports from financial institutions, reports from independent and state auditors (Zovko, 2021: 303).

Therefore, authorized officials preliminarily check the validity of initial or primary information about the existence of alleged illegal activities, and after establishing the grounds for suspicion, notify the competent prosecutor with the intention of initiating and conducting the investigation. In addition to authorized officials whose primary activity is to detect and prevent the commission of criminal offenses, in the detection stage a very important detection role have inspection authorities which, according to the nature of control function, have a real possibility to notice, recognize and identify certain illegal activities when performing tasks and duties from their jurisdiction, that is, irregularities in work and deviations that indicate the existence of a certain criminal offense. After detecting the existence of a criminal matter in non-legal sense, i.e. at the level of existence of grounds for suspicion that a certain criminal offense has been committed, the inspection authority is obliged to inform the competent prosecution and submit all available information and data about the existence of a certain criminal offense.

In addition to the inspection body, through business audits, it is possible for authorized entities to determine the existence of certain irregularities that indicate the existence of a certain criminal offense (e.g. audit reports). Audit reports can serve as a basis for additional preliminary checks aimed at determining the correct, efficient, purposeful and legal performance of official duties. Irregularities noted in the auditor's report do not constitute a criminal offense, by their nature, so it is a misunderstanding or generalization that all irregularities observed or recorded by the auditor would automatically constitute a specific criminal offense. With regard to the prosecutor's concept of investigation in the criminal procedural legislation of Bosnia and Herzegovina, on the basis of audit findings, i.e. reports, it is possible to establish the existence of grounds for suspicion that a certain criminal offense has been committed. However, the prosecutor is the only authority authorized by law who, on the basis of the available information, autonomously and independently makes an assessment and makes a decision on the existence of grounds for suspicion that a certain criminal offense has been committed, and if so, issues an order to conduct an investigation which, by its

nature, includes undertaking adequate and proportionate necessary criminal procedural actions on the plan of additional detection of the existence of criminal offense and collection of necessary evidence.

As already stated, certain persons who are direct collaborators or work colleagues of the perpetrator of this criminal offense can recognize certain risky behaviours that indicate certain abuses and deviations from the prescribed way of working and functioning of the service, and through reports (most often anonymous) inform the competent prosecutor's office or police authority. In this sense, it is important to emphasize that direct managers (bosses, supervisors, etc.) who, based on the legally prescribed authorizations of the position they perform, therefore have an instructive-control function, as well as a real possibility to notice, recognize and identify certain irregularities, i.e. abuses that by their nature, manner of manifestation, scope and other specifics indicate the existence of a criminal offense. On the other hand, if the instructive-control activity by authorized authorities is not timely, proper and adequate, it is evident that the perpetrator of this criminal offense will have a real possibility to realize a greater illegal property benefit, that is, the harmful consequences of the execution will be more significant and greater. Report on certain abuses related to the existence of this criminal offense are also submitted by the injured parties with the intention of revealing the existence of the criminal offense, but also of obtaining possible compensation for the damages caused by the commission of a certain criminal offense.

The prosecutor, as an active participant, i.e., an actor of everyday social events and processes, has the possibility to learn about certain information and data in different ways (e.g., through media, through public talks, anonymous/pseudonymous reports, from acquaintances and friends and in other ways), that is, to gather initial knowledge about the existence of this criminal offense, and to make a decision to initiate and conduct an investigation based on his own assessment. When analyzing Article 35(1) of the Criminal Procedure Code of Bosnia and Herzegovina, we noted that in the catalogue of rights and duties of the prosecutor, the legislator also prescribed the detection of criminal offenses[3].

It follows that for the discovery of the existence of this criminal offense, that is, collection of initial or preliminary information, and the initiation and conduct of the investigation by the competent prosecutor, very important are the instructive-control activities of the competent entities and individuals who, by

3 It is quite clearly recognized in the aforementioned legal provision that the detection activity, i.e. the detection of the existence of criminal offenses is prescribed by the legislator in the catalog of basic rights and duties of the prosecutor. Therefore, the prosecutor has a detection role, given the realistic possibility of direct or indirect collection of certain information and data, i.e. knowledge that indicates the existence of grounds for suspicion that a criminal offense has been committed.

the nature of their duties and tasks, more precisely by powers prescribed under the law, exercise, instructive-control activity over the work. Suppression of all forms of criminality, including crimes against official duty, depends on a number of factors, and for the sake of preventive action, there is a need for strategic, organized and planned monitoring of all problems and phenomena within society, from which potential criminal offenses can arise (Sarajlija, 2018: 17). Given the nature, manner of manifestation and other specifics of this criminal offense, the detection activity is primarily oriented towards timely detection, recognition and identification of all irregularities in work, deviations from regulations and the established methodology of performing duties and tasks, i.e. the development of the regular work process and other anomalies that indicate the existence of incriminating activities.

3. Objective-subjective concept of criminal offense

The criminal law autonomy and independence of the criminal offense of embezzlement in service in the criminal law of Bosnia and Herzegovina is based on the legal description of this criminal offense which incorporates the objective-subjective characteristics of the nature of this criminal offense, and thus the legislator prescribed its criminal law autonomy and independence in relation to other criminal offenses. In order to differentiate more clearly and directly this criminal offense from other (related) criminal offenses, we will perform a short comparative analysis with the intention of recognizing and emphasizing the essential differences, in order to avoid possible wrong identifications of mentioned criminal offenses.In this sense, due to the similarity (relatedness), this criminal offense is most often identified with the criminal offense of service in office, which is completely wrong and unacceptable, given that the legislator has prescribed a very clear differentiation between the said two criminal offenses which follow from the legal descriptions of above mentioned two criminal offenses. A comparative analysis of the legal description, i.e. the characteristics of the criminal offense of embezzlement in the service and service in office, reveals a clear criminal law demarcation line, recognizing that in the criminal offense of embezzlement in service, the perpetrator of the criminal offense appropriated money, securities or other movable property entrusted to him in service or in general in his position in institutions - in distinction from the criminal offense of service in office, where the perpetrator of the criminal offense used himself or gave for use to another person without authorization. In addition, in comparison with other related crimes, it is recognized that the criminal offense of embezzlement in service has certain

similarities with the criminal offense of evasion and theft. Through a comparative analysis of the characteristics of crime, we notice that the differentiation between the criminal offense of embezzlement in service and theft is that in the case of the criminal offense of embezzlement in service, the listed items are entrusted to the person in service, considering the nature and specifics of the specific workplace. Embezzlement occurs when someone steals or alienates what he is entrusted to his management or guarding[4].

Noted are also similarities with the criminal offense of evasion, assessing that the acts of execution coincide, more precisely that they refer to the illegal appropriation (evasion) of objects or items, but there is an obvious difference, considering that the criminal offense of embezzlement in the service is the primary criminal offense from the catalogue of official criminal offenses. Namely, when performing duties and tasks, a certain person disposes of, uses, does business with certain objects, that is, items, but in accordance with the prescribed authorizations that determine his actions in terms of timely, efficient and legal execution of certain activities. The aforementioned objects must have been entrusted to the perpetrator in his service or at work in general, and the essence of the offense is the abuse of authorities that the perpetrator has in relation to entrusted items (Tomić, 2007: 387).

By analysing the provisions of criminal laws at all four levels in Bosnia Herzegovina (state level, entity level - Federation of Bosnia and Herzegovina[5] and Republika Srpska[6] and Brčko District[7]), appreciating its complex constitutional and legal structure that determines the way of organization and functioning of criminal legislation, it is noted that this is a criminal offense prescribed in Article 221 of the Criminal Code of Bosnia and Herzegovina, Article 384 of the Criminal Code of the Federation of Bosnia and Herzegovina, Article 316 of the Criminal Code of the Republika Srpska and Article 378 of the Criminal Code of the Brčko District of Bosnia and Herzegovina. In addition, in the very name of this criminal offense, certain slight differences are noticed, considering that this criminal offense is prescribed in Article 316 of the Criminal Code of the Republika Srpska and Article 378 of the Criminal Code of the Brčko District of Bosnia

4 For more details, see: Investopedia: What is Embezzlement, and How Does It Happen? By Adam Hayes, available on: *https://www.investopedia.com/terms/e/embezzlement.asp*, accessed on 26 August 2023.

5 Criminal Code of the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of BiH, nos. 36/2003, 21/2004, 69/2004, 18/2005, 42/2010, 42/2011, 59/2014, 76/2014, 46/2016, 75/2017 and 31/2023.

6 Criminal Code of the Republika Srpska, Official Gazette of the Republika Srpska, nos. 64/2017, 104/2018, 15/2021 and 89/2021.

7 Criminal Code of Brčko District of Bosnia and Herzegovina, Official Gazette of Brčko District of Bosnia and Herzegovina, np.19/2020 – consolidated text.

and Herzegovina as Embezzlement, while in Article 221 of the Criminal Code of the Bosnia and Herzegovina and Article 384 of the Criminal Code of the Federation of Bosnia and Herzegovina, this criminal offense is called Embezzlement in service. The aforementioned legal provisions prescribe basic, milder (over KM 300 and 500) and more serious forms of this criminal offense (over KM 10,000 and 50,000), depending on the amount of property benefit acquired by committing the criminal offense, while different legal solutions, i.e. prescribed ranges of sentence of imprisonment are observed with regard to the prescribed criminal law sanctions (sentence of imprisonment).

It follows from the above, that the qualifying circumstance is manifested in the amount of acquired property benefit. However, one of the complex questions of a practical nature, when determining the qualification, is the method of calculating appropriation, for example multiple appropriation, continuous and successive appropriation of money etc., appreciating that there are different or conflicting opinions and understandings in the professional public, and regarding the method of determining and calculation of the amount of property benefit acquired by committing a criminal offense.

The act of committing this criminal offense is the appropriation of money, securities or other movable things entrusted to a certain person in the service or at work in general. As a rule, these are specific items entrusted to a certain person with the aim of timely, efficient and legal performance of duties and tasks from his jurisdictions. It follows that appropriation refers to money, securities or other movable things entrusted for the purpose of performing a service, i.e. official duties, in terms of performing duties and tasks, considering the nature and certain specificities of the specific workplace. The absence of legal restrictions regarding the nature of that service or work, i.e. not limiting that service or work to certain functions only, indicates that the perpetrator of this criminal offense can be any person who is entrusted with certain movable property in service or at work in general, and in connection with the working process itself or content of the service (Filipović, 2020/21: 379).

In view of the above, appreciating that the legislator did not restrictively determine an official or responsible person as the perpetrator of this criminal offense, embezzlement in service is included in the catalogue of fake criminal offenses. Fake official crimes are those that can be committed both in and out of service (Simović, Jovašević, 2019: 115). One of the key questions to which judicial practice gave a clear answer is the capacity of the perpetrator of the criminal offense, given that the legislator did not clearly and precisely prescribe legal provision regarding the meaning of the term „institution" as characteristic of this criminal offense, which created different interpretations, i.e. understandings when dealing

with specific criminal cases. In this regard, appreciating the imprecision of the legal norm, most often the defence interpreted the meaning of this term restrictively, in such a way that, according to their understanding, this term incorporates only public institutions, i.e. government institutions, while judicial practice gave an unambiguous answer that this term understands any form of legally organized work[8].

When it comes to the subjective component, this criminal offense is classified in the catalog of premeditated criminal offences. Therefore, the perpetrator of this criminal offense can commit a criminal offense with direct intent, i.e. with the intention of appropriating the aforementioned objects entrusted to him in the service or at work in general, with the aim of acquiring illegal property benefits. Taking into account the said objective-subjective characteristics of this criminal offense, i.e. the action of execution (appropriation) and the subjective component (direct intent), the perpetrator of this criminal offense can be a person (e.g. cashier, storekeeper, merchant, etc.) who has been entrusted with the authority in service or at work, as well as money, securities or other movable property.

4. The complexity of collecting evidence and proving the criminal offense and guilt

Valid criminal procedure laws in Bosnia and Herzegovina determine the actions of competent procedural subjects in terms of clarifying and solving of procedural tasks[9]. With the adoption and entry into force of new criminal procedure laws in 2003, reformed criminal procedure legislation of Bosnia and Herzegovina underwent significant changes, which primarily refer to the concept of investigation and radically changed role of criminal procedure subjects (Karović, Orlić, 2020: 122). As already emphasized, in order to initiate and conduct an investigation by the competent prosecutor, it is necessary to satisfy the existence of a material condition, which manifests itself in the existence of grounds for suspicion

8 For more details, see: judgement of the Supreme Court of the Federation of Bosnia and Herzegovina, number: 070-0-Kžk-07-000018 of 18 February 2010, Constitutional Court, Decision No. AP-1284/10 of 9 April 2010.

9 Criminal Procedure Code of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, nos. 3/2003, 32/2003, 36/2003, 26/2004, 63/2004, 13/2005, 48/2025, 46/2006, 76/2006, 29/2007, 32/2007, 53/2007, 76/2007, 15/2008, 58/2008, 12/2009, 16/2009, 93/2009, 72/2013 and 65/2018; Criminal Procedure Code of the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of Bosnia and Herzegovina, nos. 35/2003, 37/2003, 56/2003, 78/2004, 28/2005, 55/2006, 27/2007, 53/2007, 09/2009, 12/2010, 08/2013, 59/2014 and 74/2020; Criminal Procedure Code of the Republika Srpska, Official Gazette of the Republika Srpska, nos. 53/2012, 91/2017, 66/2018 and 15/2021) and Criminal Procedure Code of Brčko District of Bosnia and Herzegovina, Official Gazette nos. 10/2003, 48/2004, 06/2005, 12/2007, 14/2007, 21/2007, 27/2014, 3/2019 and 16/2020.

that this criminal offense has been committed. Primarily, it is necessary to collect initial or preliminary information that indicates the existence of this criminal offense, which needs to be examined preliminary in terms of validity of allegations, and which, by their content and nature, indicate the existence of criminal offense. We would like to remind you that any established irregularity in the work of a certain person in itself, does not automatically represent grounds for suspicion that a criminal offense has been committed, but can serve as a basis for operational activity of authorized officials in order to subsequently establish the existence of grounds for suspicion. Therefore, it is necessary to establish a very clear line of differentiation, i.e. the line between the violation of official duty (lighter/serious violation), prescribed by internal, i.e. by-laws, on one hand, and the existence of a criminal matter in the fake sense, at the level of existence of grounds for suspicion, on the other side.

After receiving initial or preliminary information, before issuing an order to conduct an investigation, the competent prosecutor may order authorized officials to carry out additional checks in order to establish the validity of allegation, but also to collect additional information, if the initial information is unclear, incomplete, insufficient or similar. After determining the existence of evidentiary standard of grounds for suspicion that a criminal offense has been committed, the competent prosecutor issues an order to conduct an investigation, after which he orders authorized police officers to conduct certain investigative and evidentiary actions, i.e. to conduct certain (proportionate) criminal procedural actions, depending on the nature of the criminal offense, the manner of execution and other specifics related to a specific criminal event and potential perpetrator (suspect) [10].

Given the complexity of detection, investigation of the existence of criminal offenses, as well as the clarification and resolution of a certain criminal matter by procedural entities in criminal proceedings, and the adoption of a court decision, the evidentiary actions have essential importance (Karović, Simović, 2020: 33). As a rule, it is most often about the application of certain general evidentiary actions in criminal proceedings which, by its nature and purpose, are aimed at collecting the necessary evidence regarding the existence of the characteristics of a specific criminal offense. Application or performance of certain evidentiary actions is in essence aimed at collecting, that is, securing the necessary evidence for the efficient conduct and completion of criminal proceedings, such as: employment contracts, decisions, minutes, orders, records kept *ex officio*, schedules,

10 For more details, see: Article 216(2) of the Criminal Procedure Code of Bosnia and Herzegovina, Criminal Procedure Code of the Republika Srpska and Brčko District of Bosnia and Herzegovina and Article 231(2) of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina.

notes /correspondence, USB stick, laptops, computers and other items that can serve as evidence for establishing relevant facts. Taking evidentiary actions is a necessary condition for establishing the facts that are the basis for making a court decision (Bugarski, 2014: 10).

In addition, expertise as a general evidentiary action in the criminal proceedings of Bosnia and Herzegovina enables comprehensive and versatile clarification and resolution of a specific criminal case and making of a decision by the court. A concrete and clear procedural task is set before the economic expert, i.e. complex professional questions referring to the nature of the criminal case on which the resolution of the criminal case depends, must be answered. The opinion, which must be founded and explained in its entirety, represents the expert's solution to set problem and the answer to highlighted questions for clarification of important facts in the specific criminal matter (Simović and others, 2020: 85). When it comes to this criminal offense, the most important or crucial question to which the expert is required to answer is the quantification, that is, the determination of the damage caused as a result of the incriminating behaviour of the suspect or the accused person.

With regard to the legal description of this criminal offense, in addition to the act of execution itself, which practically operationalizes certain criminal activities by the suspect, special attention must be directed to establishing, that is, proving the existence of subjective component, i.e. direct intent, taking into account cumulative connection and conditionality of objective and subjective characteristics of the criminal offense. Taking into account the nature, method of operationalization and other specifics of this criminal offense, it can be expected that the suspect will use every opportunity or possibility to make certain changes or corrections to official documents in order to conceal criminal activities or even destroy (completely or partially) certain documents that can be used for efficient conduct and completion of criminal proceedings.

However, during the implementation, i.e. realization of certain criminal procedural actions, it is very important to emphasize the aspect of the legality of collected evidence, which is operationalized through the doctrine of absolute or complete exclusion or separation of illegal evidence from the file, considering the restrictive legal requirements that determine the actions of criminal procedural subjects in the plan of resolving of a specific criminal procedural task. Any deviation or inconsistency in the application of criminal procedure actions in relation to the legal requirements is a path to illegality, from which it follows that all the actions of the competent criminal procedure subjects, primarily authorized officials and prosecutors, but also other subjects or participants to the criminal proceedings, must meet the prescribed legal requirements of a substantive and

formal nature. The tendency of humanizing the modern criminal procedural law, which primarily manifests itself through the prism of protection of fundamental human rights and freedoms of each individual, obliges competent criminal procedural subjects in criminal proceedings to consistently respect, i.e. provide catalog of rights and universal guarantees, of the suspect or the accused person at every stage of the proceedings.

After conducting all investigative and evidentiary activities in the investigation, as part of preliminary proceedings, the competent prosecutor autonomously and independently makes prosecutorial assessment as to whether, based on the evidence collected, there is evidentiary standard for reasonable doubt, and if this substantive requirement is met, the next procedural phase begins – indictment procedure. The indictment procedure is the second procedural stage or stage of preliminary proceedings. The indictment, as the most important act of the prosecutor in the criminal procedure, must meet legally prescribed requirements in terms of its content and form, taking into account that it is subject to review, or more precisely, to control by the court, i.e. the judge for the preliminary hearing. If the indictment meets all restrictive legal requirements, the judge for the preliminary hearing confirms the indictment, and this confirmation enables the transition to the next stage of the proceedings, i.e. the main proceedings/main trial.

Viewed from the aspect of establishing, that is, proving the existence of criminal offense and guilt, the evidentiary procedure is the most significant or central part of the main trial, but also of the criminal proceedings as a whole. Considering the type, legal nature, division of criminal procedural and evidentiary activities of the basic subjects, and other specifics of the criminal proceedings in Bosnia and Herzegovina, the burden of proof is on the prosecutor who must convince the court „beyond reasonable doubt" of the existence of guilt with regard to accused person or persons. Aforementioned evidentiary standard „beyond reasonable doubt" is a term that is peculiar to the Anglo-Saxon legal tradition, but it can be understood, that is, translated into our legal reality as establishing of facts in a reliable and unquestionable way[11]. During evidentiary procedure, the principle of fairness, that is, adversariness, between two opposing and equal parties, are fully expressed, i.e. between the competent prosecutor who has the burden of proof, on one hand, and the accused person (material defence) and his defence attorney who performs a formal defence, on the other hand.

However, taking into account that the criminal offense of embezzlement in the service is included in the catalogue of corruption criminal offences, one must

11 For more details on the use of term „beyond reasonable doubt", see: Judgement of the Court of Bosnia and Herzegovina, number: S1 1 K 004050 13 Krž 15 of 19 November 2013.

not ignore or forget, in addition to the investigation, the conduct of the financial investigation by authorized police officials upon the order of the prosecution, i.e. the court, and in cooperation with other subjects (banks, tax administration, etc.).

5. Conclusion

The criminal offense of embezzlement in service, as an autonomous and independent criminal offense, is included in the catalog of corruption criminal offenses which is not unique for modern times only. The roots of this criminal offense can be found in the past, practically from the first forms of abuse. In different socio-historical periods, phenomenological forms of manifestation of this criminal offense have changed, modified and adapted to current conditions and circumstances specific to a certain time. In this paper, special attention is dedicated to discovery of the existence of this criminal offense, with regard to the type, nature, method and means of execution, as well as other specifics that directly relate to detection activity.

When we speak about objective-subjective concept of this criminal offense, a comparative analysis of this criminal offense with other related criminal offenses was made in order to clearly differentiate and establish a line of criminal law demarcation, respecting the legal description of the criminal offense (objective-subjective characteristics of criminal offense). In addition, a comparative review of the legal solutions, i.e. legal description of this criminal offense at all levels, was made, with regard to complex constitutional and legal structure of the state of Bosnia and Herzegovina (state level, entity level, Brčko District of Bosnia and Herzegovina), but also certain differences in legal solutions. Taking into account legal description of this criminal offense, as well as cumulative connection and conditionality of the action of execution and the subjective component, in addition to the existence of the action of execution as an objective element, the subjective component, i.e. direct intent, is apostrophized in the paper, which deserves a special attention when proving this criminal offense.

In the context of criminal proceedings, special attention is focused on the complexity of collection of evidence and proving of criminal offense and guilt, given the restrictive legal requirements. In this sense, the most important procedural determinants referring to the conducts of competent criminal procedural entities in terms of resolving of criminal procedural task, i.e. clarifying and resolving of a specific criminal matter, in certain stages of the procedure (investigation, indictment procedure and main hearing - evidentiary procedure) are emphasized. In addition, a brief review was made of some disputable questions of a practical

nature, as well as the answers offered by court case law (e.g. the capacity of the perpetrator, the standard of proof, etc.).

In view of the above, the real and expedient need for a more specific and comprehensive determination of the legal description of the criminal offense of embezzlement in the service in future interventions by the legislator, with the aim of adequacy of legal norm as well as its efficient and lawful application by competent criminal procedure subjects, is recognized.

References

- Bijelić, S. Sarajlija, S. (2019) *Priručnik za izradu elemenata optužnica za koruptivna krivična djela*. Sarajevo: Visoko sudsko i tužilačko vijeće Bosne i Hercegovine.
- Bošković, M. (1999) *Kriminološki leksikon*. Novi Sad: Izdavačko preduzeće Matice srpske, Univerzitet u Novom Sadu.
- Feješ, I. Lajić, O. (2014) *Kriminalistička metodika*. Novi Sad: Pravni fakultet, Centar za izdavačku djelatnost, Univerzitet u Novom Sadu.
- Filipović, Lj. (2020/21) Krivično djelo pronevjera u službi u praksi sudova Federaciji Bosne i Hercegovine, *Pravo i pravda*, *XIX*(1), str. 375-393.
- Karović, S. (2018) Krivičnopravno suzbijanje organizovanog kriminaliteta u Bosni i Hercegovini – mogućnosti, izazovi i perspektive, *Zbornik radova Pravnog fakulteta u Splitu*, *55*(4), str. 835-852. https://doi.org/10.31141/zrpfs.2018.55.130.835
- Karović, S. Orlić, S. (2020) Otkrivačka, istražna i dokazna uloga ovlaštenih službenih osoba u kaznenom postupku u Bosni i Hercegovini, *Policija i sigurnost*, *29*(1-2), str. 112-125.
- Karović, S. Simović M, (2020) Rasvjetljavanje i rješenje krivične stvari u krivičnom postupku Bosne i Hercegovine – raskol između normativnog i stvarnog, *Godišnjak Fakulteta pravnih nauka Panevropski univerzitet „Aperion", 10*(10), str. 208-218. 10.7251/GFP2010208K
- Karović, S. Simović, M. (2020) Radnje dokazivanja i posebne istražne radnje: teorijsko provedbeni aspekt, *Zbornik radova, Nauka i društvo - Razvoj društva kroz prizmu nauke*, *1*(1), str. 29-44. https://doi.org/10.7251/ZND2106029K
- Sarajlija, S. (2018) Krivično djelo zloupotreba službenog položaja ili ovlasti: Ključni problemi iz perspektive njegovog procesuiranja u Bosni i Hercegovini, *Osvrt* 2/2018, str. 6-33.
- Simović, M. Jovašević, D. Simović, V. (2019) Zloupotreba službenog položaja i ovlašćenja u pravu Republike Srpske, *Godišnjak Fakulteta pravnih nauka Panevropski univerzitet „Aperion", 9*(9), str. 112-126. 10.7251/GFP1909112S

- Simović, M. Medić, D. Ćurković, S. Simović, M. (2020) *Vještačenje u sudskim postupcima, prvo izdanje,* Banja Luka: Centar za vještačenje i procjenjivanje „Zenit".
- Simović, M. Simović, V, Govedarica, M. (2021) *Krivično procesno pravo II (Krivično procesno pravo - posebni dio), Peto izmijenjeno i dopunjeno izdanje*. Istočno Sarajevo: Pravni fakultet, Univerzitet u Istočnom Sarajevu.
- Tatjana Bugarski (2014), *Dokazne radnje u krivičnom postupku, drugo izmijenjeno izdanje*. Novi Sad: Centar za izdavačku djelatnost, Pravni fakultet, Univerzitet u Novom Sadu.
- Tomić, Z. (2007) *Krivično pravo II, Posebni dio*. Sarajevo: Pravni fakultet, Univerzitet u Sarajevu.
- Zovko, I. (2021) Načini dokazivanja gospodarskog kriminaliteta, *Zbornik radova Aktuelnosti građanskog i trgovačkog zakonodavstva i pravne prakse*, 18, str. 295-311.

Internet sources:
- Akcioni plan za borbu protiv korupcije 2018-2019, Visoko sudsko i tužilačko vijeće Bosne i Hercegovine, available at *https://pravosudje.ba/vstvfo-api/vijest/download/64903*, accessed on 2 July 2023;
- Investopedia: What is Embezzlement, and How Does It Happen? By Adam Hayes, available at: *https://www.investopedia.com/terms/e/embezzlement.asp*, accessed on 26 August 2023.

Regulations:
- Criminal Code of Bosnia and Herzegovina - "Official Gazette of Bosnia and Herzegovina", nos. 3/2003, 32/2003 - correction, 37/2003, 54/2004, 61/2004, 30/2005, 53/2006, 55/2006, 8/2010, 47/2014, 22/2015, 40/2015 , 35/2018, 46/2021, 31/2023 and 47/2023;
- Criminal Code of Bosnia and Herzegovina - "Official Gazette of the Federation of Bosnia and Herzegovina", nos. 36/2003, 21/2004 - correction, 69/2004, 18/2005, 42/2010, 42/2011, 59/2014, 76/2014, 46/2016, 75/2017 and 31/2023;
- Criminal Code of the Republika Srpska - "Official Gazette of the Republika Srpska", nos. 64/2017, 104/2018 – Decision of the Constitutional Court, 15/2021 and 89/2021;
- Criminal Code of Brčko District of Bosnia and Herzegovina - "Official Gazette of Brčko District of Bosnia and Herzegovina", no. 19/2020 – consolidated text;
- Criminal Procedure Code of Bosnia and Herzegovina – „Official Gazette of Bosnia and Herzegovina", nos. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/5,

46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09, 72/13 and 65/18;
- Criminal Procedure Code of the Federation of Bosnia and Herzegovina – „Official Gazette of the Federation of Bosnia and Herzegovina", nos.. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 09/09, 12/10, 08/13, 59/14 and 74/20;
- Criminal Procedure Code of the Republika Srpska – „Official Gazette of the Republika Srpska", nos. 53/12, 91/17, 66//18 and 15/21), and
- Criminal Procedure Code of Brčko District of Bosnia and Herzegovina – „Official Gazette of Brčko District of Bosnia and Herzegovina", nos. 10/03, 48/04, 06/05, 12/07, 14/07, 21/07, 27/14, 3/19 and 16/20.

Court case law:
- Judgement of the Supreme Court of the Federation of Bosnia and Herzegovina, no.: 070-0-Kžk-07-000018 of 18 February 2010;
- Constitutional Court, Decision No. AP-1284/10 of 9 April 2010;
- Judgement of the Court of Bosnia and Herzegovina, number: S1 1 K 004050 13 Krž 15 of 19 November 2013.

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MEDIA IMAGE OF CORRUPTION IN THE PRIVATE SECTOR**

Corruption has long existed as an all-around social phenomenon characterized by complexity and action that takes place "far from the public eye". Various forms of corrupt activity, regardless of whether they are manifested in the public or private sector, threaten the values of every society. Although originally associated with the state and (its) officials with public powers, there is more and more talk about corporate corruption that manifests itself in the private sector or the area of overlap between the public and private spheres. The author's premise is that the media plays a crucial role in combating corruption through the media discourse that shapes public perception and reality of this issue. The objective is to outline the characteristics of the media portrayal of corruption. The discussion focuses on the media's contribution to fighting corruption and also addresses the obstacles that hinder media coverage, resulting in a distorted representation of corruption.

Keywords: corruption in the private sector, media, discourse, investigative journalism

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1. Introductory remarks

Corruption is a social phenomenon as old as society itself, human nature and man's egoistic need that cries out for "more". Over time, this socially negative activity was called corruption. Probably, with the development of corrupt activities, the process of its extermination began, as can often hear or read (this is supported by the understandings of thinkers such as Plato, Aristotle, Montesquieu). Nevertheless, the "extermination" of corruption, no matter how desirable and useful it is for any society, is just another utopia, so it is accordingly more appropriate to say that the fight against it has begun and its reduction to the smallest possible extent, first only morally, and then and legal principles and means. It is omnipresent phenomenon of a transnational character, which today is the subject of discussion at all social levels and in all areas, whether public and private or economic and political. It is a global concern that "undermines democracy and the rule of law, leads to human rights violations, distorts markets, impairs quality of life, and enables the flourishing of organized crime, terrorism, and other threats to human security" (Matić Bošković, 2018: 74). The nature of corruption is such that corrupt activities usually involve two parties whose interests are that they and their corrupt activities remain secret and undetected, which significantly limits the detection and proof of these criminal acts. The public usually plays a significant role in elucidating these activities, where a considerable share belongs to the media[1]. In addition, the media is recognized as an important entity that exercises "supervision" over the implementation of laws and other mechanisms of the fight against corruption.

The ways in which knowledge is gained about various social phenomena, which include corruption as a criminal activity, are either one's own experience in the sense of experiencing a social phenomenon or obtaining knowledge from different sources. It is in this place that the media is recognized as an important source. Through the media, citizens win knowledge from different spheres of social life, including knowledge about criminality. The amount of that knowledge, as well as the completeness, objectivity and truthfulness of the reporting depending on the topic. Not only is reporting on crime different from reporting on other social phenomena, but there are also differences in reporting on different forms of crime. Due to its nature of secrecy, which benefits both parties involved in corrupt activities, corruption is one of the topics for which the basic prerequisite for reporting is the discovery of such activities.

1 As a good example of the role of the media, one can take the intensive media coverage of a case from the 1960s that contributed to the development of awareness of organized crime in the USA (see more in: Banović, B. (2016). Organizovani kriminal kao aktuelna bezbednosna pretnja [Organized Crime as a Current Security Threat]. *Međunarodni problemi, 68*(2-3), 172-192).

The problem that arises concerns the large dark figure that exists due to the concealment of this form of criminality. Another reason for the distorted image created by the media is the unintentional or intentional (manipulative) media creation of a distorted and wrong image of corruption among public opinion. Hence, an attempt to present the media image of corruption in the private sector emerges as a relevant topic.

This paper aims at showing the media construction of corruption, more specifically the way in which the media reports on corrupt activities that take place in the private sector, between private entities or between private and public (state) entities.

The work has two parts. The first unit presents the phenomenon of corruption without dealing with it in detail, its typology, characteristics, causes and consequences. Considering the topic of the work, within the first unit, a special review was made on corruption in the private sector or so-called corporate corruption. The second and central part is dedicated to media image of corruption in the private sector, considering investigative journalism as a special type of media reporting.

2. Understanding the phenomenon of corruption: case of private sector

Jain (2001: 71) analysed the rich material and established that even then, the number of academic articles on this topic was expanding, and at that moment several international organizations decided to fight against various forms corruption[2]. In addition, there has been a significant increase in the international political community's interest in corruption. Examples include the adoption of documents such as the United Nations Convention against Corruption, the Organization for Economic Cooperation and Development Convention against Bribery, the World Bank's documents like Anticorruption Initiatives, or the establishment of the United Nations Development Program – Anti-Corruption for Peaceful and Inclusive Societies.

At international level, the only legally binding universal instrument for the fight against corruption is the *United Nations Convention against Corruption*[3]. This document does not define corruption anywhere[4] (although the possibility

2 About the fight against corruption in Europe see: Vega, Dulce M. Santana. (2017). The fight against corruption in Europe: lights and shadows. *CRIMEN-časopis za krivične nauke* (3) & *Revija za kriminologiju i krivično pravo*, 55(2-3), pp. 242-267.

3 United Nations. (2004). *United Nations Convention against Corruption*. The convention has been ratified in our country with *Law on Ratification of the United Nations Convention Against Corruption*, SCG Official Journal-International Treaties, no. 12/2005.

4 Nevertheless, the Convention prescribes two forms of action that states should recognize as a criminal offense of corruption in the public and private sectors, by adopting legal and other necessary measures (see more in: United Nations. (2004). *United Nations Convention against Corruption*.).

of its occurrence is recognized in both the public and the private sector), but highlights its consequences and its transnational character, which requires the involvement of all states, and in general all entities, regardless of the prevention and eradication of corruption. whether they come from the public or private sector (United Nations Convention against Corruption, 2004).

In addition to the mentioned document, the *Criminal Law Convention on Corruption*[5] and the *Civil Law Convention on Corruption*[6] are also important for the subject of this paper. Analysing the provisions of Law[7] by which the first Convention was ratified, it can be seen that the definition of corruption was missed, with the fact that the actions that are considered corrupt actions are listed (Articles 2-15 of the Law on Confirmation of the Criminal Law Convention on Corruption). With the adoption of the latter Convention, a step forward was made, so from Law[8] which ratified this convention in our country, the definition of corruption can be extracted according to which it is defined as "requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof" (Article 2 of the Law on Confirmation of the Civil Law Convention on Corruption). In the national law that was adopted in the area of the fight against corruption - the Law on the Prevention of Corruption[9], corruption is defined as "is a relationship which occurs when a public office or social status or influence are used for acquiring personal benefits for oneself or another" (Article 2 of the Law on the Prevention of Corruption). The way corruption is defined in these three documents, is not limited only to the public sector.

The World Bank's definition of corruption, which is commonly cited, describes it as the exploitation of a public position to secure personal benefits (World Bank, 1997: 102). Yet, as corruption is not only manifested in the public, but also

5 Council of Europe. (1999a). *Criminal Law Convention on Corruption* (ETS No. 173). European Union. The convention has been ratified in our country with *Law on Confirmation of Criminal Law Convention on Corruption.* SRJ Official Register-International Treaties, no. 2/2002 i SCG Official Journal-International Treaties, no. 18/2005.

6 Council of Europe. (1999b). *Civil Law Convention on Corruption* (ETS No. 174). European Union. The convention has been ratified in our country with *Law on Confirmation Civil Law Convention on Corruption*, RS Official Journal-International Treaties, no. 102/2007.

7 *Law on Confirmation of Criminal Law Convention on Corruption.* SRJ Official Register-International Treaties, no. 2/2002 i SCG Official Journal-International Treaties, no. 18/2005.

8 *Law on Confirmation Civil Law Convention on Corruption*, RS Official Journal-International Treaties, no. 102/2007.

9 *Law on Prevention of Corruption*. Official Gazette of the Republic of Serbia, no. 35/2019, 88/2019, 11/2021, 94/2021 and 14/2022.

in the private sector, this explicitly set definition and similar ones (which include only public powers) can be considered too narrow. This limitation is pointed out by the Tanzi (Tanzi, 1995a according to Tanzi, 1998: 8), who offering a more neutral definition according to which "the intentional noncompliance with arm's length relationship aimed at deriving some advantage from this behaviour for oneself or for related individuals", which violates the principle of impartiality. Therefore, it is necessary to 1) break the relationship, which as a rule should be neutral - equal, and 2) obtain a benefit for oneself or another person close to one's self. The mentioned necessarily includes the intent and intention to act with the aim of obtaining benefits. An important factor that Tanzi points to is the fact that corrupt activity does not have to result in a bribe, it is enough that it fulfills the criteria of usefulness, opening the issue, still current today, of how to distinguish between a gift and a bribe and whether there should be a difference at all (1998: 9).

Jain (2001: 73) points to the problem of defining corruption as a difficulty that rises during its study, pointing out that the definition usually ends with determining what is shaped (determined) and measured[10]. As for many other phenomena in the field of security, there is no single and generally accepted definition, that is, the understanding of corruption. The reason for this lies primarily in its character, complexity and dynamism, as well as the fact that significant variables affect it are the time, social and political context. The number of definitions probably corresponds to the number of authors who dealt with epistemological, sociological, legalistic or any other definition of this phenomenon. Thus, although the listing of definitions from broader to narrower and specific to nation-states or even lower entities could be continued, it will be omitted. Also, at this point, the typology of corruption, or its characteristics and causes, which could certainly be talked about a lot[11], will be omitted, in order to focus on the presence of this phenomenon in the private sector.

As demonstrated thus far, corruption was initially linked with the state and its institutions, including fields such as politics, justice, security, administration, health, or education. However, this issue extends beyond the public sector and has been

10 Tanzi (1998: 3) believes that corruption by itself cannot be measured, but the public's perception of corruption can. Public opinion surveys appear as a key instrument for determining public attitudes towards corruption.

11 Read about the above in: Tanzi, V. (1998). *Corruption around the world: causes, consequences, scope, and cures*, WP/98/63. Washington, DC: International Monetary Fund; Begović, B. (2007). *Ekonomska analiza korupcije* [Economic Analysis of Corruption]. Beograd: Centar za liberalno-demokratske studije; Ćirić, J., Reljanović, M., Nenadić, N., Jovanović, M., Dobrašinović, D. & Pejović, D. (2010). *KORUPCIJA: problemi i prevazilaženje problema* [CORRUPTION: Problems and Overcoming Problems]. Beograd: Udruženje javnih tužilaca i zamenika javnih tužilaca Srbije; Joković, M. S. (2018). Tipologije korupcije [Typologies of corruption]. *Srpska politička misao*, 62(4), pp. 267-284.

observed in the private sector as well as the interface between public and private sectors. Some activities that open the possibility of corrupt activities are public procurement procedures, investment of private capital in the state, influence on the adoption of certain regulations and even laws, use of public companies as informal and (often) uncontrolled sources of income for the realization of political (party) or personal financial interest or searching for information relevant to future investment (Milanović, 2007: 2-3). Tenders (public procurement) as one of the key areas in which the public and private sectors enter into financial interaction, represent one of the most critical economic activities in terms of the risk of irregularities and corruption (Public Procurement Office, 2022: 41) and thus are probably the most common ground for potential machinations which lead to corruption[12]. These machinations usually have two directions of action - determining the price of services or determining conditions that are defined so that only an offer from a certain (pre-selected) bidder is suitable. Stojiljković (2010: 216) notes that there is no evidence that private monopolies are less corrupt than public ones. Corruption in business is much more than simple bribery. Some examples are bribery, extortion and solicitation, gifts and hospitality, fees and commissions, collusion, information and influence trading, embezzlement, favoritism, nepotism, cronyism, clientelism (UNODC, 2017). According to one study, in 2011 and 2013, "private companies" and "banks" were added as separate institutions when studying the prevalence of corruption (Wysmułek, 2017: 2601).

From the provisions related to active and passive bribery (Articles 7 and 8 of the Law on Confirmation of the Criminal Law Convention on Corruption), it is possible to derive elements whose existence is necessary in order to determine a certain action as an act of corruption in private sector. These are, that one party performs a business function; that directly or indirectly promises, offers or gives, that is, or receive or accept any undeserved benefit or otherwise promise; that the benefit or promise is intended for him or another person; and such conduct is directed toward another party that manages or works for private sector entities. In addition to the above, one always acts with intention by acting or refraining from acting, which violate the duty a person is performing.

Corruption in the private sector can be explained as a special type of corruption called corporate corruption. Brooks and associates in explaining this type

12 See more about corruption related to public procurement in: Tanjević, N., & Špiler, M. (2016). Ključni rizici za korupciju u javnim nabavkama i protiv mere u pravnom okviru Republike Srbije [Key Risks for Corruption in Public Procurement and Countermeasures in the Legal Framework of the Republic of Serbia]. *Bezbednost*, 58(2), pp. 131-150; Varinac, S. (2012). *Korupcijska mapa javnih nabavki u Republici Srbiji* [Corruption Map of Public Procurement in the Republic of Serbia]. Beograd: Organizacija za evropsku bezbednost i saradnju.

of corruption use the definitions given by other authors and on that track indicate that corporate corruption "can occur between private businesses and suppliers or service providers but can also involve illegal behaviour by corporate officials for private monetary gain" (See Brooks et al., 2013: 23).

Corporate corruption can be defined as "as the misuse of formal power by a corporate representative for personal and/or organization benefit" (Castro, Phillips, Ansari, 2020). More specifically, it is about the deliberate behaviour (action or inaction) of an individual, who, by using his function, violating organizational norms on his own behalf or on behalf of the organization in which he is engaged, with the aim of achieving benefits for himself, another or that organization. If we start from the fact that the motivation for corrupt actions can be found in human nature or something like cannot be eradicated. It remains to develop mechanisms to prevent corrupt actions. One of the mechanisms that could play a very significant role is the organizational (security) culture, which would develop awareness of the need, within that, develop ways to protect the established and adopted values of the organization.

There are several reasons why corporate corruption deserves to be recognized as a separate type of corruption. First, in the government (public) and private sectors differ the culture, management style, logic, and incentives. Second, unlike governments, corporations and private entities face competitive pressures that can affect the likelihood of corruption. Finally, corporations play a different role in corruption as they are the "supply-side" that, through their financial management system, often become a source of funds that corrupt governments or other private entities (Castro, Phillips, Ansari, 2020). In any case, corruption in the private sector not only negatively affect the entity that is threatened by corrupt activity, but also negatively affect the overall social well-being.

The dissemination of information to the public about corruption, both in the private sector and more broadly, is crucial to raise awareness of the prevalence and severe consequences of such criminal activity, and to uphold fundamental societal values. In this context, the media plays a significant role in achieving these objectives. Since 2011, in corruption research, the mass media has been recognized as another "player" that contributes to the perception of corruption, as an entity that citizens believe will deal with corruption (Wysmułek, 2017: 2601). However, in order to fulfill their role, it is necessary to fulfill preconditions such as freedom of the press and independence of the media. In this regard, free access to the media is recognized as one of the factors necessary to regulate the development of democracies (United Nations Office on Drugs and Crime, 2011: 32).

3. Media image of corruption

As one of the social structures, the media "communicate" with the members of the community in which they operate, that is, they market their products - texts on the most diverse topics of social life. However, with globalization and the emergence of the "global village", the media have gained the opportunity to market their texts to a much wider, larger global market. Like the educational social system, the media are involved in the shaping of culture, that is, the shaping of the opinions of individuals, but also of social masses. The ways in which reality is presented in the media can be defined as media discourse (O'keeffe, 2006: 1). Discourse should be seen as a process that plays a vital role in the constitution of people's reality, and for the understanding of which it is necessary to see the text itself as a product of that process, interactions and context in which the text is embedded (Talbot, 2007: 3, 10). In the context of this paper, one can talk about the media discourse about corruption in the private sector, that is, the process of creating texts about corruption that shape the public's perception of this phenomenon.

When reporting on corruption, the media are expected to inform citizens about corruption and its consequences so that they can act, support government programs to combat corruption, act preventively: they create an environment in which does not welcome corruption. The aforementioned activities are indeed the activities that we as citizens expect from the media, as a segment of society involved in the detection and suppression of corruption.

When investigating corruption, the goal does not have to be to prove a specific case of corruption, but can also be to indicate that "something" enables corrupt behaviour. In this way, journalists can, on the one hand, publicly point out the problem, and on the other hand, encourage the preventive action to prevent a specific case of corruption (Nedeljković Valić et al., 2015: 44). It should be noted that it is important to continue reporting during the entire court proceedings, that is, until the specific case is resolved, pointing out the mechanisms that contributed to it, and which ultimately fulfils and justifies the media's role in reporting to the public and shaping public opinion. The use of media discourse on corruption is recognized as one of the crucial activities of the fight against corruption, which would aim to increase the pressure on politicians to support government reforms regarding this fight (Huther, Shah, 2000: 12).

Investigative journalism, as a modality of journalistic dealing with "hidden" forms of corruption, is a significant way of determining the real scale of corruption, as Ilić (2017: 232) pointed out in her work, having in mind the large dark figure of this form criminality. The dark figure should not be surprising, given that the perpetrators of this type of criminal activity (both sides) are usually not

comfortable with the disclosure of the execution. However, by studying accounting reports, data and documents obtained from their own sources. By interviewing lawyers, competitors, the police and the authorities, and all this while keeping the information strictly confidential until its publication, journalists contribute to uncovering corruption. Therefore, the authors note that something could be learned from the working procedures of the media, given that a significant part of corruption is discovered by journalists (Gottschalk, Gunnesdal, 2018: 116). What is of key importance? It is a wide set of knowledge and skills that appear as a prerequisite for media reporting, especially investigative journalism. Adequate and responsible reporting on corruption cannot be expected if the person doing it is not comprehensively prepared for such activity.

In addition to investigative journalism, there is also the talk of "civil journalism", which opens the possibility for citizens to contribute transparency through social networks and be involved in the fight against corruption. Some experts suggest that this type of reporting offers advantages over traditional media (Jha, Sarangi, 2017: 61), particularly in situations where traditional media may be compromised by state control or influenced by those in positions of power, or where a story may be underreported (Bertot, Jaeger, Grimes, 2010). However, social networks can be used to publish different types of data on various corrupt activities, both in the public and private sectors, their use is not without potential risks. Free access to social networks opens up the possibility of their abuse in the sense of creating content that is not true. In addition, this type of media can also be censored or used for government propaganda purposes, thus limiting their ability to report relevantly on corruption.When it comes to the scope of reporting and research on corruption, the authors have different views. For instance, Nedeljković believes that the public does not have enough high-quality journalistic research on corruption, nor reporting on trials related to this topic, both due to the lack of permanent court reporters, and due to the fact that it is often reported only on those trials whose actors have a sensationalist character, while Madžar points out that "corruption as a topic is abundantly represented in local media" (Madžar, 2014: 7; Nedeljković Valić et al., 2015: 5). It should be borne in mind that the above-mentioned views refer to our areas and that they are insufficient to make any more general conclusions, both for our areas and for the world. However, the extent of the media image, without neglecting its content, is conditioned by various "obstacles" that the media face, some of which are presented in the following text. At the same time, these "obstacles" can be understood as the characteristics of the media side of corruption.

In recent years, and perhaps even decades, the media has been criticized for being in most cases "puppets of the authorities", which instead of contributing to the transparency of the state apparatus and the private sector, often serve individuals

or groups to publish information about the corrupted parties opposed to them. This practice exists whether it is about economic or political groups, whether they operate in the public or private sector. We are witnesses that our country is not exempt from this kind of environment, which was also noted in the document entitled *Report on pressures and control of the media in Serbia*[13], which was prepared and published in September 2011 by the Council for Combating Corruption[14]. Four years later, the Anti-Corruption Council identified and singled out five systemic problems of media transparency and independence in the Republic of Serbia (non-transparency of media ownership; non-transparency of funding, economic influence through the budget, tax incentives and other indirect forms of financing with public money; problems of media privatization and uncertain status of public services; censorship and self-censorship; tabloidization) emphasizing that the list of real problems probably does not end with this number (Council for Combating Corruption, 2014: 7). Due to these problems, media content is usually not the result of free, objective, professional or investigative journalism. So far, document of this type have not been published again, and if we take into account the fact that the *National Strategy for the Struggle against corruption* ceased to be in force since 2018, we can ask the question, what is being done in our country regarding the suppression of corruption, including the issue of pressure and control of the media by the powerful in the public and private sector? According to data from 2010, 44% of the adult population believe that the practice of bribery often or very often occurs in the media sector (United Nations Office on Drugs and Crime, 2011: 60). It is clear that corruption has also affected the media, which must not be forgotten when considering the media image of this form of crime. The media are often owned by companies that are involved in corruption, so they are intertwined with politics and the market. Under such circumstances, corruption "consolidates the collusions between large businesses, top politicians, high-ranking public officials and journalists" creating something that can be called the "privatization of corruption" (Rayner, 2012: 264).

In addition to the influence and control of the media by the state or private entities closely related to corruption, the problems that can be observed have a somewhat different character. When they report on crime in general, violent crime is always more emphasized, while little attention is paid to the crimes of the rich and powerful (Friedrichs, 2010: 19). Ilić (2013: 232) who also starts from the

13 See more at: http://www.antikorupcija-savet.gov.rs/izvestaji/cid1028-1681/predstavljen-izvestaj-o-pritiscima-i-kontroli-medija-u-srbiji.

14 Although there is a section "Media on corruption" on the Council's official website, it contains the latest news from 2015 (see at: http://www.antikorupcija-savet.gov.rs/sr-Cyrl-CS/rekli- su/cid1040/index/ and http://www.antikorupcija-savet.gov.rs/sr-Cyrl-CS/dogaaji/cid1042/index/).

assumption of inadequate reporting on corruption, pointed out that corruption in media reporting is rarely linked to white-collar crime, and as a result important features of this phenomenon are neglected. Unlike the over-emphasized reporting of corruption in sectors such as education, justice and health, the media ignore various abuses in the economy and the banking sector, as a result of which the true extent of white-collar crime is not seen, pointing out to corrupt activities.

In a similar way, the media often avoids linking crime in general, and even corruption itself, to corporations. A deviant organization, according to Benediktsson, when it sees that a high level of supervision is inevitable, points to corrupt CEOs, that is, individuals. Scandals in which the offender is a corporation will not offer newspaper editors the sensationalism that the media, that is, editors, strive for. And so, on the one hand, many corporations cut off all ties with the perpetrators of illegal acts and divert attention from corporate injustices to individual ones, while on the other hand, the media remains to focus and report on the corrupt behaviour of individuals, but not corporations (Benediktsson, 2010: 2207).

When reporting on corrupt activities, journalists insert the texts into a "specific framework", making the texts less complex and unclear, and enabling citizens to understand them and engage morally and emotionally. Referring to the ideological role of the media that several scholars have observed. Breit points out that media texts play a vital role in the (re)production of corruption (2010: 4). The mentioned "specific framework" is almost always characterized by sensationalism. Therefore, the media image of corruption is greatly influenced by the desire for more sensational headlines and news content, in order not to attract the attention of the largest possible audience, thereby violating the principles of media work. In this context, often unverified information about corruption is launched, which is easily receptive to the ears of ordinary citizens (Ćirić et al., 2010: 53). Radojičić notes that economic crime and corruption attract a lot of attention from the media and the public, as well as the fact that negative phenomena are often sensationalized in the media, while positive messages and results are lost sight of. Mentioned sensationalism will be heightened and boosted when reporting on problematic organizational activities involving potentially public interest. In addition, such cases will appear in the media and be articulated as cases of corruption (Breit, 2010: 4), rather than cases without public interest.

With everything stated so far, if we were to look for factors that influence the media's reporting on corruption which in some way get through the "obstacles" mentioned in the text advertising policies, market needs or readers' interests, priorities in reporting, budget, access to information, cultural environment and organizational culture, private interests of media houses, editors or journalists, as well as political and ideological views of journalists or editors that make these persons "filters" in reporting.

4. Conclusion

Anyone who has access to the media, that is, to the content that the media puts out in public, is under the influence of a process called media discourse. We are witnessing the role that the media plays in society today, regardless of whether we agree with the way they operate or not. Every discourse has an impact on the public, so the discourse on corruption plays a vital role in constituting reality and the perception that people have about it. The media is also said to contribute to the strengthening of democracy when they act responsibly. The role played by the media in the fight against corruption in both the public and private sectors is recognized as one of the directions of action. That role consists both in raising public awareness of the existence and seriousness of the consequences of corruption, as well as in researching and reporting cases of corruption, in which investigative journalism is extremely important. Same that role includes the discovery of things that are somehow hidden from the public, into which corrupt activities fit perfectly. The media therefore play a significant role in shaping the perception of the population. In this way, citizens get basic knowledge that can help them understand, recognize and report corrupt behaviour, thereby contributing to the overall fight against corruption. However, when the media emphasize certain cases of corruption and ignore others, they significantly create a "distorted image". However, one must not ignore the fact that the media is just another segment of society that has not remained immune to this form of criminal behaviour, and therefore one should be careful with the content they publish, which is often, but not always, incomplete and unverified. In order to avoid and reduce the manipulation of public opinion, and provide citizens with significant information about corruption in both the private and public sectors, as well as about all other types of criminality, it is necessary to nurture and strengthen the freedom of the press and the independence of the media in order to achieve complete and objective reporting. Today, however, it is a big challenge if you remember that the media can often be referred to as a "corporate organization" that needs to ensure and maintain a balance between its goals and the political-economic system in which it operates.

Bibliography

- Banović, B. (2016). Organizovani kriminal kao aktuelna bezbednosna pretnja [Organized Crime as a Current Security Threat]. *Međunarodni problemi,* 68(2-3), pp. 172-192. https://doi.org/10.2298/MEDJP1603172B
- Begović, B. (2007). *Ekonomska analiza korupcije* [Economic Analysis of Corruption]. Beograd: Centar za liberalno-demokratske studije.

- Benediktsson, M. O. (2010). The Deviant Organization and the Bad Apple CEO: Ideology and Accountability in Media Coverage of Corporate Scandals. *Social Forces,* 88(5), pp. 2189–2216. https://doi.org/10.2307/40927543
- Bertot, J. C., Jaeger, P. T. & Grimes, J. M. (2010). Using ICTs to create a culture of transparency: E-government and social media as openness and anti-corruption tools for societies. *Government information quarterly,* 27(3), pp. 264-271. https://doi.org/10.1016/j.giq.2010.03.001
- Breit, E. (2010). On the (Re)Construction of Corruption in the Media: A Critical Discursive Approach. *Journal of Business Ethics,* 92(4), pp. 619-635. https://doi.org/10.1007/s10551-009-0177-y
- Brooks, G., Walsh, D., Lewis, C. & Kim, H. (2013). *Preventing Corruption: Investigation, Enforcement and Governance*. Hampshire: Macmillan Distribution Ltd. https://doi.org/10.1057/9781137023865_2
- Castro, A., Phillips, N. & Ansari, S. (2020). Corporate corruption: A review and an agenda for future research. *Academy of Management Annals,* 14(2), pp. 935-968. https://doi.org/10.5465/annals.2018.0156
- Ćirić, J., Reljanović, M., Nenadić, N., Jovanović, M., Dobrašinović, D. & Pejović, D. (2010). *KORUPCIJA: problemi i prevazilaženje problema* [CORRUPTION: Problems and Overcoming Problems]. Beograd: Udruženje javnih tužilaca i zamenika javnih tužilaca Srbije.
- Friedrichs, D. O. (2010). *Trusted Criminals: White Collar Crime in Contemporary Society*. Belmont, CA: Wadsworth Cengage Learning.
- Gottschalk, P. & Gunnesdal, L. (2018). *White-Collar Crime in the Shadow Economy: Lack of Detection, Investigation and Conviction Compared to Social Security Fraud.* London: Palgrave Pivot, Palgrave Macmillan, Springer Publishing. https://doi.org/10.1007/978-3-319-75292-1
- Huther, J. & Shah, A. (2000). *Anti-corruption policies and programs: a framework for evaluation*. Policy Research Working Paper No. 2501. Washington, DC: World Bank.
- Ilić, A. Z. (2017). *Mediji i kriminalitet - kriminološki aspekti* [Media and Crime - Criminological Aspects], [Doctoral dissertation]. Beograd: Pravni fakultet Univerziteta u Beogradu.
- Jain, K. A. (2001). Corruption: A review. *Journal of economic surveys,* 15(1), pp. 71-121. https://doi.org/10.1111/1467-6419.00133
- Jha, C. K. & Sarangi, S. (2017). Does social media reduce corruption?. *Information Economics and Policy,* 39, pp. 60-71. http://dx.doi.org/10.2139/ssrn.2391904
- Joković, M. S. (2018). Tipologije korupcije [Typologies of corruption]. *Srpska politička misao*, 62(4), pp. 267-284. https://doi.org/10.22182/spm.6242018.13

- Kancelarija Ujedinjenih nacija za drogu i kriminal. (2011). *KORUPCIJA U SRBIJI: Iskustvo građana* [CORRUPTION IN SERBIA: The Experience of Citizens]. United Nations Office on Drugs and Crime i Republički zavod za statistiku.
- Kancelarija za javne nabavke. (2022). *Godišnji izveštaj o javnim nabavkama u Republici Srbiji za period 1.1.2021 – 31.12.2021. godine* [Annual Report on Public Procurement in the Republic of Serbia for the Period 1.1.2021 - 31.12.2021.].
- Madžar, L. (2014). Sistemski koreni korupcije – Korupcija i njena percepcija: stvarnost naspram privida [Systemic Roots of Corruption ─ Corruption and its Perception: Reality vs. Appearance]. *Škola biznisa,* (2), pp. 1-66. https://doi.org/10.5937/skolbiz2-7186
- Matić Bosković, M. (2018). Effectiveness of Anti-Corruption Bodies in Suppression of Corruption in Selected Countries. *Journal of Criminology and Criminal Law*, 56(3), pp. 73-91.
- Milanović, N. (2007). *Korupcija u privatnom sektoru* [Corruption in the Private Sector]. Transparency International BiH i Open Society Fund Bosnia & Herzegovina.
- Nedeljković Valić, D., Ivanović, M. & Leković, S. (2015). *Praktikum za izveštavanje o korupciji i o istraživačkom novinarstvu* [Practicum for Reporting on Corruption and Investigative Journalism]. Beograd: Savet Evrope, Kancelarija u Beogradu.
- Nikolić-Ristanović, B. & Konstantinović-Vilić, C. (2018). *Kriminologija* (četvrto izdanje) [Criminology]. Beograd: Prometej.
- O'keeffe, A. (2006). *Investigating media discourse*. London: Routledge. https://doi.org/10.4324/9780203015704
- Radojičić, S. (2013). *Izbegavanje plaćanja poreza, privredni kriminal i korupcija* [Tax Evasion, Economic Crime and Corruption], [Doctoral dissertation]. Kragujevac: Pravni fakultet Univerziteta u Kragujevcu.
- Rayner, H. (2012). Corruption in France: Structural and contextual conditions. In: D. Tänzler, Maras, K. & Giannakopoulos, A. (Eds.) *The Social Construction of Corruption in Europe*. London: Routledge, pp. 229-270.
- Savet za borbu protiv korupcije. (2015). *Izveštaj o vlasničkoj strukturi i kontroli medija u Srbiji* [Report on Ownership Structure and Media Control in Serbia].
- Stojiljković, Z. (2010). Karakter i logika korupcije [The Character and Logic of Corruption]. *Savremena država: struktura i socijalne funkcije* (pp. 197-230). Beograd: Fakultet političkih nauka & Konrad Adenauer Stiftung.

- Talbot, M. (2007). *Media discourse: Representation and interaction*. Edinburgh: Edinburgh University Press. https://doi.org/10.1515/9780748630073
- Tanjević, N., & Špiler, M. (2016). Ključni rizici za korupciju u javnim nabavkama i protiv mere u pravnom okviru Republike Srbije [Key Risks for Corruption in Public Procurement and Countermeasures in the Legal Framework of the Republic of Serbia]. *Bezbednost*, 58(2), pp. 131-150. https://doi.org/10.5937/bezbednost1602131T
- Tanzi, V. (1998). *Corruption around the world: causes, consequences, scope, and cures, IMF/WP/98/63*. Washington, DC: International Monetary Fund. https://doi.org/10.2139/ssrn.882334
- UNODC. (2017). Knowledge tools for academics and professionals, UNODC Module Series on Anti-Corruption - Module 5, Private sector corruption. Vienna: UNODC.
- Varinac, S. (2012). *Korupcijska mapa javnih nabavki u Republici Srbiji* [Corruption Map of Public Procurement in the Republic of Serbia]. Beograd: Organizacija za evropsku bezbednost i saradnju.
- Vega, Dulce M. Santana. (2017). The fight against corruption in Europe: lights and shadows. *CRIMEN-časopis za krivične nauke,* (3) & *Revija za kriminologiju i krivično pravo*, 55(2-3), pp. 242-267.
- World Bank. (1997). *World Development Report 1997: The State in a Changing World*. New York: Oxford University Press. https://doi.org/10.1596/978-0-1952-1114-6
- Wysmułek, I. (2019). Using public opinion surveys to evaluate corruption in Europe: trends in the corruption items of 21 international survey projects, 1989–2017. *Quality & Quantity,* 53(5), pp. 2589-2610. https://doi.org/10.1007/s11135-019-00873-x

Legal Sources

- Council of Europe. (1999a). Criminal Law Convention on Corruption (ETS No. 173). European Union.
- Council of Europe. (1999b). Civil Law Convention on Corruption (ETS No. 174). European Union.
- *Law on Confirmation Civil Law Convention on Corruption*, RS Official Journal-International Treaties, no. 102/2007.
- *Law on Confirmation of Criminal Law Convention on Corruption.* SRJ Official Register-International Treaties, no. 2/2002 i SCG Official Journal-International Treaties, no. 18/2005.
- *Law on Prevention of Corruption*, Official Gazette of the Republic of Serbia, no. 35/2019, 88/2019, 11/2021, 94/2021 and 14/2022.

- *Law on Ratification of the United Nations Convention Against Corruption*, SCG Official Journal-International Treaties, no. 12/2005United Nations. (2004). United Nations Convention against Corruption.
- Online Sources
- Savet za borbu protiv korupcije. *Predstavljen Izveštaj o pritiscima i kontroli medija u Srbiji*, available at http://www.antikorupcija-savet.gov.rs/izvestaji/cid1028-1681/predstavljen-izvestaj-o-pritiscima-i-kontroli-medija-u-srbiji, accessed on 24.07.2023.
- Savet za borbu protiv korupcije. *ДОГАЂАЈИ*, available at http://www.antikorupcija-savet.gov.rs/sr-Cyrl-CS/dogaaji/cid1042/index/, accessed on 24.07.2023.
- Savet za borbu protiv korupcije. *РЕКЛИ СУ*, available at http://www.antikorupcija-savet.gov.rs/sr-Cyrl-CS/rekli- su/cid1040/index/, accessed on 24.07.2023.

ZAKLJUČCI

LXII REDOVNOG GODIŠNJEG SAVETOVANJA SRPSKOG UDRUŽENJA ZA KRIVIČNOPRAVNU TEORIJU I PRAKSU

– Zlatibor, 20–23. septembar 2023. godine –

Srpsko udruženje za krivičnopravnu teoriju i praksu u saradnji sa Institutom za kriminološka i sociološka istraživanja, Ministarstvom pravde Republike Srbije i Pravosudnom akademijom, a uz podršku misije OEBS u Srbiji, organizovali su LXII redovno godišnje savetovanje Udruženja na temu „*Dve decenije reforme krivičnog zakonodavstva: iskustva i pouke*". Konferencija je održana od 20. do 23. septembra na Zlatiboru.

Kao rezultat prezentovanih radova, diskusija i okruglih stolova na temu izmena i dopuna kaznenog zakonodavstva, zaključeno je da je neophodno je voditi računa o sledećem:

1. Česte izmene i dopune u kaznenom zakonodavstvu negativno utiču na pravnu sigurnost građana i otežavaju efikasno funkcionisanje pravosudnih institucija.

2. U kaznenom zakonodavstvu treba menjati, ukidati i uvoditi samo one kaznenopravne institute za koje je prethodno utvrđeno da su kriminalno-politički opravdani.

3. Krivično pravo ne sme poprimiti obeležje *prima ratio* sredstva.

4. U radu na izmenama i dopunama Zakonika o krivičnom postupku, preispitati rešenja koja nisu u funkciji efikasnosti krivičnog postupka (slučaj na primer sa pripremnim ročištem, važećim konceptom istrage, načinom kontrole optužbe i slično). Uz ovo, neophodno je posebnu pažnju posvetiti poboljšanju položaja statusa oštećenog i preispitati postojeći sistem pravnih lekova.

5. Osamnaest godina nakon poslednje sveobuhvatne reforme maloletničkog krivičnog zakonodavstva, međunarodni standardi u ovoj oblasti dostigli su

značajno viši nivo sveobuhvatnosti, a i sama primena odredaba zakona u praksi iskristalisala je potrebu da se određena pitanja drugačije urede. Imajući u vidu obim neophodnih izmena, potrebno je doneti novi zakon koji bi na celoviti način uredio pitanja kako prekršajnog, tako i maloletničkog krivičnog prava.

6. U kontekstu izmena kaznenog zakonodavstva, neophodno je izvršiti izmene i dopune Zakona o prekršajima.

7. Istovremeno sa radom na novom zakonodavnom okviru, treba pristupiti i pripremi seta podzakonskih akata, kako bi se izbegle eventualne neusaglašenosti, a u cilju potpune primene zakona.

CONCLUSIONS

LXII REGULAR ANNUAL CONFERENCE OF THE SERBIAN ASSOCIATION FOR CRIMINAL LAW THEORY AND PRACTICE

– Zlatibor, September 20-23, 2022 –

The Serbian Association for Criminal Law Theory and Practice, in cooperation with the Institute of Criminological and Sociological Research, the Ministry of Justice of the Republic of Serbia, and the Judicial Academy, and with the support of the OSCE Mission in Serbia, organized the LXII Regular Annual Conference of the Association on the following topic: "Two Decades of Criminal Legislation Reform: Experiences and Lessons ". The Conference was held from September 20 to 23 in Zlatibor.

As a result of the presented papers and the expert discussion on amendments to the criminal legislation, the following conclusions have been adopted:

1. Criminal legislation that is subjected to frequent amendments and additions undermines the legal security of the public and the effectiveness of judicial institutions.

2. In criminal legislation only those criminal law institutes that have previously been determined to be justified should be changed, abolished, and introduced.

3. Criminal law must not acquire the character of *prima ratio* means.

4. Review solutions that are not in the function of the efficiency of the criminal procedure (for example, the preliminary hearing, the valid concept of the investigation, the method of control of the prosecution, etc.) during the work on amendments to the Code of Criminal Procedure. Furthermore, enhancing the status of the injured party and reassessing the current system of legal remedies are elements that require particular consideration.

5. 18 years after the last comprehensive reform of juvenile criminal legislation, international standards in this area have reached a significantly higher level of comprehensiveness. Sole application of the provisions of the law in practice has crystallized the need to regulate certain issues differently. Bearing in mind the scope of the necessary changes, it is important to pass a new law that would comprehensively regulate the issues of both misdemeanour and juvenile criminal law.

6. In the context of criminal legislation amendments, it is necessary to introduce amendments to the Law on misdemeanours.

7. Parallel with the efforts on new legislative framework, the preparation of the set of by-laws should be prepared, in order to avoid possible inconsistencies, with the aim of implementing the law in its fullness.

ABOUT THE JOURNAL

The Journal of Criminology and Criminal Law is triannual, peer reviewed scientific journal with over 60-year long tradition, co-published by the Institute of Criminological and Sociological Research- Belgrade and the Serbian Association for Criminal Law Theory and Practice. According to the categorization of the Ministry of science, technological development and innovation the Journal is categorized as M51 (Prominent/outstanding journal of the national importance). The Journal includes articles in the field of criminal law, criminology, penology, victimology, juvenile delinquency and other sciences that study etiology, phenomenology, prevention and repression of crime. Moreover, the Journal is indexed in the prestigious global databases: ERIHPLUS, Dimensions, HeinOnline and Crossref.

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