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ВЛИЈАНИЕТО НА ГОЛЕМИТЕ СИЛИ ВРЗ БЕЗБЕДНОСТА НА МАЛИТЕ ДРЖАВИ

INTERNATIONAL SCIENTIFIC CONFERENCE

THE GREAT POWERS INFLUENCE ON THE SECURITY OF SMALL STATES

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PREFACE

Dear readers,

The mission of the international scientific conference entitled “The Influence of Great Powers Over the Security of Small States” is to encourage the academic community and security practitioners to exchange views based on applied subject specific research scientific methods, but also to attach a scientific – research dimension to practical experiences. The idea for organizing this Conference coincides with the need for addressing the contemporary challenges and security risks.

Expanding the spectrum of scientific thought is associated with the security challenges faced by states, especially in a time of global movements and dynamic world processes. Through their papers, the members of the security academic community talk among each other, discussing and sharing their different views, and ultimately arrive at common solutions for every challenge that has emerged in the security sector.

The papers in this Compendium were received by means of a public announcement and they offer solutions for the future establishment and renaming of the security systems of small countries in view of creating an efficient response to contemporary security risks and threats, that is, to the destabilizing factors that cause conflicts. On that note, and in correlation with the title of the Conference, the papers treat security issues in a number of security science sub-disciplines and contribute to confirming the existing and creating new solutions in the area of security, international relations, Euro – Atlantic integration, criminalistics and criminology with an underlying holistic approach and for the purpose of efficient and timely dealing with security risks and threats and accelerating the process of Euro – Atlantic integration.

Hence, the mission of the Conference and the publication of the papers encourage scientists and researchers to exchange scientific knowledge in order to identify the security needs and determine and select an appropriate response, as one of the prerequisites for the integration of small countries.

The practical objective of this Conference and Compendium is manifold, primarily due to the scarce number of papers and analyses on this topic in scientific and expert literature and the partial scientific approach in those that exist, which implies imposing effects in practice.

The aim is to produce valid results and scientifically verified knowledge that will enable the implementation of a rational and acceptable solution for the security sector reforms. Argumentative substantiation and presentation of the derived results and the overall situation are used to consider the systemic and

institutional solutions and to initiate a new phase of qualitative development of the security system and its institutions

The international scientific conference has gained a high reputation over the past nine years among the academia in the region and Europe. The scientific gathering 2019 will cover the following topics that are addressed in the Compendium papers:

Geostrategic interests and political influences

- Geopolitical conflict of concepts, interests and ideologies in the region: Euro-Atlantic vs. Euro-Asian integration;
- Russian influence in the Balkans-destabilizing threat or factor for economic growth;
- Turkish foreign and security policy in the Balkans ; One belt One Road-China between economic promotion and democratic obstacle;
- The role of USA in the Balkans in the era of President Trump;
- German strategic interests in the region;

New security challenges and asymmetric threats

- Radicalism and the Balkans;
- Security between strategies and red lines in the Balkans;
- The role of non-state actors in the security of Southeast Europe;
- Hybrid threats as new challenges for security ;

Global movements and changing policies

- Migration, human rights, political and security risks for small states;
- The role of the rule of law in the balance between justice and security in international relations;
- Contemporary forms of crime as a global threat;
- Capacity strengthening of small states and the capacity for fighting corruption and organized crime;

The Faculty of Security – Skopje has a key role in analyzing the processes and threats to the country's internal and international security. Ohrid scientific conference 2019 contributes through a debate of scientific articles to providing answers to all the issues that raise the interest of the scientific and social public. One of these issues is the regional establishment in terms of the great powers and their interests. Through an open and argumentative debate, the conference incites a discussion on the impacts of great and regional security factors in the Balkans.

The exchange of experiences and the presentation of the results from the scientific research conducted by higher education institutions supported by international organizations can contribute to responding to the security dilemmas and problems in the region, achieving better functionality and position of the security system.

Thus, the Faculty of Security – Skopje continues its orientation toward organizing the 10th international conference in the security field in order to contribute to the development of scientific thought, and help policy creators (political level) and decision makers (senior practitioners) on the regional, national and local level to overcome the practical problems they are facing in a faster, simpler and timely fashion with the acquired knowledge and research results.

On behalf of the Faculty of Security-Skopje and the Organizational Board of the Conference, I express my gratitude to the Hans Seidel Foundation from the Federal Republic of Germany for supporting the organization of the International Scientific Conference, as well as to the Chamber for Private Security of the Republic of North Macedonia, which has been our partner over the years in joint activities. I am especially pleased that the idea for organizing this type of international scientific conference launched 10 years ago by Professor Cane Mojanoski with a team of professors will continue to live in the future, and after its first decade it will grow into an even larger-scale international scientific academic forum.

Assistant Professor Marjan Gjurovski, Dr.Sc
Vice Dean for Science and Development
Chairman of the Organizational Board
of the International Scientific Conference and Editor of the Compendium

Country	Original Scientific paper	Review Scientific paper	Professional paper	Total work papers
Bosnia and Hercegovina		2	1	3
Croatia	2			2
Germany		1		1
Greece		1		1
Kosovo				
Macedonia	7	15	2	24
Montenegro		1	1	2
Romania			2	2
Russia		1		1
Serbia	2	9	2	13
Slovenia			1	1
Turkey		1		1
Total work papers	11	31	9	51

GLOBAL MOVEMENTS AND CHANGING POLICIES

UDK:

THE CITIZENS AND THEIR PERCEPTIONS FOR INFLUENCE ON THE ACTIVITIES OF THE POLICE

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Abstract

This paper analyzes the results from the conducted field researches in the Republic of Macedonia in 2018 and 2019. Based on the results thereof, the ratings for the level of trust the citizens have in the police vary and are marked by a slight average increase from 3.00 in 2018 to 3.12 in 2019.
An integral part of the analyses of the citizens' perceptions according to these research results is the way they can influence the police activities. The results indicate that this can be achieved by active cooperation with the police for solving a certain problem with 61.33%, followed by the attitudes "by participating in a counseling group in my municipality (58.33%), through "membership in an association that deals with police activities (57.33%) and "by proposing initiatives" (55.33%)

Key words: police, trust, citizens, partnership, community policing

Introduction

The subject of the analysis in this paper is the citizens' perceptions of their readiness for getting involved in police activities, or more specifically, if and how much they know in what way they can get involved in police activities. It elaborates a set of indicators on the basis of which the views on the level of acceptance of the method of police activities can vary. It can be found in literature and in the practices under different terms, but the most common consensus is that it is a model of Community Policing.

The police use different strategies in the community. The success of these strategies is conditioned by numerous preconditions of economic, demographic and other nature, by the characteristics of the police organization in the community (size, number of employees, gender, age and educational structure of the employees, etc.), what influences the citizens' perceptions of their security, the level of common relationships, the perceptions of the police officers, as well as their readiness to help and get involved in common activities.

The concept of community policing is both a philosophy and an organizational structure. According to this strategy, the police and the citizens are

enabled to find new ways for solving crime and the social and physical disorders in the local community. It is about an approach based on the belief that the citizens who respect the law and act according to the law should have an opportunity to be involved in police activities, in its programs and actions both in view of increasing the security in the community and dealing with crime and threats, and of achieving individual and common goals. Therefore, this concept means involving the citizens in the police actions and giving them the opportunity to be useful support to the police officers. The concept of "community policing is based on the belief that the resolution of the current social problems requires liberation of the citizens and the police from traditional boundaries that will give them new and creative ways to oppose social problems" (Cajner Mraović, Faber, & Volarević, 2003, p. 6).
The police and the police structure are a subject of study of many disciplines and sciences. Modern sociological and political approaches to the police focus on the fact that it is a separate entity with its own tasks and powers, its own organizational structure, staff, means and characteristics, which in one way or another are its *diferentia specifica*. In addition to the position and the functions, an important role in society has the exercise of those functions that enable constant interaction of the police with its social surrounding. Given the fact that the surrounding of the police system, grosso modo, constitutes the global society in which the state occupies the central place, the attitudes that “society imposes the police function or this function, in bottom line, arises from the needs, the conditions and the relations in a society and established content of the police function changes along with the changes in society” (Milosavljević, 1997) are becoming increasingly louder.

Today it is almost impossible to build a consensus for the term police and for the scope of use of this term. It comprises numerous approaches, concepts and definitions or one specific multi-definitional situation. In this paper, for analytical needs, the conceptual determination of the police is defined as: “an organizational and functional term, formal and material, strategic and dynamic, the police as a government authority and as a public service" (Milosavljević, 1997). Political science (the political approach) observes the state as a political reality that has the monopoly of legitimate physical violence, which is performed through the police as an executive body. From a formal perspective, the police is based on the powers, organizational forms and authorities in the society, it is a body which, in accordance with the security situations prescribed by law, prevents all occurrences and behaviors that can or actually lead to unwanted consequences.

The term police can be observed in both historical and contemporary context. It means that the term involves the historical experiences about the role and the organization of the police. It is a complex social phenomenon which is a complex multidisciplinary theoretical and methodological approach. The complexity and the multidisciplinary character are a consequence of the fact that the police tasks and its organizational models are different in different countries and that makes it difficult to identify its important common features. It states in the foreground that " certain national specificities are the most important to emphasize " (Milosavljević, 1997, p. 9), (Spasić, 2013, p. 87), (Masleša, 2008).

Depending on the theoretical and disciplinary approach, the definitions of the term trust are different. The term trust is usually understood as a certain set of socially-scientific and acquired practices, but also as socially confirmed expectations from individuals, organizations and institutions whose functions provide certain social, legal and other assumptions that constitute the basis for poor realization of the manner of work and action of the individual.

Trust is an indicator of the expectations and hopes of the community for the police role and tasks. It is a moment that has an important impact on the quality of relations between the police and the citizens. It is in correlation with citizens' expectations and what it really does for them. If the degree of closeness between the citizens' expectations and the real role of the police is higher, they will be more satisfied and will have a higher respect and will have more positive attitudes toward the police. If the conduct of the police is exercised in a way that is far from the expectations of the citizens, it is fairly certain that one should expect a more significant and more pronounced dissatisfaction, and the relations of the citizens and the police can be determined as worse. The dissatisfaction with the work of the police leads to its unpopularity and declining of its effectiveness, and then to the emergence and emphasis on police reform requirements (Mojanoski & Gjurovski, 2018).

The findings to date have confirmed that the citizens' expectations are concentrated on four basic roles of the police: a) property protection, b) maintaining public peace and order and solving of specific problems, c) listening to their information and acting accordingly, and d) being in their surrounding as a symbol of the order and power, or as a guarantee for the previous expectations. It is about the basic expectation of the citizens of the police which maintains the safety of their lives and properties and return the peace and tranquility in their surrounding or eliminates their fear from crime and peace disorders.

Contrary to these concepts, the classical understanding of the police role and strategy generally prevails in practice. Hence, the police emphasize and tend to better succeed in the process of repression of crime, develop certain techniques and involve important human capacities. This strategy neglects the numerous possibilities for involving the citizens in crime prevention and develops forms through which the citizens have the role of information providers. This type of cooperation and help is particularly supported and fostered. Accordingly, the police are expected to be the strongest pillar in the fight against crime and resolving the citizens' social problems is not their primary task, as the police is not supposed to be dealing with such issues. It develops the face of a "super hero" who has abilities that do not belong to everyone else. They are simply for "feats". According to this approach, the police work is to maintain law and order and it hardly accepts and pays insufficient attention to the democratic values and hardly agrees with the citizens' right for participation in the formulation and implementation of the security policy related to them.

In the explanation of this strategy, the American experience with the crime fighting model is used as an example. According to Braga it means: a) patrolling,

b) quick response and c) police investigation (Braga, 2002). Another group of researchers like Weisburd, Ec and Sherman, measure police efficiency in crime prevention and reduction using five indicators. They claim that the number of police officers and the number of police arrests should be added to the three previously stated indicators (Stefanovska & Gogov, 2015, p. 56).

The publicity and accountability in deciding upon the work of the institutions are features of the social and the political life in general (Damjanović, M., 2002). Those are the minimal conditions for people's participation in community's public life. The secret and mysterious life is not the foundation for collective action and confrontation of opinions (Кешетовић, 2000). Publicity is the basic form of social life, since without it there is no free expression of people's opinions and interests, democratic relations and control, and there is no condition for politics and the civil status of the human (Хелд, 2008, стр. 307-324). The closed, mysterious and conducted life is in fact a form of vegetation and insufficient recognition of the existence of "another life".

That other life has different types and its background environment includes various "whisperings" and gossiping, exaggerations, insinuations and causing mistrust by tapping. Such forms of "life" follow every policy to date and they constitute an obstacle to the achievement of democratic political processes (Mojanoski TS, 2002), (Mojanovski, Dujovski, & Gjurovski, 2018).

The modern society in general cannot be established as political unless it creates these conditions for the development of the public, supervision and accountability (Matić & Podunavac, 1995). There are two directions of achieving public and political life. One is relatively free and democratic and affects the creation of conditions for them. It is not prescribed, but is created in the general conditions of the personal freedom, association, publicity, struggle and civil virtue. The second direction is autocratic and bureaucratic (Ideological and Political Conflicts (Review of the Culture of Dialogue), 2011). In it the political and public life is not created, but is fabricated. Its features are fictitious public life rather than independent; manipulating the "people" with ready and prefabricated ideals and manifestations, propaganda ovations and staged actions; attenuation of the relations between the citizen and the policy of conducting a mechanism of propaganda and agitation; limiting the political interest and the self-expression of groups and citizens of a permissible and controlled area that is provided and regulated by the government; turning the citizen into a passive object of that manipulation that moves only under its influence. Under the influence of the government or of individual economic interests, the society becomes a dismal society. This is a negative form of the wider political society and the public (Barsamian & Čomski, 2004).

A specific indicator of the degree of openness of police work is its willingness to cooperate with the forms of external control (checks, inspections, etc.) (Dimoski, 2014). The most of the civic oversight institutions deal with complaints against the police (Stankovski, 2016). However, the extent of their involvement in the consideration of complaints varies considerably. While some

oversight organizations are responsible for receiving and investigating complaints in cases of serious overstepping of authority or when there appears to be inconsistencies in internal control, other organizations are limited only to monitoring and reviewing the investigations carried out by the authorized services themselves (Stojanovski, 1997). Similarly, while some bodies have no influence over the penalty for overstepping authorizations, some others can make recommendations for disciplinary measures, and even have the authority to impose sanctions.

A special, but especially dispersed form of supervision is the forms of civil self-initiative and their associations, as part of societas civilis, especially the so-called think-tank. They are usually composed of a group of intellectuals who regularly meet and discuss, analyze important issues from a particular area (in which they are professional), and through organizing peaceful gatherings and other forms of expression of attitude by civil self-initiative (Haywood, 2009), (Held, 2008). The contribution of the civil self-initiatives organized in associations that through public debates, presentation of research results and constant holding as open questions about the functioning of the police organization offer alternatives, possible solutions, or are in function of revealing scandals and crises or training the citizens and together with them they make complaints about the actions of the police (Damjanović, M., 2002). The non-governmental organizations, the media, think tanks and research institutes follow the establishment and functioning of the police, security and other services and, on the basis of the public sources, raise questions, organize debates or use other democratic means (Mojanovski, Dujovski, & Gjurovski, 2018). Individually, the citizens can seek protection through special tribunals, ombudsmen, commissioners, general inspectors, as well as domestic and international courts, such as the European Court of Human Rights (Mojanoski, 2002, p. 280).

The successful realization of democratic control and strengthening of the principle of accountability and publicity in the work of the police is a form of the dominant political culture (Matić & Podunavac, 1995). It is most often associated with the general cultural pattern and certain behavior that goes beyond the laws and other legal norms. However, laws should provide a framework that fosters a culture of openness and respect for human rights (Bačanović, 1997).

Lastly, the role of the media is no less important for exercising supervision. They are a powerful tool in informing the public about the work of the police.

Methods and instruments

This paper analyzes the results of the field surveys conducted on the territory of the Republic of Macedonia in the period from 2018 to 2019. It is about applying the method of interview, especially the structured interview technique, which in the form of a socio-demographic survey was conducted in all planning regions in Macedonia, between 30 and 40 municipalities. The number of respondents in January 2018 was 1003, in November 2018 it was 760 and in

January 2019 it was 1019 respondents. The sample is combined. It is a multi-staged and is in the group of deliberate specimens (Mojanoski C. T., 2015). It is constructed in such a way that the municipalities were selected in each planning region which was subject of the field activity. An urban or rural core was constructed in each settlement, and the principle on the right side of the movement was chosen. Every fifth home in the individual buildings was visited, that is, every 20th in the collective residential dwellings. The choice of the interlocutor was done on the basis of the principle of the nearest birthday, to an adult who lives on that address. This way of selecting the respondent determines the randomness of the sample. The instrument according to the method of filling was a structured interview is face to face. The researcher asks questions, the respondent answers. Each researcher leads an Anchor diary in which he communicates the atypical situations, but also his own impressions about the choice of the interlocutor, the manner of answering and the atmosphere for conducting the interview. In doing so, the processing of data does not include unsuccessful interviews, which are canceled regardless of the reasons for the cancellation. For the purpose of the research, Guidelines on the manner of designing the sample, selection of interlocutor, the keeping of the questionnaire, the manner of monitoring and control of the field researchers, the manner of handling the research material (Mojjanoski T. T., 2012) was prepared. The research in January was conducted in the period from 8-20, and from November 20 to December 10, 2018.

The instrument Basis for Conversation was constructed in s form of a sociodemographic survey that included a number of batteries of closed-type questions with answers from the lycert scale (I do not agree to I completely agree and I can not evaluate the answer) with grades from 1 to 5, then batteries with dichotomous answers, multi-choice questions and open questions. The subject of this paper will be part of the issues related to the citizens' confidence in the work of the police and how they can be involved in its work.

This paper will also show data on the assessment of the work of the police from the field research conducted in November 2018 (from 20 November to 10 December 2018) related to the Security and the Security risks of Macedonia. This survey was conducted on a sample of 760 citizens and 150 respondents expert public. The responses of the citizens are analyzed (Mojjanoski & Gjurovski, 2019).

Results and discussion

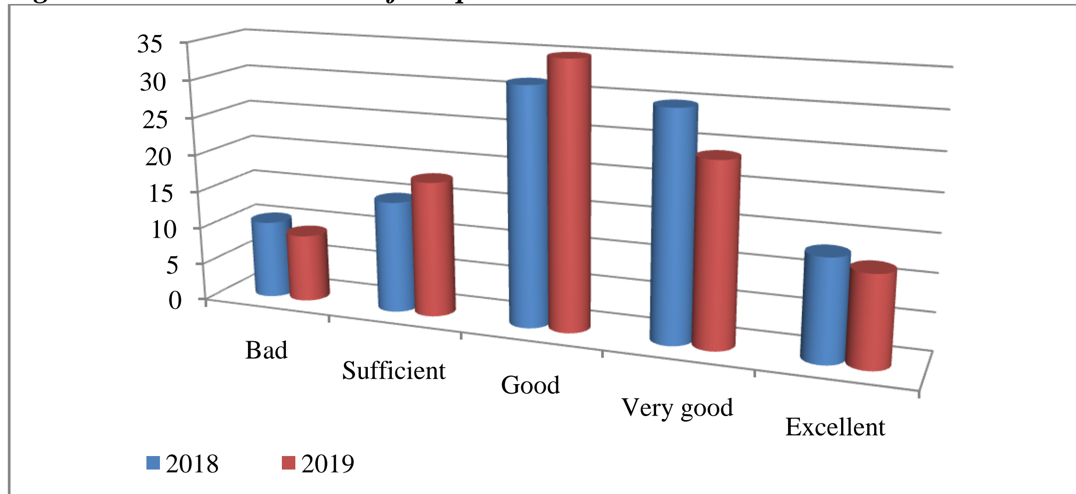
The analysis of the results starts from the data display of how they assess the work of the police in 2018 and 2019. This includes the distribution of the same question from the "Security and Security Risks of Macedonia" survey, conducted in November 2018, to a sample of 760 respondents from across the country. The characteristics of the blunder have been published in the publication "Index II" (Mojanovski & Gjurovski, Index of Safety II, 2019, pp. 27-40). What do the results show?

Table 1 ***Evaluate the work of the Police of the Republic of Macedonia***

	January 2018		November 2018		January 2019	
	f	*%*	*f*	*%*	*f*	*%*
Bad	140	13,96	76	10,00	92	9,03
Sufficient	162	16,15	86	11,32	193	18,94
Good	364	36,29	202	26,58	363	35,62
Very good	230	22,93	242	31,84	247	24,24
Excellent	107	10,67	154	20,26	124	12,17
Total	1003	100,00	760	100,00	1019	100,00
	$\bar{x}$=3,00	σ=1,17	$\bar{x}$=3,41	σ=1,21	$\bar{x}$=3,12	σ=1,13

The average results of the three research activities show relatively well-balanced grades. Namely, the dominant values are concentrated around the good and in January 2018 it is 32.29%, the same month in 2019 it is 35.62%, that the value of that assessment is somewhat lower in November 2018 and is 26.58%. If you look at the grades "very good" and "great," then it is about the following values: 33.60% in January 2018, 52.10% in November 2018 and 36.41% in January 2019.

Figure 1 Evaluate the work of the police-results: 2018 and



From the distribution it can be noted that there are certain differences in the estimates of the attitudes of the citizens measured in 2018 in the months of January and November. Namely, in November there are high positive grades, while in January 2018 and January 2019 there are certain shifts, but they are not so significant. From there arises the question: whether the differences that occur in the grades are random. That is, whether the degree of association in the results of the three measurements is significant. Testing is done with the χ2 test. They confirm that there are no significant differences in the assessments of the respondents (all three results together χ2 = 10.42, p = 0.24; grades January 2018 and January 2019

$\chi 2$ = 1.42; p = 0.84; January 2018 - November 2018 $\chi 2$ = 7,43; p = 0,12 and November 2018 - January 2019 $\chi 2$ = 6,33, p = 0,18).

1.

Perceptions of citizens' influence over the police

What are the perceptions of the citizens regarding the possibility of influencing the work of the police. The distribution of the responses is given below.

Table 2 How can you influence the work of the police?

	2018		2019			sig.
	yes	**no**	**yes**	**no**	χ^2	**P<0,05**
1)with membership in an association dealing with the work of the police	**57,33**	42,67	48,09	51,91	1,71	0,19
2) membership in a political party	23,13	76,87	26,20	73,80	0,25	0,61
3) by participating in an advisory group of citizens in my municipality	**58,33**	41,67	**53,97**	46,03	0,39	0,53
4) through the media	39,88	60,12	47,60	52,40	1,21	0,27
5) active cooperation with the police for solving a particular problem	**63,81**	36,19	**61,33**	38,67	0,13	0,72
6) through the Council in my municipality	48,52	51,48	50,34	49,66	0,07	0,80
7) through informal association with the neighbors in my place of residence	44,97	55,03	45,24	54,76	0,00	0,97
8) by submitting initiatives	**55,53**	44,47	**55,05**	44,95	0,00	0,95

It can be concluded that the citizens in 2018 and 2019 have balanced attitudes about the ways they could influence on the police's work. Namely in 2018, 63,81% of the respondents considered that "by active cooperation with the police for solving a certain problem" it can be influenced on the work of the police. A similar distribution can be noticed in 2019 when positively on this question have answered 61,33%. If we test the degree of agreement of the attitudes, both positive and negative in 2018 and 2019 it can be concluded that the Chi-square test statistic doesn't show significant difference. The active cooperation with the police for solving a certain problem is the way in which the majority of respondents consider it to be the most suitable. It points to the knowledge that the respondents are ready to realize that both the police and the citizens have a common goal, working together in solving the problems of the community and creating conditions in it to be able to fulfill their needs and interests.

The second group of attitudes that has the highest degree of support is the citizens' attitude that on the work of the police can influence with "participation in counseling group in my community", where 58,33% in 2018 have answered positively and 53,97% in 2019. In this case too, the Chi-square test statistic doesn't show significant differences among the responses of the two research results. The forms of association of the citizens are form through which the social dimension of

the human is being realized, but also a form in which the group and the community exist. According to their form they can be formal and informal. The initiatives, the petitions, the gatherings and other similar initiatives have formal and occasional character. The citizen associations are entities that develop or participate in the development of the civil society, especially in strengthening the civic initiative, direct actions, and in strengthening the citizens' subjectivity (Mojanoski, 2002, p. 207).

The third group of answers is most common about the positive attitude that the work of the police can be influenced by "membership in an association dealing with the work of the police". Namely, 57.33% in 2018 and 51.91% in 2019 have this attitude. And in this distribution the Chi-square test statistic does not show any significant differences.

Also, the fourth group of responses that have a higher degree of frequency is the answer to the question that the work of the police can be accomplished "through the submission of initiatives". On this question, 55.33% of the respondents in 2018 responded positively, and in 2019 that proportion was almost identical with 55.05%.

Somewhat weaker positive results are noted in the answers that the work of the police can be influenced "through the Council in my municipality" with 48.52%, "through informal association with the neighbors in my place of residence" with 44.97%, "through media "with 39.88% and" with membership in a political party ", where 23.13% of the respondents answered positively.

Conclusion

The research results indicate that the model Community police is actually returning the police among the people and the everyday social life. Important police’s tasks are the partnership with the community, solving the problem and the changes among the police leadership and the organizational structure.

The previous discussion points to the conclusion that in the society there is a lack of quality and complete information and knowledge about the work of the police, which presupposes the development of a more conceived strategy for improving the performance of the police work in the community. The use of community policing models is expected to improve the relationship between police and citizens. Therefore, and in accordance with the presented findings of the respondents, it is necessary to build a more sensible socially more defined platform for involving citizens in solving problems and in affirming the principles of community policing philosophy.

The partnership with the community is a way of involving the citizens in the execution of the police tasks, the solving of the problems is nothing but returning of the police in the everyday social life, and the changes on the level of police leadership and the organizational structure of the police are a condition that allows the previous two process. Every member of the police, as an official person authorized by law to apply coercion and directly to human rights and freedoms, must bear a certain personal responsibility for his actions during the performance of

his official duties and activities. The police officer should be aware of such responsibility, especially when making decisions about acting. The success or failure of each job depends on the competence and ability of the policeman. Namely, in every proceeding, the policeman should take into consideration the criteria of legality, proportionality and non-discrimination. This is necessary in order to detect possible liability of a police member for omissions or overstepping his authority in any police intervention.

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UDK:

INSTITUTIONAL AND SITUATION FACTORS AS DETERMINANTS OF MARGINALIZATION AND DEVIATION IN EDUCATIONAL-CORRECTIONAL INSTITUTIONS

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Abstract

Starting from the theory of deprivation as a possible theoretical framework for explaining the marginalization and deviance of the youth in the ECI and the juvenile prison, the subject of this paper deals with the institutional and situational factors of the prison environment within which six categories and more subcategories have been identified. The categories specifically refer to*: the regime in the educational-correctional facility and the juvenile prison***; *maintaining order and discipline; the characteristics of the space; treatment activities; the attitude of the re-education service; and the attitude of the security service* (the last two mostly refer *to the protégés).*

The purpose of this paper is to answer the question of the influence of the stated factors on the marginalization and deviance of the young, the foundation of the so-called **residential culture** versus the institutional, group and individual culture in the afore institutions. The method used in this way is basically from a qualitative perspective, in addition to the individual interviews with the protégés - field observation in institutions was used in the part of research data collecting techniques.

Key words: *institutional and situational factors, child in conflict with law, Educational Correctional Institution, marginalization and deviation*

INTRODUCTION

Starting from the theory of deprivation as a possible theoretical framework for explaining the marginalization and deviance of the youth in the ECI and the juvenile prison, the subject of this paper deals with the institutional and situational factors of the prison environment within which six categories and more subcategories have been identified. The categories specifically refer to*: the regime in the educational-correctional facility and the juvenile prison*; *maintaining order*

and discipline; the characteristics of the space; treatment activities; the attitude of the re-education service; and the attitude of the security service (the last two mostly refer *to the protégés).*

The purpose of this paper is to answer the question of the influence of the afore-stated factors on the marginalization and deviance of the young, the foundation of the so-called **residential culture** versus the institutional, group and individual culture in the afore institutions. The method used in this way is basically from a qualitative perspective, in addition to the individual interviews with the protégés - field observation in institutions was used in the part of research data collecting techniques.

Having into consideration the subject of the research [1], the following questions were raised as crucial: Is institutional security emphasized at the expense of rehabilitation?; Is the applied model more rehabilitative or intimidating and punitive?; Is there any practice of using force and more intensive obedience sanctions?; Is violence tolerated and how is the role of the staff experienced and understood (as *control, authoritarian, forced or pro-social*, *permissive, authoritative structure*). This includes the following questions: How is the regime in the Educational Correctional Institution connected with the "pains" of imprisonment? How are order and discipline carried out in the institution? Are any treatment activities implemented and how do they influence the reduction of deprivation?

The above questions were analysed through a **qualitative analysis of the obtained statement content** from the conducted interviews with the young protégés in the Educational Correctional Institution (hereinafter: ECI). Our aim, inter alia, was part of the knowledge related to the theory of deprivation[2] to be checked against our analysis of the regime, the goals and nature of the institution, as well as some other institutional and situational factors. The analysis was based on the interviews with the respondents. The research project envisaged the use of both the method of observation of the institution, as well as the interviews of the respondents. However, due to objective reasons, the method was reduced to the latter.

Analysing the prison facilities, Goffman (1961) describes them as "total institutions" in which many offenders have been removed from the wider society

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[1] The research titled: Marginalization and deviance of young people in conflict with the law in the educational- correctional and penalty institutions" was carried out by the research team of the Faculty of Security by Associate Professor Vesna Stefanovska, Oliver Bachanovikj Ph.D., Associate Professor Dragana Batikj and Natasha Peovska Docent Ph.D., in the period from 15 March to 30 June, 2018. This sample covered almost the entire population. Namely, in the period of conducting the interview, 19 protégés were accommodated the ECI and 17 protégés were interviewed (one of the protégés was on the run and the other one did not want to participate in the survey).

[2] In addition to the theory of deprivation in explaining the **relationship between the residential environment, custody deprivation and adaptation models,** several theoretical approaches are used: the theory or model of input, the model of self-concept and self-identity of the youth, the model of power and control etc.

for a certain period. Life in them is administered, or controlled and monitored by the staff. This ***formal circle of life*** causes the incapacity of the offenders to deal with certain elements of the institutional world, thus reaching the so-called death of a person. So, according to Goffman, the offenders adapt to life in those institutions through a **process of mortification** or self-change.

Based on the above, and according to the theory of deprivation, the **custody environment**, that is to say, a number of **institutional and situational factors** cause the deprivation of the custody. In addition, the basic theses in penology research imply that the stricter the regime, the more force is applied, the smaller space is, the stricter and more authoritative attitude of the staff becomes; hence, the deprivation is greater and thus the entailing negative consequences. In general, **there is a positive correlation between poor custody conditions and deprivation levels**. They cause many negative psychological consequences. In particular, they can create, inter alia, internal pressure, nervousness, fear, restlessness, insomnia, loss of appetite, sadness, depression and anxiety. Moreover, impatience, a low level of tolerance, a loss of self-esteem, a feeling of helplessness or despondency may affect the offenders. Due to the loss of autonomy, **depersonalization and loss of identity** may develop, causing revolt and resistance.

In addition to the afore-stated, there are views according to which: the adjustment of the new institutional environment is related to the **climate in the institution itself** which is determined by the social interaction with other protégés and staff and **by the conditions in the institutions**. The attitude of the staff towards the young people in conflict with the law can be considered **as crucial** for achieving a feeling of security, fair treatment, but also trust in the staff. The lack of trained personnel, as well as the use of a repressive approach by the staff, may have a negative impact on the behaviour and attitudes of the youth in the institution. When it comes to the **conditions in the institution**, they may lead to frustration, boredom or fear and a possibility of improper conduct. Overcrowded institutions, physical circumstances, architecture of the buildings, lack of supervision and security may cause depression among young people, and thus reduce the level of adaptation and incite violence.

In this context, the approach by Radovanovic D. (1992: 34) is interesting to present since one of his explanations of the theory of deprivation is related to the subject of our interest in this paper. Namely, this author uses several explanations of the stated theory,[3] including the explanation of the nature and regime of the prison organization. "The complex of problems that we call **nature and the regime** of the prison organization encompasses a series of phenomena that exist in the prison as a social system, starting with the *type and nature of the organization, internal organization solutions, policy management, method of operation and*

[3] The author tries to explain the theory of deprivation by: 1) explaining the sense of rejection; 2) explaining the deprivation; 3) explaining the nature and regime of the prison organization; 4) the impact of inmate's groups /the latter, according to the author, means expanding the theory of deprivation – m.n./. (more information on pages 30-44).

treatment of offenders, the inmates' relationship with the staff, the inside relationships and the relations between the individual services."

The notion of regime and the nature of a penitentiary institution are also explained by some other authors. Thus, regime in a penitentiary institution *means the normative arrangement of life and work, the manner in which the prison staff enforces the order and discipline, the manner of communication and the relationship between prison staff and the offenders*. The regime in the institution is a normatively regulated and concretely built up relationship that ensures the achievement of the set goals for re-socialization of the offenders. It cannot be identified with the notion of rigor, but rather with the manner of acting with the offenders which should ensure the achievement of the re-educational goals. Also, the regime is an immediate result of the way in which the aims of the punishment are set and the paths ahead are chosen (Arnaudovski and Gruevska-Drakulevski, 2013: 389).

All these phenomena are undoubtedly important, both for studying the occurrence of the prison system and for the integration therein. In literature, at least when it comes to the latter, on the one hand, these phenomena are most often reduced to a dimension that can be described as an orientation to control and maintain order, and on the other hand is the re-education element. This means that the "orientation for control or correction" summarizes the impact of the abovementioned phenomena, since they ultimately depend on **the nature and type of institution,** the work of the offenders and a whole range of other things.

The basic assumption that many researchers are starting to consider in this review is that the orientation to control is still prevalent in the penology practice of many institutions, and that this is the main reason why it comes to the occurrence and acceptance of the prisoner's social system. Namely, it is believed that the orientation towards control, especially if control is considered as the primary task, leads to an organizational arrangement known as a "total institution" and one of the important features of such institutions is the overproduction of rules and provisions that regulate the overall activity of the individual (Goffman, 1979), starting from such ordinary things as eating, bathing, writing, behaviour, to general and vocational education and work. The consequence of such overproduction is the **inferior status** that constantly reminds the convicted person of being rejected by society, that he/she is unworthy of trust, that he/she is not given autonomy, independence or any other personal value. In addition, the orientation towards control reinforces all other deprivations, and therefore, the most appropriate way for acceptance in the prison society in this case, according to the already described mechanism, is to emphasize the deprivation.

In that regard, it is clear that overemphasized control is taken as a factor that affects either the occurrence of some particular type of deprivation, or the strengthening of the existing ones (as well as the feeling of rejection). This, in fact, is the reason why the nature and regime of the prison facility is treated as an element of the deprivation theory. Therefore, within our scope of interest, we focus on the question related to the regime and nature of the institution (in this case ECI

in Ohrid) in order to come up with findings on the basis of which we can draw conclusions on the existence or absence of emphasized control, figuratively speaking, a neutral control facility, and thus contribute to defining the answer to the key question of the research dealing with stigmatization, marginalization and deviance of juveniles in the educational-correctional facility.

In literature, the discussions about control usually refer to a special type of control, **one that itself is an objective** which is not deliberately pursued, especially not in relation with re-education. That type of control is still present in a number of institutions for executing penalties today. The roots of this control are still present in retributive orientation. Opposite to this control of the retributive type, it seems that there is control in function of re-education and it is intended to have different effects from the previous one. The author's impression is that not enough attention is devoted in literature to the "control in the function of re-education", if we can hypothetically name it as such, because there are relatively few penalties that stand in its defence (Radovanovic, D., 1992: pp. 36- 37).

At the end of this section, we note that in the framework of the subject of this paper, which refers to the institutional and situational factors of the environment based on the needs of the qualitative research, six categories and several subcategories have been identified:

1. The regime in the Educational- Correctional Institution - Ohrid: rules of conduct, that is to say, whether a more rehabilitative or an intimidation and punitive model is applied in the institution.
2. Maintaining order and discipline: control, observation, obedience, rewards, applying physical force, verbal attacks, disciplinary measures.
3. Characteristics of the space: accommodation facilities, overcrowdedness and physical security.
4. Treatment activities: availability and application: education, work, stress management.
5. The attitude of the re-education service: openness, availability, support, understanding, empathy, reaction, prejudice, discrimination
6. The security service relationship: openness, availability, support, understanding, empathy, reaction, prejudice, discrimination.

They will be the subject of our analysis of some research results.

RESULTS AND DISCUSSION

The starting point for analysing and commenting on the research results is the indication of the need for consistent respect of the top principles in the execution of the corresponding sanctions: the principle of individualization and the principle of humanity, combined with the ultimate goal of re-socialization and re-education, always bearing in mind that these are minors with all their specifics.

We have also begun with the need for consistent respect, primarily on the part of the staff, of the rights of minors who have been sentenced with an institutional educational measure, in accordance with the applicable regulations and

international norms and standards (e.g. Children Rights Convention, Beijing, Havana Riyadh and Tokyo Rules, Riyadh Guidelines, etc.).

1. The regime in the educational- correctional institution and the juvenile prison in Ohrid

We have already elaborated the theoretical part in the introductory part of this paper, the significance of the regime and the nature of the establishment in which the educational measure is carried out. In this section we will focus on the research itself by analysing the statements of the juveniles covered by our research.

We have concluded that the assessment of the minors of the conditions in the facility depends on the degree of their adaptation to these conditions (determined by institutional and situational factors), since it depends on whether the given conditions are accepted, whether the inmates display a neutral attitude towards them (*"I have put my life in a stall")* or they have a negative approach ("There *is no life here").*

In this Context, it is interesting that some respondents agree with the conclusion that the rules of the established regime are strict, as they actually should be, and according to some respondents the rules must be strict. This attitude may have developed due to the previously established opinion among the respondents that in such facilities order and discipline can be established only by repression and control, or it ensues from their need to comply with the conditions in the facility (so-called personality dies i.e. mortification), which is characterized by numerous deprivations. Moreover, this is further elaboration of the previously raised question about the need to create awareness among juveniles that they should know their rights and request that the staff, as well as society in the wider sense, take care of them with consistent respect. Such developed awareness in juveniles contributes to their successful preparation for returning to normal life, life of freedom, and above all, consistently respecting their personality and dignity. This has a function of restoring their self -confidence and self-esteem at the same time.

The first set of questions that are the subject of our interest are: Whether the institution has applied a more rehabilitative or an intimidation and punitive model; Whether force and sanctions are applied for enhancing obedience; Whether violence is tolerated and the role of the staff implies putting emphasis on control rather than on pro-social modelling? Does the authoritarian structure emerge from these issues? The obtained answers from the analysis given by the respondents lead us to the conclusion that the institutions (ECI) are repression-oriented. It is explicitly stated by most respondents, and some of them have given more detailed information. Another question is whether and why some of them consider it as a normal state i.e. why they necessarily have this negative attitude, which has already been discussed.

In addition to this conclusion is the fact that the respondents do not even mention the treatment work with them; yet, the majority of them point out that

when they need treatment, they turn to the psychologists, and some of them do it regularly.

(1) There is nothing (of activities), I don't know, maybe before, but I have been here since 2016, no.

A partial explanation for this can certainly be found in the inadequate conditions in which the ECI is temporarily placed, an institution that has not been built according to the specific needs when it comes to the execution of the educational measure, but for the needs of another type of a penitentiary facility. Additionally, the respondents mention only the psychologists as the people they turn to for help, without mentioning at all the pedagogues, social workers and other experts who are part of the resocialization team. This, inter alia, is contrary to the legal regulations, in particular to the Law on Enforcement of Sanctions (hereinafter: LES), as well as the relevant by-laws in this area.

In this context, we refer to the provision of the LES (Article 313, paragraph 3) according to which: The expert team conducting the examination referred to in paragraph (2) of this Article shall be consisted of a psychologist, a pedagogue, a social worker, a doctor, and, if necessary, other experts.

The characteristic statements of the respondents in the context of the aforementioned first set of questions are:

1. *" Oh, it's not home, this is a prison "*
2. *" Augh, it's worse than a cage here. "*
3. *"Locked cage."*
4. *„I've deserved (to be so long in the institution- m.n.) and even a dog will try to escape if it is always tied up."*
5. *"I told you, the prison isn't like it should be."*
6. *"The most important thing that happened to me was the prison."*
7. *"I do not care. I put my life in a stall. "*

(statements from interviewed persons)

In the context of this issue, we note that in penology literature we come across the concept of situational control (such as Richard Wortley, 2004: 3-5). Situational control aims to take preventive measures to reduce the risk of the occurrence of further criminal behaviour in a prison. It is interesting to note, and it comes from the statements of the respondents that the situational control in the institution is primarily reduced to risk control instead of taking preventive measures based on the prison environment (e.g. prison architecture, over population, etc.) and the characteristics of the prison population. Indeed, the approach of situational control implemented in society to prevent the occurrence of crime is respectively applied in prison environment. It is assumed that this type of control will decrease risks and prevent behaviours that could end up with violence, theft, rape, extortion and other types of criminal behaviour in prison. In addition to this approach, the statements of the respondents are as follows:

1. The children aren't listening to the director very much ... the old one was better, this one is shouting a lot, one mistake and he will punish you at once, 3-4 months' probation…
2. They get measures on the spot (when there is a brawl- m.n.) if you make a problem today, you will have a problem, you will go to the director, he will give you an official solitary, and you will lie in for 4 days 7 days.
3. The psychologist doesn't care about out there, she wants you not to make a problem and to be calm, and when you have a weekend and when you go out, she isn't bothered, you have to think on your own.
4. If you make problems here, there will be solitary. If you shout at the commander, you will be beaten. (When there is a fight) The guy who is guilty will lie in a solitary. (Commanders) can hit two, three solitaries (but without sticks).
5. There (referring to Veles -m.n.), there are no cameras, the commanders are on their phones all day, but here they are not on the phone all day, they check up on you, they ask you if somebody bugs you ... they regularly come to the bedrooms and there in Veles there's no such control . It is better here, there could a child dead, for God's sake. There you can get the kind of drugs you like, a mate will come with you, throw it to you and tell you the place. There we used phones, and here there is no chance to use it, because there are many checks. (When there are fights) The psychologists write statements instantly, give the children the opportunity to write down who is guilty, others who watched also write statements and they punish the problem makers.
6. If they tell the psychologist that there is some kind of a brawl, she sends them to a solitary right away. She summons them and tells them that they will get a solitary. I've been in a solitary confinement, not just once ...
7. You know, it is more freely in those institutions (anyone can go anywhere, there is no command, m.n.) … here no way, if you make trouble, they immediately apply the prison laws…

(statements from interviewed persons)

The problem of the separation from the family, especially from the parents, the brothers and sisters and other close people, is often emphasized by the respondents as something that is very important to them and it is important for their adaptation to the new conditions. On the one hand, their separation leads to various psychological consequences, especially depression, dissatisfaction, disappointment, while on the other hand to intolerance, rage, anger, aggression, etc. Overcoming this problem may be a stimulating or a protective factor and sometimes minors are allowed to have frequent contacts with their families and (or) on their loved ones, either directly, by telephone (it means a lot to them to use a telephone, but some of them are limited in this because of lack of available assets) or in writing.

The lawmakers took into consideration these needs of the juveniles and, to that end, they agreed that several provisions should regulate this issue. Thus,

according to the Law on Execution of Sanctions (hereinafter: LES): Juveniles have the right to receive visits of the immediate family members within the boundaries of the institution's rules without restriction, and by the approval of the Director of the Educational - Correctional Institution other persons can also visit the juveniles (Article 322 of the LES). Minors may, without limitation, be contacted by their parents and close relatives (Article 323 of the LES). Minors are allowed to leave for one month during the year to visit their parents or close relatives, as a rule, during school holidays and during holidays and weekends. There may also be a joint holiday outside the institution (Article 325 of the LES).

2. Sustaining order and discipline (control, monitoring, obedience, prizes, use of physical force, verbal assault and discipline measures) and relations with the security service

The majority of the respondents focus on describing the measures applied to them or other protégés, which as a rule, lead to the use of physical force. A frequent subject of conversation with them was the most severe disciplinary measure: solitary confinement. Some of them have been repeatedly issued this measure due to escaping, untimely return to the institution, violation of the order and discipline in the institution (as a rule, that are fights, demolitions of inventory and other objects). The majority of them agree that they have deserved that measure. Some of them remark that there are cameras in the institution, and it is interesting that some of them (who were previously in Veles, where the ECI was also temporarily placed) compare the two institutions, stating that in Ohrid, even though it is more rigorous, there is established order and discipline (which means it is evaluated positively).

(1) " Compared to Veles, there was nothing, some commanders here think of Ohrid /some children were brought here, they are calm, don't touch them and they won't touch you." When there is a fight, the psychologist yells, when you come here as a new one and the psychologist tells you whenever there is a problem, do not react, I will take some measures ... "

(2) " Commanders can warn you if there is a fight or a theft, but they can take you to a room and teach you a lesson, beat you, with a good reason. Here, I was beaten twice, once for a fight, another time for a quarrel. They beat us together (me and the person I was fighting previously), if someone made the incident, he/she would be beaten, for example, for other children. They hit the back, legs, but not elsewhere, you feel pain, but not much. "

(3) There are both good and bad sides, I don't know ... means they (inmates) don't have any rights, they are like objects in the institution ... is it an object…it is a stick ... it is so , but they have no right to use it against us, they have no right ... using the right when you have to use it ... those that make noise ... the right you have when you get into a fist

fight, many people will be scuffled, which means they cannot be separated, they can hit us 5-6 times but without damaging our health... (excessive force, m.n.)

(4) For example, if you make a problem today, you will be beaten by the commanders ... beating ... sticks ... hurts, hurts ... I've been beaten 4-5 ... I was only beaten yesterday 3 times 4 .. why I was here ... my back, legs not to make trouble ... if the problems is not to be beaten, they will beat you with this pen and you will be put in a solitary.

(5) I've deserved (to be so long in the institution, m.n.) Even if you tie a dog here, it will try to escape.

(6) If the children don't get up, they will be woken up with a stick. He was dragged from the second floor, he was dragged down ... and after that he was put down in the line, the commander was yelling ... they have no right with a stick, it hurts ... we are not prisoners ... and we are from 1-5 years - it's not the same, it's my lawyer, he told me that they mustn't do it with sticks. They run right away, they'll put you down, you'll write a statement, they'll put you in a solitary ... I haven't been in a solitary yet ... they use slaps, boxes and sticks, but not every commander, some of them don't swear like this, they just call out to them to write a statement, and some swear, not to me, but to some other children. There are both good and bad, but if you respect everyone, they will be good to you.

(statements from interviewed persons)

What are the rules that the members of the staff should obey? They are in many acts, ranging from basic one, concerning the entire staff in the penitentiary institutions, then LES, furthermore, the bylaws, as well as the document on ethics, namely the Code of Conduct of office persons in the performance of the tasks in the penitentiary and educational-correctional institutions[4] (in particular, Articles 3, 4, paragraph 1, indents 2, 3, 8 and Article 6, paragraph 1, indents 2, 3, 4, 7).

It is quite indicative that the respondents refer to the security service as "commanders." The question is why this is so or what does this indicate? Do they really know that they are not commanders or is it a result of the pronounced subordinate relationship between the members of this service and the protégés? Do these "commanders" require it from their protégés, i.e. insist on being addressed in that way? Also, it is a possible indicator of the self-image, or the self-perceptions and self-understanding of the respondents i.e. an expression of their social and mental situation in the institution, which in fact is verified in many researches in this area.

[4] The Code was adopted by the Minister of Justice, 9 February 2018, No. 23- 1238/.

3. Characteristics of space (architecture, accommodation capacities, overcrowdedness, lack of privacy, hygiene, food, personal items, lockers, etc.).

In penology scientific and special literature research , significant attention is devoted to the **architecture of the institution** which houses people who understand and support appropriate sanctions. The architecture of the institution is rightly considered, and it is also empirically verifiable, as one of the determinants of the success of the re-socialization process. "It depends on the architectural solutions of the prison and imprisonment, which types of work can be applied in the re- education, and if they are performed by force of the mandatory instructions, what degree of quality do they have. Therefore, the architecture of the prison space significantly influences the organization of life and work of the convicted community and their decisions increase or reduce the negative influences of the informal prison socialization system on the offenders. "(Nikolic, Z. 2009: 234 and 235).

Unfortunately, when it comes to both the ECI and juvenile prison, the first impression (however superficial) is that the architecture does not correspond to the purpose of the measure, that it is punishment for the juveniles. It is due to the following reasons: First of all, starting from the fact that the two institutions are located almost in the centre of the city, surrounded by residential and other facilities, then the outer appearance of the institutions, as well as the fact that they are located in the same premises and only formally / symbolically divided. Once again, we emphasize that we were not able to look around the interior of the facilities, so that we were not able to see directly the situation in the premises where the protégés are accommodated, the common premises, the library (if any), the kitchen, toilets, etc. We have this found out by the statements of the respondents who sometimes had a critical attitude towards this issue, sometimes positive, and sometimes were completely disinterested in giving any assessment of these issues.

The majority of the respondents agree with the statement that the space in which they are accommodated is small. It is interesting that some of them point out how many people are accommodated in the same room with them (the number varies from 3 to 12) and that it bothers them. Unfortunately, we were not able to get a glimpse of their size and whether the international and national norms and standards are respected in terms of the number of persons placed in them (according to the surface and the cubicle, the light, etc.).

In this regard the Law on Execution of Sanctions contains precise provisions which, unfortunately, are not implemented. Namely, according to the Article 265 of the Law:

(1) The juveniles are accommodated in separate rooms in one facility at night for overnight accommodation in accordance with the possibilities of the institution.

(2) Due to lack of space, several juveniles can be accommodated in one room at night, the **number of which must not exceed five persons,** in which case supervision should be provided in such a way to protect every minor.

We could conclude by the statements of most respondents that this provision of LES is not respected, and somewhere the number of persons accommodated in the premises is drastically exceeded. However, the awareness of the overcrowding in the penitentiary institutions in Macedonia is confirmed not only when it comes to serving the sentence of imprisonment by the adults, but unfortunately, even when juveniles serve an educational measure (as the measure directing to ECI).

In terms of hygiene, the opinions are divided, but the prevailing are good ones, with the remark that some of the respondents should maintain hygiene by themselves. At the same time, everybody confirms that once a week there is general cleaning and that sometimes they themselves are to blame for the hygiene not being at a satisfactory level. Some of them complain about the impossibility to have privacy and the impossibility to be alone, not interrupted by anyone for some time. They also point to thefts (as one of the forms of victimization) that are performed by some other protégés, and some of the respondents point out the names of the protégés who perform these acts.

In terms of food, its diversity and quality, almost all respondents, with the exception of two, agree that it is satisfactory.

The statements of the respondents with respect how they spend their day are interesting and indicative. Indicative because the contents of the activities they describe do not promise much and very few are in the function of re-socialization. In doing so, the prevailing monotony would be the main characteristic of these activities.

1. *Hands, face, teeth, at .... until 2 o'clock we have spare time, we are locked until 6 o'clock for afternoon rest, then they unlock us at 7.30, we have dinner, at 8.30 we line up, they lock the door*
2. *Some dance, listen to music, a drill ... you exercise (until 2 o'clock, J.P.), we watch a movie, some sleep, some watch TV (in the afternoon, J.P.).*
3. *When I get up, I know that I will first wash and wait until 8:30 am, if I have something in the cupboard, I will eat, if I do not eat what I have, then I will go up until 1:30 and then I will eat again I will go up, I will take therapy (in the morning and in the evening). After lunch we are all locked until 6 o'clock, then they unlock us to take dinner and then again up to 10 when it starts Karasevda (the soap opera) up to 11, then we go to bed. I'm in room no. 2. We play basketball, soccer.*
4. *We start at 8:30, we have a line, breakfast , and after that we come to the circle, we have a test, we clean, we have a list - a cleaning schedule and for that we get a reward weekend, and for these reasons you will do it, if not, the psychologist will give you a minus and today one, tomorrow another one and they will not let you go out. Then you can have coffee, I love drinking coffee*

and we can make orders, then cigarettes, then we play basketball and football for a while, then we will sing, or have cigarettes , that you will have something to do or talk to a psychologist, or if the director comes, we line up.

CONCLUSION

At the end, we will turn upon Michel Foucault, who in his perhaps best-known works: "Nadzirati i kazjnavati" (1975) asks the essential question of Penology, and thus of re-socialization as its core: "Does the prison return the “improved "offenders back into society? Foucault does not think so. Prison does not improve, but joins criminals with those similar to them, divides them, files them, marks them as offenders, and eventually returns them, not back to "normal" society, but back to the social margins where they came from. There, they serve as an element in a vicious police - prison-penitentiary circle. Foucault sees this as a defeat of the legal system, but as the success of disciplinary power. The offenders are supervised both inside and outside prison..[5] In that sense, Jerome Stumphauzer emphasized that "a worse programme of social learning could not be projected, to remove a young man from the same society he can learn to adapt into, to expose the person to hundreds of criminals with related examples and criminal behaviours which he has not learned yet and seize the imprisonment / punishment as the only principle of behavioural change.“[6]

However, what we would like to highlight is the optimism at the very end, which echoes in the statements of almost all respondents that they have expressed through their faith in themselves, in the future, in the plans they are making after leaving the institutions, and in their belief that they are not "bad kids", that they should be given another chance, that they have paid their debt to society (they do not mention the victim), in their faith in God and in the desire to upgrade their education (some of them have already been doing it).

(1) *I just wanted to tell you, give me an opportunity to see what kind of a child I am, the judge ... I did not talk to her ... I was in court ... she asked me only for detention ... then I did not know what to say, I was afraid ... I did not have a lawyer and I think I'm here because of that, but if you don’t have a lawyer, it doesn’t mean that you’re a problematic child.*

On behalf of that optimism, society must do much more than declarative pledges or appropriate legal solutions and create conditions for the return of the minors back on the right track for their full integration into society.

[5] **http://fenomeni.me/misel-fuko-nadzirati-i-kaznjavati-tema-zatvor//**accessed on 25.02. 2019

[6] Томпсон, В. Е., Бинам, Џ. (2014), *Малолетничка деликвенција,* Арс Ламина-публикации

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UDK:

STATISTICAL PRESENTATION AND DOCUMENTATION OF REPORTED CRIME IN THE REPUBLIC OF NORTH MACEDONIA: CONDITIONS AND CHALLENGES

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INTRODUCTION: CRIME STATISTICS IN THE REPUBLIC OF NORTH MACEDONIA

The existence of an organized system for crime statistics is extremely important for every country because it contributes to adopt appropriate policies within the criminal justice system. Collecting examined crime data significantly influences the successfulness of all parties included in crime control and prevention. Every institution which is part of the criminal justice system produces large amount of data, records, information and documents. These data gain importance only if, during the regular procedure, are statistically organized, and from so called raw data, they are transformed into comprehensive and useful information that can serve in the decision making process.

Specifically, the crime statistics aims to determine the basic and most important characteristics of different types of criminal activities within a certain period of time and in certain geographical area, their extent, structure, and movement tendency. The crime statistics allows us to follow the number of revealed, processed and judged criminal offences, as well as their structure according to gender, age and other traits, number of recidivists and victims, the reasons, conditions and the method in which the crimes have been committed, the material damage that has been caused, etc. Moreover, systemically made statistics produces information that is useful for evaluation of the institutional activities, information about the duration of each phase of the criminal procedure, information about the number of verdicts annulled or changed, determining the type of criminal offences that are most frequently revealed, those which are investigated, those for which a verdict is reached, etc. Furthermore, the statistics can exert a positive influence on criminal justice policy, on the planning of repressive and preventive measures and on the more efficient management of financial, technical and human resources of the institutions within the criminal justice system.

Therefore, the value and usefulness of the crime statistics can be seen in three conditionally not related areas:

(1) *in themanagement:* every department and institution shall have the capacity to control and monitor its activities. Successful management with the institutions is built upon information which may reveal whether the tasks and goals are achieved on time and legally, and whether the disposable material and human resources are used efficiently and effectively. The more complex and big the institution, the more necessary are statistical information, mostly about the resources, their location, as well as the number of cases that should be taken into consideration.

(2) *in the planning:* planning implies identification of alternative paths that would help in the achievement of some future goal. For example, the courts, during the process of planning, should identify the manner in which they will reduce the time needed for certain case to be solved. Anyway, the planning indicates understanding of the current condition, establishing criteria for problem solving, implementing a system that would give information about the progress of the plan and whether the plan is achieved, while the whole planning system relies on statistical data and information;

(3) *in the research and analysis:* these activities are being conducted in order to discover the reasons, conditions and causes for the crime, they help us to understand the criminal activities and to reveal the connections between the crime and changes in the society in order to understand the matter more profoundly. The crime statistics explains partially the whole context of crime, and for these reasons, the analysis combined with other social and economic statistics enables us to see more clearly the image produced by the criminality.

The two main branches of the statistics are descriptive statistics and inferential statistics. The descriptive statistics is used to describe the characteristics of the phenomenon and the existence of connections between certain variables, while the inferential statistics aims to draw the right conclusions about the characteristics of the crime.

STATISTICAL ANALYSIS OF CRIME

The Law on State Statistics[7] defines statistical analysis as a preparation, collection, storing and keeping the data, analyzing the data and their movement in different areas starting from the social and economic conditions in the country. The governmental bodies as well as other private, scientific, and competent bodies conduct the statistical analysis. The analyses are conducted in accordance with the Program for statistical analysis, and the bodies that conduct the analyses are obligated to take into consideration the following: to prepare methodological basis for the analysis according to the already existing internationally accepted norms

[7]Official gazette of the Republic of Macedonia No. 54/1997, 21/2007, 51/2011, 104/2013, 42/2014, 192/2015, 27/16 and 83/18.

and standards, as well as adopting nomenclatures and classifications. Furthermore, these bodies also prepare the instruments and methods of the analysis, elaborate the data and publish the results. The current program (as well as the previous programs) includes analysis related to crime statistics that will be conducted cooperatively by the State Statistical Office, the Ministry of Internal Affairs, the courts, the public prosecutor's offices, penitentiary institutions and detention and rehabilitation centers.

Therefore, the crime statistics is in a process of relatively independent phases within the frames of statistical analysis.

1. collecting and recording data about the individual phases of the criminal procedure, punishment procedures, alternative measures and safety measures. Basically, the data are related to the committed criminal offences,, to the offenders and perpetrators, to the suspects, offenders that have been charged and convicted, to prison population etc. The institutions which are part of the criminal justice system keep statistical records about these data, in electronic and paper form, as stated by the law.

2. statistical analysis, which means arranging according to previously established classifications and qualifications, analyzing and presenting the crime statistics and data.

3. application of statistical techniques and methods such as: crime rates, proportions, percentage and correlations, frequencies, time series, central tendency, dispersion measures, index of qualitative variation, probability calculation, i.e. binominal probability distribution which explains crime patterns etc. Furthermore, there are also other statistical techniques, such as: ANOVA, correlation coefficient and regression model.

4. statistical presentation is a presentation of the obtained data in textual form, in tables and graphs, including discussion and concluding remarks.

Even without further elaboration of the statistical analysis of crime and its current condition in our country, conducted by the governmental bodies, we can conclude that the process has many omissions such as lack of use of statistical techniques and methods (this mostly refers to the Ministry of Internal Affairs), and it is conducted only with keeping records and counting the data from these records without any professional statistical elaboration.

Statistical records of crime

The criminal justice agencies in our country have different statistical units as a basis for keeping their statistical records. In this context, the basic unit of the statistical records in police is the criminal offense, in the public prosecution is a person for which an investigation has been started or who has been charged with a crime, no matter whether the offender is known, while the courts record the case in the court registers. In this context, statistical units are the crimes and offenders (people), and the crimes are presented with their legal qualification (in multiple crimes, every crime is count, and the prolonged crime is count as one). In addition,

when counting the number of offenders, the following situations should be taken into consideration: (1) when one offender commits one crime, (2) when one offender commits more crimes, (3) when more offenders commit one crime and (4) when more offenders commit more crimes. Recidivism in all cases is of an extreme importance and it must be recorded, mostly in more serious crimes. It can be concluded that the statistical records of the institutions in our criminal justice system give aggregated data from records that are several decades old. These records rely on the classification of criminal offences of the Criminal Code of the Republic of North Macedonia. Even though the classification is not a particularly complex task, during the last few decades, there were many delays in following the changes and amendments of the Criminal Code regarding the new criminal offences. However, the establishment of a general classification of criminal offenses should be done by the academics and professionals in a wide-ranging manner, as well as creating sub classifications that could follow more closely and precisely the criminal phenomena and to cover all elements which compose the essence of a criminal offence. Crime statistics should rely on the criminal justice system, which, basically, is a process composed of the following phases: committing a crime, informing the police, making a police record, depriving the offender of liberty, suspecting, charging and convicting (or discharging) the offender, sentencing to a prison or other sentences, time spent in prison and number of prison population.

Each year the State Statistical Office releases a publication of offenders, but there is a common consent that “the statistical representation, not even nearly, portrays the real situation, and in more than a half of the cases, requests for conducting a procedure have been rejected, which indicates to a high incompetence and inefficiency of the criminal justice system, and in this context, the indicators of crime rate cannot be considered as the safest or exclusive basis for evaluating the effects of the penal legislation“ (Kambovski, 2006).

Taking into consideration the fact that the State Statistical Office of the Republic of North Macedonia is a central institution responsible for conducting state statistics, there are advantageous preconditions for integration of the relevant statistics in the country, such as the demographic, economic and crime statistics. The State Statistical Office should continuously improve human and technical resources and have to be supported by every institution that owns data, through institutionalization of the cooperation and with providing permanent financial resources which are crucial for conduction the program for statistical analysis.

POLICE RECORDS OF CRIME STATISTICS: PROBLEM FORMULATION

The data of reported criminal offences that is recorded in the police form for reported crimes, as well as other official documents are kept in individual file. In order to gain statistical value and significance, there should be a process of data elaboration, i.e., the data should be stored in adequate databases which would

generate statistical indicators and reports about the condition of reported crime. This means that statistics expressed in numbers, before being presented in statistical tables and graphs, are being entered in suitable databases and are being suitably organized, arranged and statistically elaborated. Furthermore, with the application of certain methods and statistical procedures, analysis can be conducted, crime patterns in time and space can be established, its extent can be determined, its occurrence and other traits, determining relationships between certain characteristics, etc.

Taking into consideration the above mentioned, the analysis of this paper aims to determine the process of statistical analysis and documentation of reported crime by the statistical offices of the Public Security Bureau. The goal is to examine the processes of entrance of collected data in suitable databases, numeration, elaboration of these data and displaying the data in statistical tables. For these reasons, we set the following research questions:

1. What types of databases are used to enter the collected crime data?
2. Which methods and techniques are applied for statistical data elaboration and analysis?
3. With which challenges face the Bureau for statistical research and documentation within MoI?

The data were collected through interview with the staff employed in the local and national statistical units within the Ministry of interiors. We made interview with seven respondents (the manager staff of several units: unit for criminal intelligence and research at local level, unit for statistical purposes at national level, department for strategic analyses at national level, with several analysts and administration staff).

RESULTS AND DISCUSSION

Entry of data and statistical data elaboration

Before being statistically elaborated and recorded, criminal offence data are entered in several records. However, only data for criminal offences which are officially prosecuted are being statistically elaborated. These offences are in charge of special units for property or violent crimes under criminalistic police that open up individual files for each crime event (together with all related documents). Those files are forwarded to the Sectors of Internal Affairs unit for further statistical analytics. As a matter of fact, the individual file is a basic information source for crime data which are filled in the monthly Crime Register, in other statistical databases and in the system for automatic data processing (the HOST system) which are administered by the Unit for Criminal Intelligence and Analysis (EKRA) of the Sector for Internal Affairs Skopje.

First of all, the authorities in EKRA note the reported crime in the *Crime Register* and mark the case with unique identification number (KU number). After noting all the necessary information about the committed crime in the Criminal

Registry, the crime file (documentation) is sent to the Unit for Statistical Analysis and Documentation (OSID) for further statistical analysis. At the same time with entering the data in adequate statistical tables, the data are also entered in the *system for automatic data processing (the HOST system),* in which, information about the criminal offence and the offender (if known) are written. Based on the gathered statistical reviews from all Sectors for Internal Affairs and the EKRA, each three months, a complete statistical report is made.

Statistical analyses, tables, and reports about the crime recorded by the police

The Sector for strategic analysis and reports of the Public Security Bureau, on a central level, as well as the Unit for Statistical Analysis and Documentation make regular monthly, three-monthly, semi-annual and annual statistical reports/reviews. These reports contain total number of criminal offences: with known and unknown offender, total number of revealed criminal offences, total number of reported offenders: adults, juveniles, children, recidivists, material damage, etc. According to the type of criminal offence (so called nomenclature), a classification of four categories is made. Moreover, for each category, articles and paragraphs of the Criminal Code are being mentioned: classical crimes (property, blood, and sexual, violent crime), economic/financial crime, illegal trade (drugs and weapons). In addition, the statistical reviews can be shown as tables or graphs with absolute numbers and percentage. They are disseminated, i.e., published on website of the Ministry of Internal Affairs.

For internal purposes of the Ministry of Internal Affairs and other bodies (Ministry of Justice), additional classifications and divisions of certain criminal offences is made. For example, criminal offences in the area of family violence, hate crime, cybercrime and high profile corruption. Apart from the already mentioned, there are no other categories according to international classifications in the Ministry of Internal Affairs.

International classification according to UN and EU

United Nations Office on Drug and Crime (UNODC), in 2015, for the purpose of crime statistics, established International Classification of Crime for Statistical Purposes (ICCS). This classification is also used by EUROSTAT, an agency within the European Union authorized for collecting crime data in the European Statistical System from the EU member and candidate states.[8] The criminal offences are classified in 11 categories: Acts leading to death or intending to cause death, (2) Acts leading to harm or intending to cause harm to the person,

[8]The first collection of criminal offenses in the member states is made in 2007. Until now, seven publications have been issued “Statistics in focus” (2007, 2008, 2009, 2010, 2012, 2013, 2015), www. ec.europa.eu/eurostat/

(3) Injurious acts of a secular nature, (4) Acts against property involving violence or threat against a person, (5) Acts against property only, (6) Acts involving controlled psycho-active substances or other drugs, (7) Acts involving fraud, deception or corruption, (8) Acts against public order, authority and provisions of the State, (9) Acts against public safety and state security, (10) Acts against the natural environment, (11) Other criminal acts not elsewhere classified. Until now, in the Republic of North Macedonia, the authorities have not systemized the criminal offences according to the above mentioned international classification or nomenclature. For these reasons, our national crime statistics is not part of international statistical system.

Aside from the above mentioned classifications, the employees in the Offices for criminal intelligence and analysis prepare reports/reviews each month about the security situation in our country which show the number of criminal offences that are prosecuted ex officio by public prosecutor or by private lawsuit. However, these reports are not considered as official statistical records because they are confidential, for internal purposes only and are not published. Part of the respondents believes that those are *police records* that are internally reviewed and analyzed, i.e., they serve for preparation of security assessments and plans related to security level. Therefore, the offices for statistical analysis and documentation make difference between *police (or internal) or official (or public) statistics.*[9]

The crime data statistics are also part of the Annual reports of the Sector of Internal Affairs, as well as the Public Security Bureau. However, they are neither published, nor disseminated. The only annual reports that are put on the MoI web site are: (1) The 2016 Annual report of the Public Security Bureau and (2) 2015 Annual report of the Sector of Internal Affairs Skopje. Apart from these, on the website of the Ministry of Internal Affairs are also available certain problematic analyses or analyses related to family violence, juvenile delinquency, drug trafficking, certain organized crime offences, etc. However, such analyses are only partial and are not prepared and published regularly and systematically.

Based on the available statistical reports and data about the reported crime, we can undoubtedly conclude that the citizens and academic community cannot systematically follow their rate, movement and other characteristics. The data analyses and reports are basic, and most of them limited to absolute numbers (total numbers) and percents.

Statistical presentation of recorded crime: weaknesses, priorities and recommendations

The process of statistical crime representation in the Republic of Macedonia for a long time faces several weaknesses, problems and challenges. Part of these weaknesses and challenges are already identified and acknowledged as key

[9]The police statistics also covers lawsuits filed by private persons and these are shown in internal reports and security plans of the police.

strategic goals in several strategic documents of the Ministry of Internal Affairs, but another part are left on the margins without being sufficiently acknowledged and taken into consideration in the process of planning efficient strategy for crime reduction. The analysis of certain strategic documents (the Strategic plan of 2017-2019, the Police Development Strategy (2016-2020), Reforms in the police as a part of the reforms of the criminal justice, (OSCE, 2013) shows that the Public Security Bureau puts much more emphasis on the development of criminal intelligence, strategic analysis and production of analytic products, while it puts less emphasis on statistic research and representation of crime. In this context, the analytic units of the Ministry of Internal Affairs face the following problems:

Old and dysfunctional automatic data elaboration system; the HOST system is introduced in 1976 and it is in use since 1978, which means that it is in operation for 40 years without any updates regarding some elements which refer to the manner in which crimes are committed or the manner in which the police duty is performed. It is an old system, inherited from the 1980s, not updated and upgraded until now, although the crime data of each case are recorded in detail that enable individual analyze and review.[10] Apart from this system, other statistical analyses can be made using Microsoft excel program for that purposes, but they are on basic and descriptive level. Aside from the above mentioned, there are no other unified and national reported crime databases. Individual statistical analyses and data collection for specific criminal offences is made ad hoc and on demand on the police units or other international, public or scientific institutions and organizations. The weaknesses of the IT system are considered as a strategic goal of the Police Development Strategy (2016-2020).

The statistical analysis and recording of statistical data is unpopular and unattractive job. The work in the analytic and statistical units of the Public Security Bureau is considered unattractive and degrading. Moreover, the common opinion is that the work is not interesting, but it is difficult, useless, and paid less compared to other job positions. As a result of this, it is regarded as a low-level job, that no one would apply for, and in this context, part of respondents, ironically, refer to it as the job *"no one wants and no one comes to work?!"*. Furthermore, the staff that works in the analytic unit is not motivated, work there for a long time, and part of the employees are shortly before retirement. Generally speaking, some of the respondents are not satisfied from the staff development policies and the knowledge transfer from older to younger colleagues, because of the absence of suitable training and because of inadequate technical equipment for statistical research and documentation. For these reasons, until the statistical, as well as strategic and intelligence analyses do not gain significance and are not prioritized regarding the development of efficient strategies for crime control, the statistical units will be characterized by lack of motivation and creativity, as well as basic knowledge in statistics.

[10]The IT sector of the Ministry of Internal Affairs can download certain statistical tables from the HOST system.

Inadequate personal capacities: small and insufficiently trained staff. The work quality depends on the competence and motivation of the staff. However, in the units for statistical analysis of crime, the staff has only basic knowledge of statistical research and analysis, and they do not have the possibility for additional and more advanced training. The respondents agree that *"there is a lack of trained experts in analytics… for example, percents, analysis, not everyone can do that, training is necessary for that".* Namely, the statistical analysis requires knowledge in Microsoft Excel program, however, there is lack of knowledge about these operations among the staff, except for the basic descriptive analytical operations and calculations of absolute and relative crime frequencies. The new staff, on the beginning, faces with certain difficulties related to adaptation and performance of new working tasks and responsibilities. For these reasons, it is recommended that the initial period of few months be preparatory for the new employees, so they can acquire the new skills and work responsibilities. Apart from competence and motivation, the statistical units lack employees, and according to part of the respondents, the number of employees is not a priority for the higher instances within MoI. As some of the employees' state, "*they are looking for progress, but they do not have sufficient personal potential".*

Old legal framework and practice; the guideline for administration of statistical data, the manner of processing statistical data and the manner of informing about the manifestations and conditions of the public security have not been updated since 2008, mostly with the new incriminations in the last 10 years. Furthermore, there are neither written standards about recording, nor rules of counting the criminal offences that would coordinate the different police practices. According to the respondents, when multiple crimes are committed, sometimes in the police record system, only the most severe criminal offence is registered, while sometimes all offences are individually recorded. There is also different practice when recording criminal offences which include murder of three people in one crime event (threefold murder), for example. In this context, it should be recorded as one offence, but according to certain respondents each murder is counted and recorded individually and therefore, in the official statistical records it is counted as three criminal offences. Furthermore, when counting the offenders, in cases when one offender commits more crimes simultaneously, he/she is recorded in the statistical records as many times as there are numbers of crime. There is also unsuitable practice when counting the recidivists. When an offender commits more offences, he/she, in the statistical records, is counted as a recidivist according to the number of offences. For example, if one person commits four crimes in one year, he/she, as recidivist, will be recorded and counted thrice, which leads to a distorted image about the number of recidivists in a certain period of time?

The existing classification of criminal offences is not applicable for international purposes. Moreover, the classification of criminal offences is artificial without clear determination what is economic crime, organized crime or crime related to drugs and arms, considering the fact that one criminal offence, according

to its nature and other characteristics, can belong to two or even more groups of crime.

Criminal offences that are prosecuted by private lawsuits are "forgotten" in the official statistics and are not mentioned in the legal acts. According to certain respondents *"crimes prosecuted by private lawsuits have never been mentioned"* during the last decades. This means that the Units for analysis, during the years, have not referred to the question: is the recorded crime being presented objectively because of the fact that the crimes prosecuted by private lawsuits are not part of official statistical data and records? Or, can official police statistics recover the public trust in the police? In this context, not recording and counting the crimes prosecuted by private lawsuits means negligible treatment by the police, especially toward crimes such as thefts, frauds and damage of private property, which mostly damages the citizens. Apart from the low percents (approximately 7 %) of crimes that are prosecuted by private lawsuits (a total of 21 crimes), the indicators show that the ratio between reported crimes prosecuted by private lawsuits and those prosecuted ex officio is approximately 1:2 on annual level. This means that crimes that cause low material lost (when the damage is calculated in the amount of one minimal monthly salary in the amount of 11,500 to 12,000 MKD), should not be underestimated, mostly because big number of citizens has minimal monthly salaries.

Inadequate cooperation between the units that are part of the statistical elaboration and documentation process. Taking into consideration that creation, or so called crime statistics production is composed of several processes in which different police units take part, their close collaboration and coordination is necessary. That cooperation is between (1) the data collection agencies (the uniformed and criminalistic police), (2) the agencies that enter and analyze crime data (Local Units for criminal intelligence and analysis) and (3) agencies that present data, i.e., disseminate them among the public (National Unit for Criminal Intelligence and Analysis and their Statistical Research and Documentation Sector). As a matter of fact, mutual cooperation and trust is necessary, not only in the process of *creating statistical records* (as result), but also in their usage by the uniformed and criminalistic police. It should be a cyclic process of mutual sending and receiving information ("input" and "output"). However, according to part of the respondent's statements, cooperation between the offices is poor while joint meetings take place very rarely. Most of the respondents are neither interested in statistics, nor in official crime rates and movement stating the *"I cannot say anything from an analytic point of view", there is no time to open the portal – the Ministry of Internal Affairs website", I have no control over statistics objectivity"* (interviewee's statements). The above mentioned disadvantages are also identified and set as strategic goal of the *Police Development Strategy 2016 – 2020.*

In this context, deepening the cooperation between data owners (offices with special authorizations, prosecution, courts, and penitentiary institutions) should be a priority of these institutions and should serve as a basis of developing mutual methodology and standards. In practice, data and information owners

collect data and information, elaborate them for operative purposes, while very little or no attention at all is paid to the inoperative usage of those data. Without support of the management body, conversion from operative data to useful statistical data would be almost impossible. The cooperation can be improved with introduction of legal regulations that would imply compulsory participation of all subjects in statistical research, and by holding the administration responsible for avoiding its duties. In addition, all institutions that own crime data must engage themselves, in other words, must engage professional staff that would apply statistical analytical techniques and methods not only for daily administrative purposes, but also for explaining the crime in its phenomenology and etiology as negative social phenomena. Basically, the final goal of statistics is developing integrated system that would provide connecting data from different sources and in different forms (paper, digital, photography, video and audio records) within the criminal justice system, as well as with statistical offices from other social areas.

Furthermore, statistical analysis and displaying crime data is still done with an old data elaboration system, unsuitable technical equipment and limited staff capacities. If statistics is used to obtain objective image on crime rate, to increase the public trust in the police, to plan police activities, as well as to map and forecast certain crime forms, then the modest methodological framework that is applied in statistical offices (data collection methods and instruments, systems and databases and statistical analyses procedures) will give modest analyses that are not very applicable and useful for better development of the crime control policy.

Moreover, in statistical offices, objectivity, validity, integrity and trustworthiness of statistical data are not being questioned. The administrative staff and the employees in these offices do not put under question this process, i.e., the manner in which crime data are being collected. For them, the data as they are filled in the official police documents (records, notices and criminal complaints) are final products and they are not paying much attention to their objectivity, authenticity and quality. This means that they are not authorized to control crime data quality. Their tasks are: to elaborate the already collected data from police stations, to classify them and to put them in suitable databases, and then, to make statistical reports and analyses, partially for internal purposes and partially for the public. Consequently, even though they agree that *"the statistics reflects the police work"* and that "*lots of things depend on the police",* they do not ask the question about their objectivity saying that *"the statistics here is correct" or "I believe it is correct"* (interviewee's statements).

For these reasons, an adequate system for controlling the validity and objectivity of collected crime data should be incorporated as a part of the statistical offices, mostly because public trust in crime statistics integrity requires independent observation on the quality of the whole process, from recording criminal data and to their statistical representation in tables, graphs and reports.

CONCLUSIONS

Statistical offices which operate on local and centralized level have little knowledge about crime statistics as an applied activity that serves for statistical analysis and crime research, for determining connections between different variables as well as for forecasting and planning efficient crime control. One of the main problems is limited staff, technical and professional potential for scientific and applied statistical research and crime analysis. Improving statistical analysis and research, as well as introducing more methodologists, statisticians, criminologists or other researchers from the suitable scientific area is also necessary to take place in statistical offices. Furthermore, statistical offices should develop correlation as well as dynamic crime statistical analysis. The implementation of standardized and unified methodology for preparation and publication of statistical crime reports will enable comparison of crime data among different geographical areas and in different time periods. In addition, in order to provide comparative analysis of crime recorded by the police with other countries, the State Statistical Office has to implement as soon as possible the International Classification of Crime for Statistical Purposes (ICCS).

The development of crime statistics is a serious and big project which requires planning, coordination and material costs in order to meet the user's basic requirements. It should not be analyzed and conducted for itself, but it should serve and help many users inside and outside the criminal justice system for different purposes. The crime is better understood and measured if its statistics is in correlation with other types of statistics, which increases its value and it can rely on and apply already used methods, procedures, classifications, concepts and definitions established in other forms of statistics.

Consequently, police crime records and statistics are not performed in order to evaluate the police efficiency (even though they can be used for such purposes). They help the police, the citizens, academic community and experts to perceive the crime, its threats and risks, to improve life quality and country's development, economy's development, citizens' standard and mostly to protect human rights and freedoms. Police statistics are legal obligation according to the Law on State Statistics. If there are no objective crime data, the state decisions which are of public interest will be unsuitable, even wrong, mostly when is related to the juvenile delinquency and its prevention, to the protection and support of victims of crime, social protection, education, etc. Lack of objective information given by the Ministry of Internal Affairs about crime rate, leads the public to develop their own crime perspective based on personal experience or media presentation. That is unsuitable, it may increase the fear from crime, or it can make people believe that the police hide crime data, which influences the life quality and even the decision whether to stay in or leave Macedonia. According to the professor Arnaudovski, the questions: "what does one country look like and how is the position of citizens within it?", can only be answered if we can determine what type of crime is most prevalent and how institutions react to crime.

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UDK:

NEW CRIMINAL LEGAL CHALLENGES IN COMBATING ORGANIZED CRIME AND TERRORISM IN THE REPUBLIC OF SERBIA - A BIG STEP FORWARD

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Abstract

Modern tendencies of criminal procedural legislation are increasingly resorting to finding more efficient instruments for suppressing the most dangerous and most serious criminal offences – the criminal offences of organized crime and terrorism. On its way to finding adequate responses to the contemporary criminal threats of this kind, the Republic of Serbia adopted the new Law on Organization and Jurisdiction of the State Authorities in Suppression of Organized Crime, Terrorism and Corruption, thus establishing the new special organizational units for combating organized crime and terrorism for a more successful fight against this form of crime. Namely, the desired efficiency in fighting this form of crime can be reached only by authorizing state authorities which are in charge of detecting and prosecuting (the police and public prosecutor's office), by adopting a special law, by establishing special departments with the aim of providing the evidence of existence of the criminal offences of the organized crime and terrorism in more efficient and more flexible way. Accordingly, the authors have analyzed the subject matter from several aspects: firstly, special organizational unit which is in charge of combating organized crime and terrorism in the Republic of Serbia; secondly, mutual relationship between the main subjects of the pre-investigative phase as an instrument of the realization of efficiency of criminal proceedings in combating the criminal offences of organized crime and terrorism; thirdly, statistical indicators of the filed criminal charges of the criminal offences of organized crime and terrorism in the Republic Serbia; fourthly, final considerations.

Key words: *organized crime, public prosecutor, police, efficiency*

1. THE SPECIALIZATION OF THE BODIES IN CHARGE OF DETECTING, PROVING AND REACHING JUDGMENTS IN CRIMINAL OFFENCES OF CORRUPTION AS ONE OF THE VERY IMPORTANT FEATURES OF THE STATE REACTION

By adopting the new Law on Organization and Jurisdiction of State Authorities in Suppression of Organized Crime, Terrorism and Corruption, Serbia has shown its willingness and determination to fight these forms of crime more effectively and to successfully respond to the contemporary challenges posed by criminal offences of organized crime and terrorism. Namely, the process of establishing a normative basis for a more efficient fight against these forms of crime began back in 2002 when the Law on Organization and Jurisdiction of State Authorities in Suppression of Organized Crime, Corruption and Other Severe Criminal Offences was adopted[11], which suffered numerous amendments, whereas the last result of legislative interventions of this kind is the Law on Organization and Jurisdiction of State Authorities in Suppression of Organized Crime, Terrorism and Corruption.[12] The adoption of these legal texts, which represents a novelty in the criminal procedural legislation of Serbia, is a big step forward with the aim of creating normative and other prerequisites for more efficient fight against organized crime, terrorism and criminal offences of corruption.

The Law on Organization and Jurisdiction of State Authorities in Suppression of Organized Crime, Terrorism and Corruption defines which criminal offences the Prosecutor's Office for Organized Crime is in charge of and in that sense we can distinguish two groups of criminal offences. Firstly, these are criminal offences of organized crime, whereas organized crime represents the commission of criminal offences by an organized criminal group or its members. An organized criminal group is a group of three or more persons which exists for a certain period of time and acts in collusion with the aim of committing one or more criminal offences punishable by a term of imprisonment of four years or more, for the purpose of direct or indirect acquisition of pecuniary or other gain (Article 2, points 33 and 34 of the Criminal Procedure Code). Observed in this context, it is necessary to note that the new legal text does not contain definitions of organized crime, organized criminal group, which was not the case in the Law on Organization and Jurisdiction of State Authorities in Suppression of Organized Crime, Corruption and Other Severe Criminal Offences, and with which the expert public did not agree, since the CPC[13] normatively determined the stated terms and

[11] "Official Gazette of the RS", No. 42/2002, 27/2003, 39/2003, 67/2003, 29/2004, 58/2004 – separate law, 45/2005, 61/2005, 72/2009, 72/2011 – separate law, 101/2011 – separate law and 32/2013.

[12] Law on Organization and Jurisdiction of State Authorities in Suppression of Organized Crime, Terrorism and Corruption, ' Official Gazette of the RS ', No. 94/2016, started with its application on March, 1st 2018

[13] Criminal procedure code of the Republic of Serbia RS, ‘ Official Gazette ‘, .No.72/11, 101/11, 121/12, 32/13 and 55/14

there was no need for repetition. The mentioned shortcoming has been corrected in the new Law[14]. However, we can see that the legislator does not use the usual terminology of organized crime in general, but organized crime both in the Criminal Procedure Code and in the Criminal Code. Secondly, when it comes to this legal text, there is also the fact of detailed enumeration of other criminal offences in which the Prosecutor's Office for Organized Crime and special departments of the higher public prosecutor's offices for the suppression of corruption act.

This law applies in relation to detection, prosecution and trial of the following criminal offences: organized crime; assassination of the highest state officials (Article 310 of the Criminal Code[15] of Serbia) and insurrection (Article 311 of the CC); criminal offences against official duty (Article 359 and Articles 366-368 of the CC) and criminal offence of giving and accepting bribes in connection with voting (Article 156 of the CC); criminal offences against the economy (Articles 223, 223a, 224, 224a, 227, 228, 228a, 229-232, 232a, 233, Article 235, paragraph 4, Articles 236 and 245 of the CC); terrorism (Article 391 of the CC), public instigation of terrorist attacks (Article 391a of the CC), recruitment and training for the commission of terrorist acts (Article 391b of the CC), the use of deadly device (Article 391v of the CC), destruction and damaging of a nuclear facility (Article 391g of the CCC), financing terrorism (Article 393 of the CC) and terrorist conspiracy (Article 393a of the CC); criminal offences against government authorities (Article 322, paragraphs 3 and 4 and Article 323, paragraphs 3 and 4 of the CC) and criminal offences against the judiciary (Articles 333, 335 and 336, paragraphs 1, 2 and 4 and Articles 336b, 337, 339 of the CC), if they were committed in connection with the aforementioned criminal offences (Article 2 of the Law).

The law also contains provisions on state bodies responsible for the suppression of organized crime and terrorism, as well as the criminal offences in which they act, as well as the state bodies dealing with the suppression of corruption, which is a novelty in this legal text in relation to the previous one.

State bodies dealing with the suppression of organized crime and terrorism act in the following criminal offences: organized crime; the crime of assassination of the highest state officials (Article 310 of the CC) and insurrection (Article 311 of the CC); terrorism (Article 391 of the CC), public instigation of terrorist attacks (Article 391a of the CC), recruitment and training for the commission of terrorist acts (Article 391b of the CC), use of deadly device (Article 391v of the CC), destruction and damaging of a nuclear facility (Article 391g of the CC), financing terrorism (Article 393 of the CC) and terrorist conspiracy (Article 393a of the CC); criminal offences against official duty (Articles 359, 366, 367 and 368 of the CC),

[14] The Law refers to the Law on Organization and Jurisdiction of State Authorities in Suppression of Organized Crime, Terrorism and Corruption

[15] Criminal Code, ‘ Official Gazette of the RS ’, No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016

when the accused, that is, the person to whom bribe is given, is an official or responsible person who performs a public office on the basis of the election, appointment or appointment by the National Assembly, the President of the Republic, the Government, the General Session of the Supreme Court of Cassation, the High Court Council or the State Council of Prosecutors; crimes referred to in Article 2 point 4 of this Law if the value of the proceeds exceeds RSD 200,000,000, or if the value of the public procurement exceeds RSD 800,000,000; crimes referred to in Article 2, point 6 of this Law, if they were committed in connection with the crimes referred to in points 1 to 3 of this Article; the criminal offence of money laundering (Article 245 of the Criminal Code) in case the property that is the subject of money laundering originates from the criminal offences from points 1 to 4 of this Article (Article 3 of the Law on Organization and Jurisdiction of State Authorities in Suppression of Organized Crime, Terrorism and Corruption).

State bodies dealing with the suppression of organized crime and terrorism are the following: the Prosecutor's Office for Organized Crime as a public prosecutor of special jurisdiction established for the territory of the Republic of Serbia, the Organizational Unit responsible for the fight against organized crime within the Ministry of Internal Affairs and the Special Department of the Higher Court in Belgrade as the first instance for the territory of the Republic of Serbia. For decision in the second instance, the Special Department of the Court of Appeal in Belgrade is competent. Also, in the District Prison in Belgrade, a special detention unit is established to serve the detention specified in these criminal proceedings.

In accordance with the above, we can see that by means of this reformed normative framework, the legislator has taken a serious step forward in the fight against organized crime and terrorism (Mijalkovic, 2018) and that forming special organizational units is a step towards a more efficient way of detecting and proving criminal offences of these forms of crime (Mijalkovic, 2009).

2. MUTUAL RELATIONSHIP OF PRE-INVESTIGATION PROCEDURE ENTITIES AS AN INSTRUMENT FOR REALIZATION OF THE EFFICIENCY OF CRIMINAL PROCEEDINGS IN SUPPRESSION OF CRIMINAL OFFENSES OF ORGANIZED CRIME AND TERRORISM

The realization of efficiency as an international standard represents an important instrument in the fight against organized crime and terrorism. Namely, the efficiency (Bejatovic, 2015; Mijalkovic, 2015) of the criminal procedure sublimates in itself several factors that are significant, and some of them are: the legal norm, the mutual relationship of entities of the criminal procedure, the legalization of certain institutes such as the principle of opportunity, plea agreement, misuse of legal norms, etc. Observed in this context, we should emphasize the mutual relationship between the entities of the criminal procedure,

that is, the pre-investigation procedure, since all the above normative elements of efficiency can be achieved only by the main entities of pre-investigation and criminal proceedings (Cvorovic, 2013), and if there is no mutual cooperation in the application of the legal norm, then they remain a dead letter, which certainly does not contribute to the realization of the efficiency of the criminal procedure of suppressing organized crime and terrorism, as well as crime in general. The main entities of the pre-investigation procedure are the public prosecutor and the police (Ilic, 2013), and the adoption of the Criminal Procedure Code in Serbia in 2011 and the Law on Organization and Jurisdiction of State Authorities in Suppression of Organized Crime, Terrorism and Corruption significantly contributed to the increase in the realization of the international standard (Bejatovic, 2014a; Skulic, 2014a) by means of increasing powers to the public prosecutor and the police, as well as by forming special departments to combat this form of crime. Accordingly, according to the CPC, when there are grounds that a criminal offence which is prosecuted ex officio was committed, including criminal offences of organized crime, the police are obliged to begin taking measures and actions to which they are authorized. The legislator (Bejatovic, 2014b) primarily refers to operational and tactical measures and actions, and some of them important for the suppression of organized crime and terrorism are the following: seeking necessary information from citizens; inspection of vehicles, passengers and luggage; restriction of movement in a given space for the necessary time, no longer than eight hours; calling for searches for the persons and objects being sought; in the presence of the responsible person – inspection of certain facilities, premises of state bodies, enterprises, shops and other legal entities, obtaining insight into their documentation and, if necessary, confiscation (Article 286, paragraphs 1 and 2 of the CPC). Also, a significant operational and tactical action introduced by the latest Criminal Procedure Code is obtaining records of telephone communications, used base stations, or locating the place from which communication is performed. In order to realize the efficiency of the pre-investigation procedure, the police is obliged to inform the public prosecutor about all actions it undertakes, if they are operational and tactical, within 24 hours, and in case of evidentiary actions without delay. The necessity of informing the public prosecutor about the actions undertaken and the duty of the police to act upon his request contribute significantly to the realization of both quantitative and qualitative efficiency in providing evidence for criminal offences of organized crime and terrorism. Namely, the important issue regarding this form of crime is providing evidence, which is crucial for the realisation of the international standard of efficiency, especially in terms of the possibility that the evidence obtained by the police in the pre-investigation procedure can be used in the criminal procedure and be the factual basis of the judgment. The aforementioned legal provision points to the need for cooperation between the police and the prosecutor's office (Cvorovic & Turanjanin, 2016) in the pre-investigation procedure and also points out that the efficiency of criminal proceedings depends on the efficiency of the pre-investigation procedure. Significant evidentiary actions that the police can

undertake in pre-investigation proceedings, on their own initiative and on the proposal of the public prosecutor, when it comes to organized crime and terrorism are: inspection, search of an apartment/house, other premises or persons, temporary confiscation of objects; giving an expert opinion and taking samples. The police can take all actions on their own initiative apart from searching the apartment/house, other premises or persons, and taking samples, which are done with obligatory notification of the public prosecutor about the actions taken. By means of the stated norm the legislator pointed to the importance of mutual cooperation between these two entities for the efficiency of the criminal procedure. In addition to evidentiary actions, a significant role in countering this form of crime is given to the special evidentiary actions, especially when it comes to the realisation of the preventive aspect of criminal policy. According to the CPC, special evidentiary actions can be determined when there are grounds that a criminal offence has been committed for which the prosecutor's office of special jurisdiction is in charge of (Prosecutor's Office for Organized Crime and the War Crimes Prosecutor's Office) as well as for other, most serious, enlisted criminal offences.

The special evidentiary actions provided for by the CPC are: covert surveillance of communications, covert surveillance and recording, simulated deals, computer search of data, controlled delivery, and an undercover investigator. The specific features of special evidentiary actions in the criminal procedure legislation of the Republic of Serbia when it comes to suppressing these forms of crime are primarily reflected in the special evidentiary action of an undercover investigator, which can only be determined for criminal offences for which the prosecutor's office of special jurisdiction deals with, and that may also be a foreign citizen. Also, when it comes to the special evidentiary action of covert surveillance of communication, which is extremely important for the criminal offences of organized crime and terrorism and the realisation of the preventive aspect of criminal policy, if, during the conduct of the covert surveillance of communication, it becomes clear that the suspect uses another phone number or address, the police will automatically extend surveillance to that phone number and inform the public prosecutor about it. The public prosecutor must submit a proposal for extension of the measure to the preliminary procedure judge, who will decide on this within 48 hours. If the preliminary procedure judge approves of a proposal, he will subsequently approve the extension of the measure to that number, and if he rejects the proposal, the collected material is destroyed (Article 169 of the CPC). We can notice in all activities of the police, the public prosecutor and the preliminary procedure judge, the importance of their mutual cooperation in combating organized crime and terrorism, and in addition to the provisions of the CPC, the importance of this instrument of efficiency is emphasized by the new Law on Organization and Jurisdiction of State Authorities for Suppression of Organized Crime, Terrorism and Corruption, through specific provisions for cooperation between state authorities through liaison officers and task groups. Namely, the Law provides for the appointment of at least one liaison officer by the Tax

Administration, the Customs Administration, the National Bank of Serbia, the Administration for the Prevention of Money Laundering, the Anti-Corruption Agency and other bodies determined by Article 20 of the Law with the aim of achieving cooperation and more efficient communication of dataof the above bodies and organizations to the Prosecutor's Office for Organized Crime and special departments of the higher public prosecutor's offices for the suppression of corruption in order to prosecute in relation to the criminal offenses prescribed by this Law. In case of need, liaison officers who have the status of a civil servant may be temporarily transferred to the Prosecutor's Office for Organized Crime and the special department of the higher public prosecutor's office for the suppression of corruption (Article 20, paragraphs 1 and 3 of the Law). In addition to the liaison officers, the legislator also foresees the formation of task groups in the Prosecutor's Office for Organized Crime and special departments of the higher public prosecutor's offices for the suppression of corruption, with the aim of working on the detection and prosecution of criminal offences that are the subject of the work of the task group. The task group is formed by the decision of the prosecutor, or by the decision of the competent higher public prosecutor, upon obtaining the consent of the Republic Public Prosecutor. The task group formed in the Prosecutor's Office for Organized Crime is managed by the prosecutor or his deputy, while in the special department of the higher public prosecutor's office for the suppression of corruption it is managed by the public prosecutor, the head of the special department or the deputy public prosecutor assigned to the special department of the higher public prosecution office for suppressing corruption (Article 21, paragraphs 1 and 2 and Article 22 of the Law).

In accordance with the above, we can notice the importance of the mutual relationship of the entities of pre-investigation procedure in order to realize efficiency as an international standard (Cvorovic, 2015), and that the provisions of the CPC and the Law on Organization and Jurisdiction of State Authorities in Suppression of Organized Crime, Terrorism and Corruption represent a significant step forward in the field of suppression of this form of crime, observed form this prerogative as well. However, the specificity of legal norms in respect of criminal offences of organized crime and terrorism may, in certain situations, be contrary to fair criminal proceedings, but also to a trial within a reasonable time. Namely, the legislator foresees that, when it comes to examination of witnesses for crimes in which the public prosecutor of special jurisdiction is in charge of, the public prosecutor can examine witnesses without even summoning the suspect and his defense counsel to attend the examination if they judge that their presence can affect the witness (Article 300 paragraph 2 of the CPC). In the mentioned situation, since the examination of a witness was not attended by a subject in the function of defense, a court decision cannot be based solely or decisively on that testimony of the witness. We think that this attitude of the legislator can be critically reviewed, when observed from the point of view of fair procedure and equality of arms. Namely, if the public prosecutor with the function of the allegation assesses the situation that the presence of the defense would affect the witness and in this way

leaves no room for the defense to ask a question, which would mean that the decision of the public prosecutor is not reviewed, which in the trial model of the criminal procedure (Bejatovic , 2014c, Skulic, 2014b), must be attributed to the opposed subject, we consider it at least to be unjust and according to the general rule of law, the right to attend the witness's testimony belongs to the defense. In addition to violating the implications of a fair trial, when it comes to the completion of an investigation that relates to criminal offenses of organized crime, the legislator also affects the efficiency of the criminal proceedings in the segment of the trial within a reasonable time. If the state of the investigation is sufficiently clarified, the public prosecutor will issue an order to conduct the investigation (Article 310, paragraph 1 of the CPC). However, the investigation is time-limited and if the public prosecutor fails to complete the investigation within six months for regular proceedings, and within a year when it comes to the criminal offense for which the prosecution of special jurisdiction acts, he is obliged to inform the higher public prosecutor directly about the reasons for which the investigation has not been completed (Article 310, paragraph 2 of the CPC). We consider the legislator's position to extend the deadline for the completion of the investigation of the criminal offenses in the jurisdiction of the prosecutor's office with special jurisdiction to be unjustified, especially given the fact that they have more staff and that they are technically better equipped precisely for the purpose of more effective fight against these forms of crime. Also, in addition to the undue prolongation, the mentioned deadline is instructive, which means that in the case of regular criminal proceedings, as well as criminal proceedings for the criminal offenses of organized crime, there are no procedural mechanisms that would force the public prosecutor to complete the investigation in the anticipated time, which we consider to be an extremely important factor that negatively affects the efficiency of the criminal procedure. However, we can point out that in this case the mutual relation between the entities of the pre-investigation procedure is an extremely important factor in the efficiency of the criminal procedure, but also in the conclusion of the investigation within a reasonable time, in other words, the efficiency of the investigation depends on the efficiency of the pre-investigation procedure, which is another argument in favour of justification of the analysis of the factor of efficiency of criminal proceedings

Finally, when it comes to this precondition of efficiency of detection and proving this and any other categories of criminal offenses, it is particularly necessary to point out the fact that the mutual cooperation of these, as well as of all other entities and pre-investigation and criminal proceedings, can be based only on the norms of certain laws and by-laws and that it can be realized only within the framework and in the manner proved for by them.

3. STATISTICAL INDICATORS OF FILED CRIMINAL CHARGES FOR CRIMINAL OFFENCES OF CORRUPTION AND TERRORISM

Regarding the criminal offences of terrorism, organized crime and the activities of an organized criminal group, there is a whole range of criminal offences that are committed or can be committed by an organized criminal group or its members, whose detailed enumeration is impossible because of the scope of work, but there are certain crimes that are typical of organized crime, which will be subject to further analysis. Namely, statistical indicators of submitted criminal charges of the following criminal offences are analysed: money laundering (Article 245of the CC); forming a group for the purpose of committing criminal offences (Article 346 of the CC); conspiracy to commit a crime (Article 345 of the CC); extortion (Article 214 of the CC); abduction (Article 134 of the CC); financing terrorism (Article 393 of the CC); terrorist conspiracy (Article 393a of the CC).

Table 1: Statistical indicators of filed criminal charges relate to the following corruption offenses for 2017 and 2018: money laundering (Article 245of the CC); forming a group for the purpose of committing criminal offences (Article 346 of the CC); conspiracy to commit a crime (Article 345 of the CC); extortion (Article 214 of the CC); abduction (Article 134 of the CC); financing terrorism (Article 393 of the CC); terrorist conspiracy (Article 393a of the CC)

		Criminal Code of the Republic of Serbia						
Number of criminal offences		245cc	346cc	345cc	214cc	134cc	393cc	393acc
Police departmans - total	2017		41	2	179	12		
	2018	82	33		125	14		
BEOGRAD	2017		2	2	51	3		
	2018				23	5		
KRAGUJEVAC	2017				2			
	2018				1	1		
JAGODINA	2017				4	1		
	2018		1		1			
NIŠ	2017		3		9			
	2018				8			
PIROT	2017							
	2018							
PROKUPLJE	2017		2		2			
	2018				2			
LESKOVAC	2017				3			
	2018				6			
VRANJE	2017				6			
	2018				1			
ZAJEČAR	2017				2			
	2018				5			
BOR	2017				5			
	2018		1		6			
SMEDEREVO	2017				1			
	2018				3			
POŽAREVAC	2017				3			
	2018				3			
VALJEVO	2017				2			
	2018				3			
ŠABAC	2017				9	1		
	2018				9			
KRALJEVO	2017		2		4			
	2018		2		2	2		
KRUŠEVAC	2017				3			
	2018				4	1		
ČAČAK	2017		2		4			
	2018				3			
NOVI PAZAR	2017				2			
	2018				1			
UŽICE	2017				2			
	2018				4			
PRIJEPOLJE	2017							
	2018					1		
NOVI SAD	2017				19	4		
	2018				24	2		
SOMBOR	2017				2			
	2018				1			
SUBOTICA	2017				8			
	2018				6			
ZRENJANIN	2017				5	1		
	2018				3	1		
KIKINDA	2017				6			
	2018				2	1		
PANČEVO	2017				6	1		
	2018				1			
SREMSKA MITROVICA	2017				14	1		
	2018				3			
AP KIM	2017							
	2018							
SBPOK	2017		23		3			
	2018	82	29					
SUK	2017		7		2			
	2018							

Source: Sector for Analytics, Telecommunications and Information Technology, Department for Analytics, Ministry of Interior Affairs, Republic of Serbia[16]

In accordance with the statistical indicators of filed criminal charges of criminal offences of organized crime and terrorism, the adoption of a new Law with a view to more successful fight against this form of crime should result in a

[16] Sector for Analytics, Telecommunications and Information Technology, Department for Analytics, Ministry of Interior Affairs, Republic of Serbia

lower number of filed criminal charges, and as the best indicators of the aforementioned findings, account can be taken of statistical indicators of filed criminal charges for the above offences, for the time period of 2017 and 2018, in order to detect the positive effects of the new legal text through a comparative analysis. Namely, the conducted research was carried out in the police administrations in total, the Police Administration for the City of Belgrade, as well as the regional police administrations and the Internal Control Sector, which means that the research included the territory of the Republic of Serbia. Regarding the criminal offense of money laundering, we can notice that the total number of filed criminal charges in 2018 is 82 and that these are filed by an organizational unit responsible for the fight against organized crime and terrorism. It is interesting that no criminal charges were filed for the criminal offence of money laundering in 2017, which is a good indicator of the achieved criminal policy of this criminal offence, whereas the result in 2018 is an indicator of the efficient work of the new organizational unit responsible for the fight against organized crime and terrorism. The tendencies of increase or decrease of criminal charges for the criminal offense of money laundering must also be monitored in the coming years, since the responsible organizational unit started operating on March 1st, 2018 and that we still have to wait for the real effects of the new law. It is interesting that in the case of a criminal offence conspiracy to commit a crime (Article 345 of the CC) there is not a single criminal charge in 2018, while the number in 2017 is only 2 criminal charges, in the administration for the City of Belgrade. We have higher values when it comes to the criminal act of forming a group for the purpose of committing criminal offences (Article 346 of the CC), where the number of criminal charges for 2017 was 41, while in 2018 the number of criminal charges filed was 33. It should be noted that there are no criminal charges filed in certain regional police administrations, while fewer criminal charges were reported in police administrations in Belgrade, Jagodina, Niš, Prijepolje, Bor, Kraljevo and Čačak. The highest reference values are for the organizational unit responsible for the fight against organized crime and terrorism, and in 2017, amounted to 23, while in 2018 this number was slightly higher and amounted to 29 filed criminal charges. Also, in the Internal Control Sector, we have 7 filed criminal charges in 2017, while in 2018, no criminal charges were filed for the criminal offence of forming a group for the purpose of committing criminal offences, which is yet another indicator of the adequacy of the new legal text. In addition to the above criminal offences, the analysis of statistical indicators included the criminal offenses of extortion (Article 214 of the CC) and abduction (Article 134 of the CC) as typical criminal offences of organized crime. Namely, in 2017, the criminal offense of extortion had a greater number of filed criminal charges, 179, while in 2018 there were 125. The greatest number of files for the criminal offence of extortion were filed by the police administration in Belgrade and the police the administration of Novi Sad, while it is interesting to point out that the organizational unit for the fight against organized crime and terrorism in 2018 did not file any criminal charges, nor did the Internal Control Sector, which is another indicator of the effectiveness of the new

legal text. There is the least number for the criminal offence of abduction (Article 134 of the CC) – in total in 2017 there were 12 filed criminal charges for this criminal offence, while in 2018, there was a total of 14 filed criminal charges for the criminal offense of abduction. We have the most significant number of them in the police administration in Belgrade. According to the statistical data, we can note that when it comes to crimes of financing terrorism (Article 393 of the CC) and terrorist conspiracy (Article 393a of the CC) there are no criminal charges filed.

The tendencies to create a more efficient normative basis and the adoption of a new legal text are yet another indication of the desire of the Republic of Serbia to successfully fight organized crime and terrorism. Namely, the professional and legal cooperation between the entities of pre-investigation and criminal proceedings, the standardization of special evidentiary actions, the establishment of special organizational units for the fight against this form of crime are only some of the instruments in the desire to achieve the goals of criminal policy in relation to organized crime and terrorism, especially the segment of the preventive aspect of criminal policy. The previously stated statistical indicators of filed criminal charges for criminal offences of organized crime and terrorism speak in favour of the previously stated facts.

4. FINAL CONSIDERATIONS

By adopting the new Law on Organization and Jurisdiction of State Authorities in Suppression of Organized Crime, Terrorism and Corruption, Serbia has shown its willingness and determination to fight these forms of crime more effectively and to successfully respond to the contemporary challenges posed by criminal offences of organized crime and terrorism. However, this is only one of the preconditions for the adequacy of the state reaction to these forms of crime. In addition to the norm, there are also other assumptions of the adequacy of the state reaction to these forms of criminal activity. Among them, the following are particularly pointed out: the efficiency of the detection, proving and reaching judgments of this category of criminal offences, the adequate application of a legal norm whose precondition, along with the adequate mutual cooperation between the entities of detection, processing and proving this group of criminal offences, is the exclusion of the abuse of legal norms by them.

Having in mind the importance of these factors, it can be concluded that the positive criminal legislation of Serbia represents a good normative basis for the desired level of their practical realization. In addition, the statistical data presented support the justification of new solutions, first of all, the Law on Organization and Jurisdiction of State Authorities in Suppression of Organized Crime, Terrorism and Corruption, but not only in this legal text, but also with the already achieved results of their practical application.

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UDK:

IMPORTANCE AND ROLE OF COVERT SURVEILLANCE AND AUDIO AND VIDEO RECORDING OF THE SUSPECT AS A WAY OF COMBATTING ORGANIZED CRIME AND CORRUPTION IN THE REPUBLIC OF SERBIA

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Abstract

The effectiveness of the prevention and suppression of organized crime and corruption, as well as the criminal procedure in general, depends on many objective and subjective factors, but the great influence on the final ruling of the criminal matter is achieved by the preliminary criminal proceedings. Bearing in mind that the crimes of organized crime and corruption are increasingly becoming more and more difficult to prove by using classical, traditional evidentiary action, great attention will be paid to the covert surveillance and audio and video recording of the suspect as a special evidentiary action in the Republic of Serbia. During the research theoretical methods such as critical analysis of content, descriptors, comparisons, synthesis and deductions will primarily be used, in order to achieve the goal of the research, which is to point out the importance and role of covert surveillance and audio and video recording of the suspect in criminal procedures in the Republic of Serbia in relation with fighting organized crime and corruption. In the paper, we will first point out the basic legal rulings in the Republic of Serbia concerning the conditions for the application of this special evidentiary action, it's content, the difference in relation to covert surveillance of communications, as well as the manner of conducting and duration of it. Special attention will be paid to the analysis of certain disputed questions, and first of all what it means when the legal provision that covert surveillance and audio and video recording cannot be performed in home and which are the practical consequences of such a provision, whether this action also sublimates the audio recording of the suspect's conversation with other persons, as well as what kind of basic problems arise in the practical application when adopting and implementing the order on the application of this special evidence.

Keywords: *The Criminal Procedure code, special evidentiary actions, covert surveillance and audio and video recording of the suspect, inviolability of home.*

1. INTRODUCTORY CONSIDERATIONS

Special investigative techniques are, as such, regulated by the UN Convention against Transnational Organized Crime,[17] which also provides their implementation, if permitted by the basic principles of its domestic legal system each State Party shall, within its possibilities and under the conditions prescribed by its domestic law. In that sense, it is emphasized that "the classic forms of collecting and providing evidence appear to be insufficient for successfully combat the most serious forms of crime, and therefore modern states resort to new procedural forms of evidentiary actions at the price of some confrontation with the right to privacy and other human rights" (Bejatović et.al ., 2013, p. 123).

The Criminal Procedure Code of the Republic of Serbia (Official Gazette of the Republic of Serbia, Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014) named special investigative techniques as special evidentiary actions (articles 161-187 of the CPC), which is also the case with the CPC of the Republic of Croatia (Narodne novine, No. 152/08, 76/09, 80/11, 21/11, 91/12, 143 / 12, 56/13, 145/13, 152/14, 70/2017). In order to give example, we emphasize that the Criminal Procedure Code of the Republic of Srpska (Official Gazette of the Republic of Srpska, No. 53/12, 91/2017, 66/2018) calls the special investigative techniques ‘’special investigative actions’’, while the Criminal Procedure Code of Montenegro (Official Gazette Montenegro, No. 57/09, 49/10, 47/14 - decision US and 2/15 - decision US, 35/15, 58/15 - law and 28/18 - US decision) named them ‘’measures of secret surveillance’’ , but other names are also present (Bošković, 2015, p. 150).

The covert surveillance and audio and video recording of the suspect is a special evidentiary action that is singled out as an independent one in relation to covert surveillance of communications. Namely, before the adoption of the 2011 CPC, there had been only one special evidentiary action called ‘’surveillance and recording of telephone and other conversations or communication by other technical means and optical recording of persons’’, which included covert surveillance of communications and covert surveillance and recording of the suspect. Bearing in mind this kind of legal solution, what should be emphasized is the attitude which shows that "the bugging (using covert listening devices) of rooms and faces, or the observation of direct verbal communication is of great importance in combating against particularly complex and dangerous forms of criminal work. The fact is that in many countries it is envisaged as a ‘’sui generis’’ research technique in relation to the surveillance and recording of telephone and other conversations and communications which are carried out through technical aids "(Banović & Marinković, 2005, 527).

[17] The Convention was adopted in 2000, in Palermo, Official Gazette of the FRY - International Treaties ", no. 6/2001 and "Official Gazette of Serbia and Montenegro - International Treaties", No. 11/2005.

The covert surveillance and audio and video recording of the suspect is a very important special evidentiary action that is often used in combating organized crime and corruption. Having in mind the title of the paper, in the following presentation, we will point out the most important provisions of the new Law on organization and jurisdiction of state authorities in combating organized crime, terrorism and corruption, which has been applied since March 1, 2018, (Official Gazette of the Republic of Serbia, no. 94/2016 and 87/2018 - other law), as well as a number of legal deficiencies and imprecision when it comes to covert surveillance and recording of the suspect.

2. REVIEW OF THE BASIC CHARACTERISTICS OF THE LAW ON ORGANIZATION AND JURISDICTION OF STATE AUTHORITIES IN COMBATTING ORGANIZED CRIME, TERRORISM, AND CORRUPTION IN SERBIA

In November 2016, the National Assembly of the Republic of Serbia adopted a new Law on organization and jurisdiction of state authorities in combating organized crime, terrorism and corruption (hereinafter referred to as LOJSACOCTC), which began to be applied on 1 March 2018 (Official Gazette of the Republic of Serbia, No. 94/2016 and 87/2018 - other law). This law created a normative basis for the more effective fight against the most serious forms of crime, and above all, an adequate procedural mechanism was established under the realm of the public prosecutor's office, which is otherwise in charge of carrying out the criminal prosecution function.

When it comes to combating organized crime, the new Law mainly relies on rulings which have already existed and have been defined by the previous Law on Organization and Jurisdiction of State Authorities in Combating Organized Crime, Corruption and Other Particularly Serious Crimes (Official Gazette of RS No. 42 / 2002, 27/2003, 39/2003, 67/2003, 29/2004, 58/2004, 45/2005, 61/2005, 72/2009, 72/2011, 101/2011 and 32/2013). In this regard, state authorities dealing with combating organized crime are: the Prosecutor's Office for Organized Crime as Public Prosecutor of the special jurisdiction established for the territory of the Republic of Serbia, the Service for Combating Organized Crime within the Ministry of the Interior for carrying out police affairs in relation to criminal offences specified in the law, as well as the special department for dealing with the cases of those criminal offences, i.e. the Special Department of the Higher Court in Belgrade, as the first instance for the territory of the Republic of Serbia. The Special Department of the Appellate Court in Belgrade is competent for decisions in the second instance. Also, a special detention unit is established in the District Prison in Belgrade to serve the detention set forth in these criminal proceedings (Bošković, Kesić, 2015: 398).

However, the most important novelty in the Law is certain solutions that relate to the organization and competence of state authorities in combating corruption. In this respect, in order to deal with cases of criminal offences which

are considered to be corruption cases, in accordance with the provisions of the Law, four special departments of the higher public prosecutor's offices in Belgrade, Kraljevo, Nis and Novi Sad are formed. These special departments of the higher public prosecutor's offices deal with criminal cases in which they are competent in the areas of the certain appellate courts. Also, a special organizational unit of the Ministry of Interior is formed and it is responsible for combating corruption and for carrying out police affairs in relation to criminal offences about corruption. Finally, in the Higher Courts in Belgrade, Novi Sad, Kraljevo and Nis, special departments for the suppression of the criminal offences of corruption are formed. As it can be noted, the new Law should be used for specialized training of state bodies for detection, criminal prosecution, and processing of criminal offences of corruption, all with the aim of increasing efficiency in the country's fight against corruption.

In addition to the aforementioned specialization of state bodies in the fight against corruption, LOJSACOCTC also mentions other specific rules and we will emphasize the following ones. First, in the Prosecutor's Office for Organized Crime and Special Departments of the Higher Public Prosecutor's Offices, a financial forensic department can be formed, and forensic accountants can work there (Article 19). As it can be concluded, creating this service is not seen as an obligation, but as a possibility. It should be emphasized that "when it comes to corruption, and in particular the" criminality of white collar "or high corruption, it is very important to follow the path (trail) of money" (Škulić, 2018, p. 434). For this reason, it is necessary to establish a financial forensic department in order so that those with special expert knowledge can help in a financial investigation. Furthermore, the Law prescribes the obligation for a certain number of state institutions (Tax Administration - Tax Police, Customs Administration, National Bank of Serbia, etc.) to choose at least one liaison officer in order to establish cooperation and more efficient flow of data from these bodies to the Prosecutor's Office for Organized Crime and specialised departments for suppressing the corruption of the higher public prosecution offices (Article 20). In this way, "connection through liaison officers will enable faster flow of information between public prosecutors and other state institutions, which will create conditions for more efficient gathering of evidential against perpetrators of organized crime and corruption" (Ćetković, 2018, p. 65). Since this paper cannot be longer than it should and because of the subject of research, we will point out at this point only one more specific legal solution which can be used for establishing task force units at Prosecutor's office for organized crime and at specialised departments of the higher public prosecution offices for the suppression of corruption. The aim is to work on the detection and prosecution of criminal offences that are the subject of the work of the task force units. The members of the task force units are employees in the state and other bodies, depending on the subject of work which is set by the decision on establishing the task force unit. Thus, for example, if the process of solving a tax offence is in progress, a member of the Tax Police will surely be one of the members of the task force unit.

The new LOJSACOCTC is certainly an important step forward towards a more efficient state battle against organized crime and corruption. The new solutions reflected in the state specialized training of authorities in the fight against corruption, establishing the financial forensic department, the appointment of liaison officers and the possible establishment of task force units is a legal solution that represents a good and high-quality normative basis for a more efficient criminal procedure. To all of this mentioned thing, it should be added that there is the possibility of initiating covert surveillance and audio and video recording of the suspect, as a special evidentiary action that should make the proving of these crimes much easier, which will be discussed in the next presentation.

3. BASIC FEATURES OF COVERT SURVEILLANCE AND RECORDING OF THE SUSPECT AS A SPECIAL EVIDENTIARY ACTION IN THE REPUBLIC OF SERBIA

One of the basic postulates of the Convention is that special investigative techniques have to be carried out in accordance with the law, in order to avoid violating privacy in the sense of Article 8 and in order to allow the evidence to be valid. The European Court of Human Rights stand ground on this issue and they are a very complex matter that deserves to be analysed in detail and they deserve thorough expert analysis so that at this point we will point out only one specific rule of the Court according to which the acceptance of evidence obtained by violation of a right guaranteed by the European Convention does not automatically lead to the point that the trial can be declared unjust.[18] In this case, the covert listening devices were installed, which violated Article 8, paragraph 1, and the interference with the right of the defendant to privacy could not be justified in this way in accordance with Article 8, paragraph 2, since there was no legal framework for such surveillance, which meant that installing the device could not be in accordance with the law. Nevertheless, the Court found in this case that the acceptance of evidence obtained by violating a right guaranteed by the European Convention does not automatically result in the trial being declared unjust, even though it is the only evidence against the defendant. In addition to this decision, there are a number of other decisions of the Court where it has been established that the violation of Article 8 of the Convention does not automatically lead to the conclusion that the entire criminal proceedings were not fair and that such evidence must be excluded from the files.[19]

3.1. Requirements for ordering

The covert surveillance and recording of the suspect are ordered if a general condition which is common for all special evidentiary actions is fulfilled. These

[18] British case, *R v Khan (1997)* AC 558

[19] See judgments: *Schenk v Switzerland (1988) 13 EHRR 242; Allan v United Kingdom (1999); Perry v United Kingdom [2000] CLR 281.*

actions may be ordered against a person for whom there are *grounds for suspicion* that he has committed a criminal offence, for which the Code stipulates that a special evidentiary action can be done, but evidence for criminal prosecution cannot be acquired in another manner, or their gathering would be significantly hampered (Article 161, paragraph 1 of the CPC). Bearing in mind this legal provision, it is important to emphasize that the principle of proportionality and subsidiarity is of special importance in using special evidentiary actions (Marinković, 2010, page 267). Covert surveillance and recording of the suspect may also exceptionally be ordered against a person for whom there are grounds for suspicion that he is preparing one of the criminal offences referred to in this Code, and the circumstances of the case indicate that the criminal offence could not be detected, prevented or proved in another way, or that it would cause disproportionate difficulties or a substantial danger.

What is more, the covert surveillance and recording of the suspect may be ordered for criminal offences, which by a special law, has been assigned to the prosecutor's office of special jurisdiction, i.e. The Prosecutor's Office for organized crime and the Office of the War Crimes Prosecutor, and for a number of other criminal offences listed in the CPC. The Prosecutor's Office for Organized Crime is competent to deal with criminal offences of organized crime, as well as a number of other criminal offences listed in LOJSACOCTC.[20] Beside these criminal offences which are dealt with by Prosecutor's Office for Organized Crime, covert surveillance and recording of the suspect can also be ordered for crimes which War Crimes Prosecutor's Office can deal with, as well as for a number of other crimes listed in the Criminal Procedure Code, such as: aggravated murder (Article 114 of CC), abduction (Article 134 of CC), robbery (Article 206, paragraphs 2 and 3 of CC), extortion (Article 214, paragraph 4 of CC), counterfeiting money (Article 223, 1-3 of CC), unlawful production and circulation of narcotic drugs (Article 246, paragraphs 1-3 of the of CC) and other criminal offences.[21]

Covert surveillance and recording of a suspect may be ordered solely for two reasons: the first one - *for the purpose of detecting contacts or communication of the suspect* in public places where access is limited or in premises, except in a dwelling. The locations or premises referred to or vehicles belonging to other persons may be the object of covert surveillance and audio and video recording only if it is probable that the suspect will be present there or that he is using those vehicles; and the second one - *determining the identity of a person or locating persons of things*. (Article 171, paragraphs 1 and 2).

[20] For example, these are the criminal offences of assassination of the highest state officials (article 310 CC).

[21] By the provisions of the Article 162 CPC there are all criminal offences in respect of which special evidentiary actions can be applied.

3.2. Conducting covert surveillance and audio and video recording

Secret surveillance and recording of the suspect are most often seen in the acoustic surveillance of rooms/facilities, cars and a person himself, in covert taking photos, visual surveillance of the facility, covert recording using classic and digital cameras, video cameras, and similar media (so-called photo and TV documenting). Here, first of all, it is referred to live conversations, such as those on streets, squares, public meetings, but without the use of special technical means, but with tape and optical recording.

The difference when compared to the covert surveillance of communication is reflected in the fact that, in the case of covert surveillance of communications, the interception of communications is accomplished through the use of some technical means, while in secret surveillance and recording the emphasis is on visual observation and monitoring of a person, and the other element of this special evidentiary action makes surveillance of communication *in vivo* (Radisavljević, Ćetković, 2014, p. 178).

This special evidentiary action is ordered by a preliminary proceedings judge by a justified order on justified request by a public prosecutor. The order contains the available data on the individual subject to covert interception of communications, specifies the offence, reasons on which the suspicion is based, *the designation of premises, places or means of transport, the authorization for entering and setting up technical devices for recording,* the manner of application, the scope of and duration of covert surveillance and recording of the suspect. It can be noted that this court order must contain the authorisation to enter and install technical devices for recording in the appropriate premises or facilities, places or a vehicle, which is certainly very important from the aspect of protecting the privacy of the person, but it should be emphasized once again that this special evidentiary action cannot be carried out in the dwelling (home).

The duration of the interception is limited to three months, with a possible extension by a further three months. Exceptionally, for offences prosecuted by the Prosecutor's Office for Organized Crime, that is, the War Crimes Prosecutor's Office in cases of organised crime and war crimes this special evidence can be extended up to a maximum of two more times in three months. This means that the action of covert surveillance and recording of the suspect in criminal proceedings for which the competent prosecutor's office of special jurisdiction can last for a maximum of one year.

Covert surveillance and recording of the suspect are executed by authorized police officers, the Security Information Agency or the Military Security Agency (BIA and VBA). Daily reports are made on the conduct of the covert surveillance and audio and video recording and are together with the collected recordings delivered to the judge for preliminary proceedings and the public prosecutor, at their request (Article 173, paragraph 1). Upon the termination of the covert surveillance and recording of the suspect recordings of the communications and other parcels and a special report which contains: the time of commencement and termination of the interception, data on the official who conducted the interception,

a description of the technical means used, the number and available data on the persons encompassed by the interception, and an assessment of purposefulness and results of the application of the interception are delivered to the judge for preliminary proceedings (Article 170, paragraph 1). Finally, all material gathered during this special evidentiary action is passed by the judge to the public prosecutor who will order the recordings obtained through use of technical means to be transcribed in full or in part and to be described.

In accordance with the previous considerations, it should also be noted that the Law on Security Information Agency (Official Gazette of the Republic of Serbia, No. 42/02, 111/09, 65/14 - decision US, 66/14, 36/2018) in its provisions provides for deviation from the constitutional principle of the inviolability of secrecy of letters and other means of communication (Articles 13-15g). Namely, the Director of the Agency may, if necessary to provide the security of the Republic of Serbia, submit a proposal to the President of the Higher Court in Belgrade for prescribing a special measure and if the President of the Higher Court agrees with the proposal of the Director of the Agency, issues an order on prescribing a special measure. On the other hand, if the President of the Higher Court in Belgrade discards proposal for prescribing of a special measure, he shall issue a resolution, and the Director of the Agency may file complaint to the Court of Appeal in Belgrade against the resolution, i.e. decision on the above-mentioned complaint shall be made by committee of the Special department in the Court of Appeal in Belgrade that has legal mandate to process cases relating to criminal offences of organized crime.

4. CERTAIN DOUBTS IN THE APPLICATION OF COVERT SURVEILLANCE AND RECORDING OF A SUSPECT - CONCLUDING DISCUSSION

Analyzing the current legislation in the Republic of Serbia when it comes to covert surveillance and recording of the suspect, one can see certain doubts and legal gaps, as well as the inconsistencies that leave room for different interpretations. First of all, it has already been said that this special evidentiary action can be carried out in public places where access is limited or in premises, but under no circumstances can it be carried out in a home. In that sense, when deciding can be considered as a room suitable for the execution of this special evidentiary action, and what is home, there are some doubts in practice. The Prosecutor's Office for Organized Crime submitted suggestions for the application of this evidentiary action when residential unit where no one resides is in case, and if it is only used by members of an organized criminal group to conduct conspiratorial conversations. This was accepted in practice by the Higher Court, the Special Department. On the other hand, if some of the members at least occasionally stay in such dwelling, regardless of the fact that the primary purpose of the dwelling is to be used for making plans about committing criminal offences, the court did not accept the prosecution's motions for the application of this special

evidentiary action (Radisavljević, Ćetković, 2014, page 179). Bearing in mind the practice of the European Court of Human Rights in terms of the concept of the home, it can be concluded that the court, in this case, acted in a proper manner. Namely, although it can sometimes be completely justified to withdraw parallels between the concept of home and property, there is, however, no sign of equality between these two terms, but only an appropriate coincidence. In this respect is the judgment of the European Court of Human Rights in *Khamidov v. Russia*.[22] It was established an individual may have a property right in a particular building or land, without having sufficient ties with it for it to constitute a home. On the other hand, in the same case, the Court does not consider that the mill, bakery and storage facility, which appear to have been used entirely for industrial purposes, would constitute the applicant's home.

Another question which is posed as controversial and highly debatable is whether "recording" within this special evidentiary action involves exclusively video or visual recording, or audio recording can also be categorized here. On one hand, in support of the fact that this special evidentiary action includes audio recording, the argument is that the term "recording" includes both video/photo recording and audio, i.e. audio-recording and actually has both meanings. On the other hand, in support of the fact that this special evidentiary action does not include audio recording, it is argued that the objective of covert surveillance and recording is the detection of contacts or communication of the suspect in public places and places where access is limited or in premises, except in home, that is, determining the identity of a person or locating a person or things. Having such a goal, it appears that firstly it is the considered of covert visual surveillance, and therefore it is only video or photo recording (Ignjatović, Škulić, 2012, pp. 371-372). In any case, the final answer to this question will be given by the court practice, but we think that this special evidentiary action involves not only video/photo recording but also tone/audio recording and that it was the intention of the legislator when constructing this legal normative, but certainly it would have much more sense if that legal normative was specified and resolve so that it can solve this dilemma in a clear way.

Finally, when it comes to covert surveillance and recording in premises other than home, the legislator also regulated the possibility of entering the premises and installing recording devices, whereby, logically, it is considered a covert entry. However, the legislator's drawback is that he did not regulate the removal of the recording devices in the premises since these devices should not be allowed to remain in the room indefinitely since the duration of the period of executing this special evidentiary action is limited by certain maximum legal deadlines. This way, i.e. with the current lack of legislation, it seems that the covert recording devices can be covertly installed in a room, based on the clear authorization within the order of the preliminary proceedings judge to covertly enter and install the devices in the room without the need for uninstalling these

[22] http://hudoc.echr.coe.int/eng?i=001-83273 available on 25/03/2019

devices after the "expiration of the term" of executing a special evidentiary action (Škulić, 2015, p. 47).

Regardless of all the aforementioned inaccuracies and doubts about the covert surveillance and recording of the suspect, this special evidentiary action is of great importance in the process of detecting and proving criminal offences of organized crime and corruption. Considering the new Law on organization and jurisdiction of state authorities in combatting organized crime, terrorism and corruption it is clear that the Republic of Serbia has opted for a decisive and effective fight against organized crime and corruption.

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39/2003, 67/2003, 29/2004, 58/2004, 45/2005, 61/2005, 72/2009, 72/2011, 101/2011 and 32/2013).

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UDK:

WILLINGNESS TO REPORT CORRUPTION IN RELATION TO WILLINGNESS TO REPORT OTHER FORMS OF VICTIMISATION AMONG STUDENTS IN SOUTHEASTERN EUROPEAN COUNTRIES

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Abstract

The paper investigates the issue of reporting and the willingness to report corruption in relation to the willingness to report other forms of victimisation among students in South Eastern European countries. The aim of the paper is to provide answers to the questions of how willing students are to report corruption and to what extent their willingness is related to the willingness to report other forms of victimisation, as well as to their socio-demographic characteristics, such as sex, country of residence and field of study.

Based on the results obtained, the purpose of the paper is, firstly, to identify opportunities for encouraging young people to report corruption, as well as other types of crime, and secondly, to identify to which groups in terms of their socio-demographic characteristics additional attention should be devoted when encouraging them to report. The focus is on young people since the possibility to influence willingness to report is believed to decrease with age.

The research was conducted on a convenience sample of 1400 students from Bosnia and Herzegovina, Montenegro, Croatia, Hungary, Macedonia, Slovenia and Serbia (200 per country) by using the survey quantitative method. The research instrument was a questionnaire in which the respondents were asked about their socio-demographic characteristics, as well as 10 vignette questions containing short descriptions of various types of crime, i.e., 5 hypothetical situations in which they are victims of crime and 5 hypothetical situations in which they are witnesses of crime.

Based on the hypothetical situations, the respondents were asked to assess whether they would report crime on a scale from 1 (I am absolutely certain that I would report) to 4 (I am absolutely certain that I would not report). The results of the descriptive and multivariate analysis show statistically significant differences in willingness to report various types of crime among young people in the South Eastern European countries examined.

Key words: *corruption, reporting crime, vignettes, students, South Eastern Europe*

1. INTRODUCTION

Corruptive crime is a contemporary challenge faced by the world's countries, especially by those in South-eastern Europe, relatively young democracies, where corruption is significantly more prominent than in developed Western countries.

The term corruption in its broader meaning refers to the "abuse of public authority for private purposes" (Karklins, 2005: 4). Furthermore, corruption, in particular in post-communist countries, can be further subdivided, from institutional at the higher level, to the lower level, such as bribing civil servants – police officers, doctors, etc. In addition to bribing, which is most frequently considered to be identical to corruption, there are other acts belonging to corruption, such as extortion or profiting from procurement. Corruption is rarely a crime committed on its own; it is often committed together with other illegal acts, such as fraud, malpractice and violating the rules (Karklins, 2005: 20).

In post-socialist countries, which are the topic of this paper, the perception of corruption is high. According to the database of *Transparency International*[23] (2019), the Corruption Perceptions Index 2018 for the countries being researched is as follows:

Country	Score (out of 100)	Rank (out of 180)
Bosnia and Herzegovina	38	89
Croatia	48	60
Hungary	46	64
Macedonia	37	93
Montenegro	45	67
Serbia	39	87
Slovenia	60	36

Source: Transparency International – *Corruption Perceptions Index 2018*

The above figures indicate that corruption is perceived as present to a high extent, especially if the figures are compared with other European countries where corruption is perceived as present to a lesser extent (Denmark – score: 88/100, rank:1/180; Switzerland, Finland and Sweden – score: 85/100, rank: 3/180;). Therefore, the corruption issue does exist in these countries, on the other hand, there is a whole range of papers on this topic, meaning that it cannot be claimed that the issue of corruption is not addressed (see: Sotiropoulos, 2017; Božić, 2012; Piplica, 2011; Budak, 2006; Radin & Shoup, 2014; Šundalić & Pavić, 2011; Begović & Mijatović, 2001 etc.). However, there is the possibility that, due to the specific characteristics and complexity of corruption, there is a problem with implementing scientific findings in the laws and policies.

[23] https://www.transparency.org/about, accessed on 3 March 2019

A specific feature of this paper is that it investigates how citizens would react to corruptive crime and their willingness to react – in other words, it starts from a micro-approach by a citizen, and his or her role within the macro-system. Reporting corruption is certainly one of the key steps in identifying this type of deviant behaviour, and, ultimately, a step towards solving it.

Reporting crime

According to Giddens (2007: 216), crime statistics based on committed crimes are the least reliable of all social statistics since a large number of crimes remains unreported, i.e. unidentified. In order to avoid this problem, Haralambos and Holborn (2002: 366) propose the so-called victimisation surveys, in which respondents are asked whether they were victims of crime and whether they reported crime to the police. There are several limitations to this method, including refusing to participate in the survey and current perception of certain crimes in society. Furthermore, there are the so-called *vignette studies*. Vignettes are short descriptions of social, hypothetical situations that respondents have to imagine, and subsequently answer questions based on these situations. Similar to the victimisation method, this method also has its limitations. The results can be influenced by the individual characteristics of respondents, social context and other individuals (Goudriaan, 2006: 34).

Socio-demographic characteristics can also influence the decision to report crime, i.e. they can have an impact when deciding whether to report a crime or not. According to Skogan (1984), there are slight differences in reporting when it comes to sex, meaning that women are more willing to report crime compared to men. Nonetheless, according to Tanton and Jones (2003), men aged from 15 to 24 report more frequently than women of the same age (according to Avdija & Giever, 2012). Godiraan, Lynch and Nieuwbeerta (2004) point towards the positive correlation between willingness to report and age – willingness to report increases with age. Socio-economic status can also influence the decision to report crime, whereby individuals of lower socio-economic status tend to report less (Tankebe, 2009). When it comes to comparative research, which is scarce in Eastern Europe, the perception of police successfulness, conformity and the level of individuality can affect the decision to report crime. Namely, in countries where the police is considered more successful, with a higher level of conformity and individuality, citizens are more willing to report crime (Goudriaan, Lynch & Nieuwbeerta, 2004).

When it comes to other factors influencing reporting crime, more willing to report are victims who consider that they have suffered more substantial material damage (Bowles, Reyes, & Garoupa, 2009), who consider the committed crime to be more serious (Akers & Kaukinen, 2009), who do not know the perpetrator (Goudriaan & Nieuwbeerta, 2007), who have police officers more readily available (Tolsma, Blaauw, & Grotenhuis, 2012; Levitt, 1998) and who are encouraged to report by other citizens or by the police (Avdija & Giever, 2010). The decision to report can also be influenced by social factors, such as social control (Hart &

Colavito, 2011), as well as by psychological factors, such as emotional arousal (Greenberg & Beach, 2004).

The research aim of this paper is to investigate how willing students in the post-socialist countries in South Eastern Europe are to report crime and to what extent their willingness is related to willingness to report other forms of victimisation and their socio-demographic characteristics (age, sex, field of study, university success and country of residence). In addition, conformity and perception of successfulness of police will be explored for every country in order to provide an answer to the question of whether there is a correlation between conformity or succesfulness and willingness to report corruption and other crimes in general.

2. METHODOLOGY

2.1. Respondents

The research was conducted on a non-probability sample consisting of 1420 volunteers – students from seven post-socialist countries in South Eastern Europe (Bosnia and Herzegovina, Montenegro, Croatia, Hungary, Macedonia, Slovenia and Serbia) (Table 1).

Table 1. *Country*

Country	n	Structure (%)	Structure female–individual country (%)
Bosnia and Herzegovina	241	17	80.1
Montenegro	160	11.3	78.1
Croatia	227	16	80.6
Hungary	201	14.2	77.6
Macedonia	155	10.9	81.9
Slovenia	214	15.1	71.5
Serbia	222	15.6	84.7
Total	1420	100	

The respondents were both male and female (289 male and 1125 female respondents) aged from 18 to 35, with an average age of M= 22,399 (SD=2,857). The sample included the following fields of study: biomedicine and health, biotechnical sciences, social sciences, humanities, interdisciplinary areas of science, natural sciences, technical sciences and the arts (Table 2).

Table 2. *Field of study*

Field of study	n	Structure (%)
Biomedicine and health	190	13.38
Biotechnical sciences	47	3.3
Social sciences	683	48.18
Humanities	204	14.37
Interdisciplinary areas of science	41	2.89
Natural sciences	67	4.72
Technical sciences	131	9.23
Arts	21	1.48
Other	36	2.54
Total	1420	100

The sample includes students with higher and lower grade point averages (Chart 1), and with higher and lower socio-economic status (Chart 2).

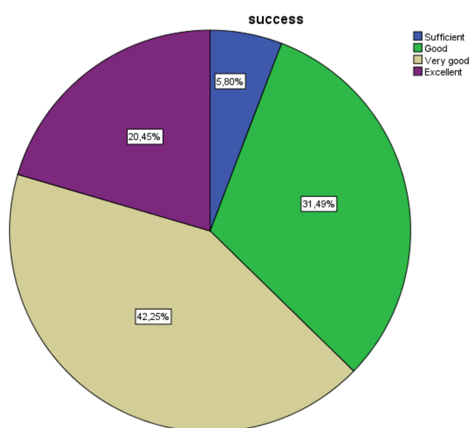

Chart 1. - *Success*

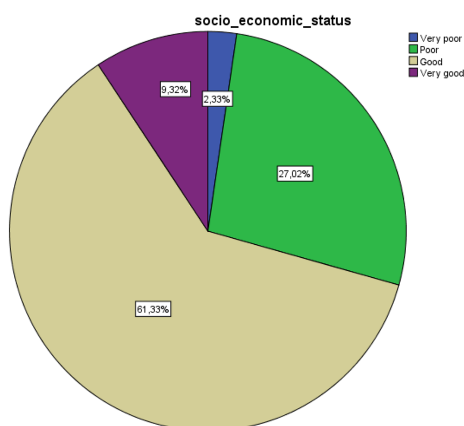

Chart 2. – *Socio-economic status*

2.2. Research outline

The method used in this research is the quantitative method of survey. The instrument used for collecting data was an online questionnaire. The online surveying method was selected due to the increased feeling of anonymity and security, which, in this case, is significantly higher compared to face to face

surveying (Kosinski et al., 2015), which is extremely important given the sensitivity of the research topic. Furthermore, the online surveying method has proven to be one of the best when researching the student population, which uses the Internet on a daily basis, meaning it is accessible in that way, as well as willing to participate in this type of research (Vehovar, Lozar Manfreda & Callegaro, 2015: 25-26)

2.3. Instrument

The research instrument was an online questionnaire on reporting crime. The introductory part of the questionnaire contained socio-demographic characteristics, such as age, sex, field of study, university success and socio-economic status. This was followed by a set of so-called vignettes containing short descriptions of situations. Described to respondents were various hypothetical situations in which they had to picture themselves as the victim of a particular crime, after which they were asked to answer, on a scale from 1 to 4, to which extent they would be willing to report a specific crime, where 1 stands for *I completely disagree*, and 4 stands for *I completely agree*. The vignettes contained descriptions of the following crimes: property crime, crimes against life and body, crimes against sexual freedom, crimes against public order, crimes related to drug abuse, and corruption crimes. In total, 10 vignette claims made up an average linear combination of the variable *General willingness to report crime* (Cronbach α=0.816), where a higher score represents a higher willingness to report crime. This was followed by a set of 9 claims that formed the average linear combination of the variable *Police successfulness* (Cronbach α=,0.918), where a higher score represents a more positive attitude on police successfulness. The last part of the questionnaire contained a set of 6 questions on conformity, of which 3 claims refer to the average linear combination of the variable *Conformity to rules* (Cronbach α=0.847), and 3 to the average linear combination of the variable *Interpersonal conformity* (Cronbach α=0.712). Finally, the average linear combination of the previously stated two variables formed the variable *Conformity in general* (Cronbach α=0.814). For the conformity scale, used were claims from the questionnaire on basic values (PVQ-RR) by Shalom Schwartz (2017). A higher score indicates a higher level of conformity.

2.4. Procedure

The survey was conducted by means of an online questionnaire prepared in the online application named *Google forms*[24]. The questionnaire was translated and posted on student *Facebook* groups – university, faculties, year of study, etc., separately for each country. Participation was on a voluntary basis and completely anonymous. Respondents could withdraw from participation at any given moment. It was explained to them in the introductory part that they will suffer no damage or achieve any material benefit, in accordance with the ethical research principles.

[24] Google forms https://docs.google.com/forms

The questionnaire and the research were approved by the Ethics Committee of Croatian Studies, University of Zagreb. The data collection process lasted for a month, and the data obtained were analysed in the program package IBM SPSS Statistics 23.0. Used for the analysis of data were descriptive statistics and the multi-variate statistical methods.

3. RESULTS

In order to gain insight into willingness to report corruption and general willingness to report crime by countries, used was descriptive statistics.

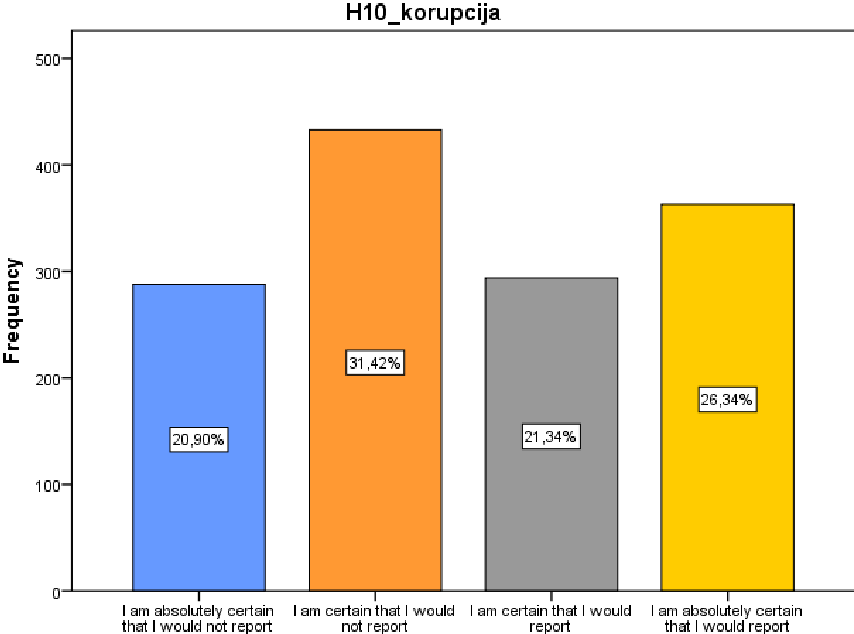

Chart 3. – *General willingness to report corruption*

As it can be seen in Chart 3, over half of the respondents would not be willing to report corruption.

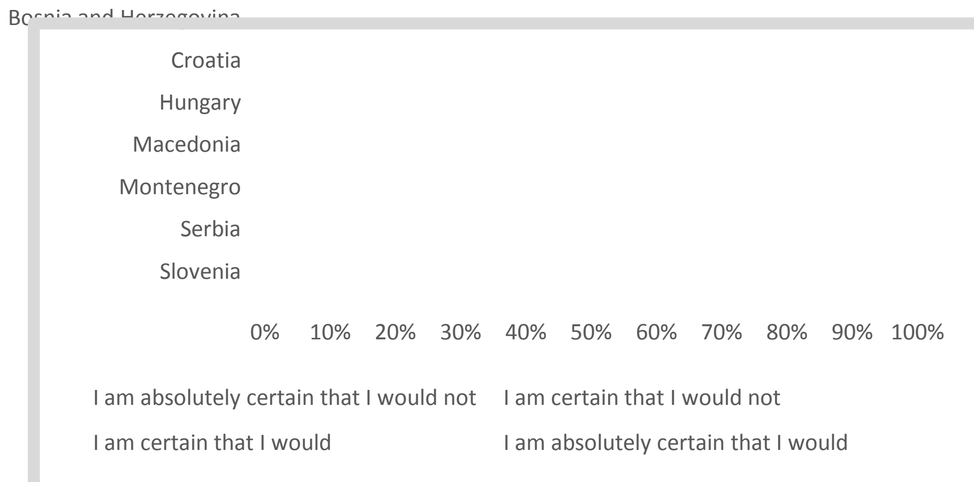

Chart 4. – *Willingness to report corruption by country*

Chart 4 depicts the willingness to report corruption in particular countries. According to descriptive indicators, the highest willingness to report corruption is in Macedonia (M=2.905, SD=1.078) and Montenegro (M=2.753, SD=1.074), and the lowest in Hungary (M=2.067, SD=0.98) and Croatia (M=2.386, SD=1.0545), while the remaining countries are placed in between.

Table 3. – *General willingness to report crime by country*

Country	M	SD
Bosnia and Herzegovina	2.706	0.535
Croatia	2.479	0.471
Hungary	2.363	0.5
Macedonia	2.836	0.603
Montenegro	2.755	0.606
Serbia	2.579	0.485
Slovenia	2.453	0.513

Table 3 depicts the general willingness to report crime by country. According to descriptive indicators, the highest willingness to report crime is also in Macedonia and Montenegro, whereas the lowest willingness is in Hungary, Slovenia and Croatia. Further analysis will be used to determine whether there is a statistically significant difference in willingness to report among countries.

Socio-demographic characteristics

In order to determine whether there are differences in willingness to report based on socio-demographic characteristics, conducted was statistical variance analysis (ANOVA):

Table 4. *Table of ANOVA summary for arithmetic means for willingness to report corruption and sex*

	Sum of Squares	df	Mean Square	F	p
Between Groups	0.377	1	0.377	0.315	0.575
Within Groups	1639.457	1370	1.197		
Total	1639.834	1371			

* *p<0,05*

Given the obtained results (F=0.315 along with df_1=1 and df_2=1370, and p=0.575), accepted is the null-hypothesis saying there is no statistically significant difference in willingness to report corruption between males and females (Table 4). However, it should be noted that there is a huge difference in sex in the sample, in which respondents are mainly females (Table 1).

Table 5. *Table of ANOVA summary for arithmetic means for willingness to report corruption and field of study*

	Sum of Squares	df	Mean Square	F	p
Between Groups	4.014	7	0.573	0.477	0.852
Within Groups	1602.410	1334	1.201		
Total	1606.424	1341			

* *p<0.05*

Given the obtained results (F=0.477 along with df_1=7 and df_2=1334, and p=0.852), the null-hypothesis that there is no statistically significant difference to report corruption among respondents with different fields of study could not be refuted (Table 5). However, it should be noted that mostly students of social sciences participated in the survey (Table 2).

Table 6. *Table of ANOVA summary for arithmetic means for willingness to report corruption and university success*

	Sum of Squares	df	Mean Square	F	p
Between Groups	0.331	3	0.110	0.092	0.964
Within Groups	1635.222	1367	1.196		
Total	1635.554	1370			

* *p<0,05*

Given the obtained results (F=0,092 along with df_1=3 and df_2=1367, and p=0,964), the null-hypothesis that there is no statistically significant difference to report corruption among respondents of different university success could not be refuted (Table 6). Respondents mostly described their success as good and very good (Chart 1).

Table 7. *Table of ANOVA summary for arithmetic means for willingness to report corruption and socio-economic status*

	Sum of Squares	df	Mean Square	F	p
Between Groups	7.738	3	2.579	2.164	0.091
Within Groups	1624.983	1363	1.192		
Total	1632.721	1366			

** p<0.05*

Given the obtained results (F=2.164 along with df_1=3 and df_2=1363, and p=0.091o), the null-hypothesis that there is no statistically significant difference to report corruption among respondents with different socio-economic status could not be refuted (Table 7). However, it should be noted that mostly students of social sciences participated in the survey (Table 2). According to descriptive indicators, the majority of respondents described their financial situation as “good”.

Table 8. *Table of ANOVA summary for arithmetic means for willingness to report corruption and post-socialist countries in South Eastern Europe*

	Sum of Squares	df	Mean Square	F	p
Between Groups	83.554	6	13.926	12.226	<0,001
Within Groups	1561.605	1371	1.139		
Total	1645.158	1377			

** p<0,05*

Given the obtained results (F=12.226 along with df_1=6 and df_2=1371, and p<0,001), the null-hypothesis is refuted and it can be concluded that there is a statistically significant difference in willingness to report corruption and post-socialist countries in South Eastern Europe.

Table 9. *Results of post-hoc tests of willingness to report corruption and countries of South Eastern Europe*

(I) Country			Mean Difference (I-J)	Sig.
Games-Howell	Bosnia and Herzegovina	Montenegro	-,22254	,436
		Croatia	,14505	,784
		Hungary	,46471*	,000
		Macedonia	-,37470*	,020
		Slovenia	-,19394	,514
		Serbia	,02391	1,000
	Montenegro	Bosnia and Herzegovina	,22254	,436
		Croatia	,36760*	,019
		Hungary	,68726*	,000
		Macedonia	-,15216	,883
		Slovenia	,02861	1,000
		Serbia	,24646	,315
	Croatia	Bosnia and Herzegovina	-,14505	,784
		Montenegro	-,36760*	,019
		Hungary	,31966*	,023
		Macedonia	-,51976*	,000
		Slovenia	-,33899*	,019
		Serbia	-,12114	,899
	Hungary	Bosnia and Herzegovina	-,46471*	,000
		Montenegro	-,68726*	,000
		Croatia	-,31966*	,023
		Macedonia	-,83942*	,000
		Slovenia	-,65865*	,000
		Serbia	-,44080*	,000
	Macedonia	Bosnia and Herzegovina	,37470*	,020
		Montenegro	,15216	,883
		Croatia	,51976*	,000
		Hungary	,83942*	,000
		Slovenia	,18077	,712

	Serbia	,39862*	,011
Slovenia	Bosnia and Herzegovina	,19394	,514
	Montenegro	-,02861	1,000
	Croatia	,33899*	,019
	Hungary	,65865*	,000
	Macedonia	-,18077	,712
	Serbia	,21785	,375
Serbia	Bosnia and Herzegovina	-,02391	1,000
	Montenegro	-,24646	,315
	Croatia	,12114	,899
	Hungary	,44080*	,000
	Macedonia	-,39862*	,011
	Slovenia	-,21785	,375

**p*<0,05*

By applying the *Games-Howell* post-hoc test, it has been established that there is a statistically significant difference (p<0,001) among arithmetic means in willingness to report corruption between Hungary and all other countries, whereby students from Hungary are less willing to report corruption compared to other countries being researched. Furthermore, at the level of significance of 5%, it can be concluded that there is a statistically significant difference between Croatia and Montenegro, Macedonia and Slovenia whereby students from Croatia are less willing to report corruption than students from Montenegro, Macedonia and Slovenia. There is also a statistically significant difference between Macedonia and Bosnia and Herzegovina and Serbia whereby students from Macedonia are most willing to report. The difference among countries is depicted in the chart:

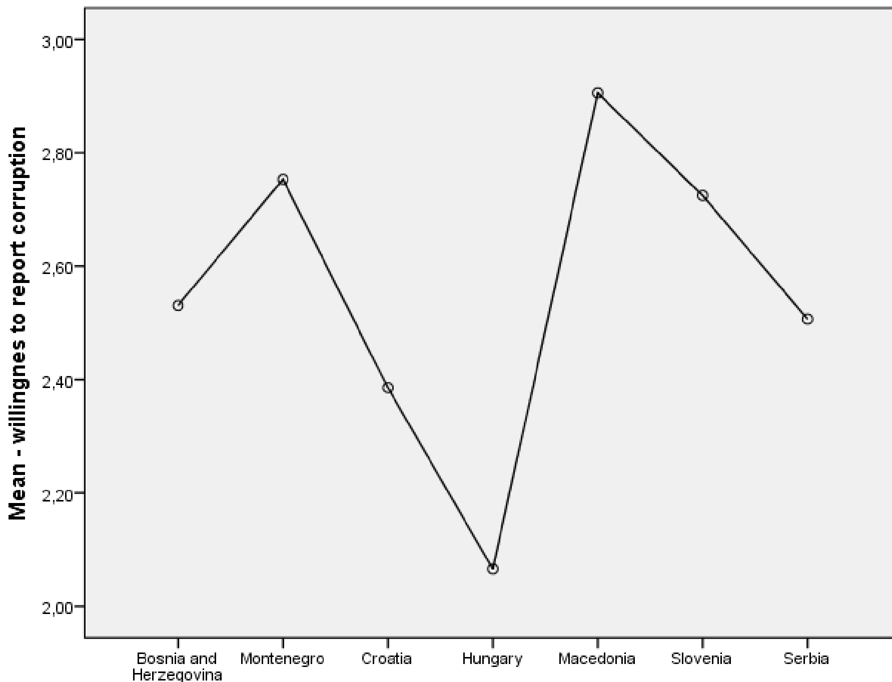

Chart 5. – *Difference in willingness to report corruption among countries*

In order to determine whether there is a correlation between willingness to report and age, correlation between general willingness to report crime and willingness to report corruption, and correlation to report and conformity, used was the Pearson correlation indicator.

Table 10. – *Correlation: Willingness to report corruption and age*

	Age
Willingness to report corruption	0.015
General willingness to report	0.009

***p<,01; *p<,05*

The table shows that there is no statistically significant correlation between willingness to report corruption and age of students (r=0,015).

Table 11. – *Correlation: Willingness to report corruption and general willingness to report crime*

	General willingness to report crime
Willingness to report corruption	0.564**

***p<,01; *p<,05*

The Pearson correlation coefficient shows that there is a statistically significant positive correlation between willingness to report corruption and general willingness to report crime (r=0,564).

Table 12. – *Perception of police successfulness by country*

Country	M	SD
Bosnia and Herzegovina	1.958	0.634
Croatia	2.121	0.594
Hungary	2.114	0.7
Macedonia	1.866	0.741
Montenegro	1.978	0.63
Serbia	1.963	0.634
Slovenia	2.483	0.71

In Table 12. can be seen perception of police successfulness by countries, where in Macedonia police is perceived the least successful, and in Slovenia the most successful.

Table 13. – *Correlation: Willingness to report crime and perception of police successfulness*

	Perception of police successfulness
General willingness to report	0.163**
Willingness to report corruption	0.071**

***p<,01; *p<,05*

The Pearson correlation coefficient shows that there is a statistically significant positive correlation between general willingness to report and perception of police successfulness (r=0.163), and there is a statistically significant correlation between willingness to report corruption and perception of police successfulness (r=0.071).

Table 14. – *Conformity by country*

Country	Conformity to rules	SD	Interpersonal conformity	SD	Conformity in general	SD
Bosnia and Herzegovina	4,037	1.29	4.329	1.052	4.1822	1.042
Croatia	3.9	1.307	4.3567	1.011	4,1289	0.98
Hungary	4.0927	1.143	4.388	0.928	4.2405	0.89
Macedonia	4.6436	1.077	4.3862	1.139	4.5013	0.968

Montenegro	4.2756	1.32	4.079	1.317	4.1711	1.12
Serbia	4.0108	1.284	4.1963	1.102	4.1108	1.022
Slovenia	3.85	1.196	4.0265	1.15	3.9405	1.014

According to descriptive indicators of conformity (based on Schwartz's basic values scale), the highest level of "conformity to rules" is exhibited by Macedonia and Montenegro, and the lowest by Croatia and Slovenia. The highest level of "interpersonal conformity" is also exhibited by Macedonia, whereas the lowest by Slovenia, Serbia and Montenegro. When it comes to conformity in general, Macedonia once again has the highest score, while Slovenia has the lowest (Table 13).

Table 15. – *Correlation: Conformity*

	Conformity to rules	Interpersonal conformity	Conformity in general
Willingness to report corruption	0.163**	0.055*	0.131**
General willingness to report crime	0.292**	0.172**	0.273**

***p<,01; *p<,05*

The Pearson correlation coefficient shows that there is a statistically significant correlation when it comes to conformity to rules, interpersonal conformity and conformity in general. Willingness to report crime tends to have a stronger positive correlation, whereas willingness to report corruption has a more modest positive correlation with level of conformity.

4. DISCUSSION AND CONCLUSION

The results of the research have shown that students in post-socialist countries in South Eastern Europe, to a significant extent, do not express willingness to report corruption. This could be explained by the specific characteristics of this type of crime, which distinguish it from other types of crime. Namely, corruption crime can be classified as a "crime without a victim", where both sides benefit in a certain manner, meaning that they are less willing to report this type of crime. Belonging to the same type of crime are prostitution, drug abuse crimes and illegal gambling (Abercrombie, Hill & Turner, 2008: 175). Moreover, according to Karklins (2005: 6), social reaction to corruption depends on its characteristics. For instance, an average citizen is going to condemn corruption occurring at a higher level, whereas he or she is going to find justifications for corruption occurring at a lower level or possibly even participate in it. Although corruption belongs to those types of crime that are reported less frequently than other types, the results indicate that there is a statistically positive correlation between willingness to report corruption and willingness to report crime in general. It should be noted that the majority of crime is not reported, i.e. generally, the willingness to report is not high, meaning that this can be an indicator of this

correlation. When it comes to individual countries, students from Macedonia are the most willing to report corruption, as well as other types of crime, whereas students from Hungary and Croatia are least likely to report. Goudriaan, Lynch & Nieuwbeerta (2004), when discussing the macro-model of cross-national research on willingness to report crime, stress the importance of the level of conformity and perception of police successfulness, both of them having a positive correlation with willingness to report. The results of this research confirm the positive, statistically significant correlation between the level of conformity (to rules, interpersonal, and in general) and general willingness to report, i.e. willingness to report corruption, whereby this correlation is somewhat weaker when it comes to reporting corruption compared to reporting crime in general. The results also confirm the positive correlation between general willingness to report crime in general and perception of police successfulness and willingness to report coruption. The research provided some interesting findings related to socio-demographic characteristics. By examining the variance analysis for sex, field of study, university success, and socio-economic status, it can be seen that there is no statistically significant difference in willingness to report. However, given that respondents participating in the research were volunteers, there is the possibility that they are, simply by agreeing to participate, more willing to report crime (Goudriaan, Lynch & Nieuwbeerta, 2004). Therefore, based on the descriptive characteristics of respondents, there is the possibility that women are more willing to report crime compared to men since the number of women who decided to participate on a voluntary basis is four times greater than the number of men, which indicates that this topic should be further explored. Numerous studies also show that women are more willing to report (Skogan 1984; Green, 1981; Ashbaugh & Cornell, 2008). However, gender differences that could influence such a disproportion should also be taken into account, for instance, certain conscience dimensions that are more prominent in female character traits (Costa, Terracciano, & McCrae, 2001) and that could influence the decision to complete the questionnaire on a voluntary basis. In any case, more attention should be devoted to this topic. Based on this logic, and according to descriptive indicators, more willing to report, given their voluntary participation, could be individuals studying social sciences, with good and excellent success, with good or very good financial status, which could also be confirmed by previous studies (e.g. Skogan, 1976). When it comes to age, the research did not show a statistically significant correlation between age and willingness to report crime, probably because the sample includes a homogeneous group in terms of age, i.e. young people who are generally less willing to report (Goudriaan, 2006: 166).

The limitations of this paper include the usage of so-called hypothetical vignette situations, in which a respondent must picture himself or herself as a victim or witness of crime, and based on that, respond to questions on willingness to report. Given that, in this case, it is not a real victimisation situation, there is the possibility that the results would be different in case of actual victimisation (Leeper Piquero & Piquero, 2006). Actual victimisation situations can occur in various

social contexts, which can significantly influence human behaviour and cannot be fully predicted and included in vignette studies (Baumer, 2002; Greenberg & Ruback, 1992). Another limitation could be the non-probability volunteer sample that may, as already stated, mostly encompass those already more willing to report crime. Nonetheless, such studies are still a better method than official crime statistics, which, unfortunately, do not present realistic figures, important for implementing programmes and encouraging desirable pro-social behaviour, in this case, reporting all types of crime.

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UDK:

DOES CRIME PAY OFF? A CASE OF LOVENIAN CONFISCATION OF PROCEEDS OF CRIME ACT

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Key words: *organized and economic crime, the Confiscation of Proceedings of Crime Act, legislation, the Court decisions*

1. INTRODUCTION

The economic situation, slower economic growth, and worse financial crisis were creating opportunities for the rise of organized crime before 2010. Organized crime deals with various activities such as human trafficking, smuggling of illegal drugs, illegal trafficking of dangerous weapons and corruption, which generate mass revenues. Organized crime poses a threat to every political system and the economy of the country. The main characteristic of organized crime is the acquisition of profit in an illegal manner; therefore, the institute for confiscation of such acquired assets has the biggest impact in the fight against organized crime. Therefore, in accordance with the Resolution on the National Program for Prevention and Suppression of Crime for the period 2012-2016, Slovenia also implemented the Confiscation of Proceeds of Crime Act (hereinafter: CPCA) in 2011, since it is the duty of the state to provide the necessary measures that tackle the sources of threat to modern society (Rep, Ipavec, 2012).

2. IMPLEMENTATION OF THE LAW AND ITS LEGAL AMENDMENTS OR DILEMMAS

On 29 May 2012, CPCA came into force. According to the legislator, the implementation of CPCA was a necessity due to the increase in criminal offences. In 2009, the total amount of proceeds of criminal activity was approximately $2.1 billion, i.e. 3.6% of the world GDP. Moreover, some have even called it the factor of restricting organized crime, since it (could) positively influence the economic position or stability of the state. Organized crime poses a threat to every political system and the economy of the country. The main characteristic of organized crime is the acquisition of profit in an illegal manner; therefore, the institute for confiscation of such acquired assets has the biggest impact in the fight against organized crime. The priority of the Act was to pursue the goal of seizing unlawfully acquired assets of persons who posses it, while at the same time ensuring that the rights of third parties who acquired the assets legally and in good

faith were protected. CPCA represented the elimination of deficiencies in the Slovenian legal order. It implemented the principle of criminal law, which stipulates that no one may retain the benefit that comes from a criminal offence or because of it (Rep, Ipavec, 2012). CPCA has a starting point from the point of view of the suspicion of illegal assets in the Criminal Procedure Act (hereinafter: CPA), therefore it also reasonably applies the provisions of the law governing criminal proceedings. The confiscation of assets covers five phases: financial investigation, freeezing and seizure, confiscation, execution of the decision of confiscation and disposal of assets (Rejc Longar, 2018). However, CPCA follows the civil and non-criminal procedure and is a court procedure in both cases (Kovačič Mlinar, 2012). However, the confiscation of assets s of unlawful origin under CPCA is one of the measures imposed even without a conviction or irrespective of the prosecution of the person who is the target of the measure of confiscation. It represents a measure of a civil law nature that is realized in a civil procedure. The subject-matter of the procedure is therefore not the conviction of a person's conduct, but the confiscation of unlawfully acquired things. The activating factor for the initiation of proceedings under CPCA is to suspect that a person has assets of unlawful origin that appear in a pre-trial or criminal procedure and whose total value exceeds €50,000 (Higher Court, 2017). At the time that the Act was passed, the Government enabled the creation of a special internal organizational unit, which represents the state as the applicant in the procedure (Sa.J, 2018) at the Specialized State Prosecutor's Office (hereinafter: SSPO).

CPCA, as an effective institute, represents a step in the right direction. On the other hand, uncertainties are related to the principle of proportionality. Legislators also referred to European legislation in the draft of CPCA, as it provided the basis for the withdrawal of unlawfully acquired proceeds from crime, for example, Civil Convention on Corruption, Civil Law Convention on Corruption (Council of Europe, 2002), United Nations Convention against Transnational Organized Crime, United Nations Convention against Corruption, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime , United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, International Convention for the Suppression of the Financing of Terrorism (Rep, Ipavec, 2012). At the time of the adoption of the CPCA, the debates of many theoreticians as well as practitioners were devoted specifically to the field of human rights and fundamental freedoms in this procedure, since criminal law must remain a defender of human rights (Dežman, 2011). Proportionality is based on the fact that the institute of confiscation of proceeds from crime does not excessively interfere with human rights and fundamental freedoms. Due to the sensitive area of human rights and fundamental freedoms, the dilemmas of the constitutional nature of the institute emerged and caused a split in the professional public. It split into the defenders and opponents of the institute. Lawyer Blaž Kovačič Mlinar (2012) considered that CPCA was an important and at the same time a problematic novelty for our legal system. In his view, the introduction of the reversed burden of proof in criminal proceedings would in any

way be a big deviation from the presumption of innocence, the essence of which is that the burden of proof is the responsibility of the prosecutor , On the other hand, those advocating the Act, emphasized that criminal activities were seriously undermining the basic human rights of victims of crime. Therefore, it is necessary to penalize potential perpetrators because they violate the rights of third parties through criminal offences (Rep, Ipavec, 2012). Nevertheless, the Act triggered certain dilemmas presented below.

2.1 Constitutional rights

Prohibition of excessive state interventions and the principle of proportionality is binding for all national authorities as well as the legislator. The legislator is obliged to adopt such legal acts which do not violate human rights with their provisions, except in cases where the Constitution explicitly allows the possibility of regulating the law and thereby limiting the individual rights protected by the Constitution. Article 67 of the Treaty on European Union provides that the European Union provides citizens with a high level of protection by preventing and combating crime. The right protects human dignity, one's personal data, and, most importantly, protects the individual to whom the data is connected to. It is an elementary human right, which is defined both in the Constitution and in international legal acts, but it is indispensable in particular from the point of view of protecting humans from the state authority, the public and other individuals. In the Slovenian legal system, its content is defined in articles from Articles 35 to 38, whereas the European Convention defines it in Article 8. Proponents of the institute support a different opinion/(Rep, Ipavec, 2012). Slovenian jurisprudence is still modest in terms of the acceptability of the new CPCA. We must, however, be aware of the positions of the Constitution of the Republic of Slovenia, which explicitly states in Article 8 that laws and other regulations must comply with the generally applicable principles of international law and international treaties that are binding on Slovenia. In our law, the question of possible violations of human rights and fundamental freedoms of the provisions of CPCA has arisen mainly due to the novelties introduced by the law, which relates to the financial investigation and the reversed burden of proof (The draft of Confiscation of Proceeds of Crime Act, 2010). Therefore, it is worth mentioning here that the Constitutional Court (2012), by decision no. U-I-23/12 of 2012 confirmed that CPCA was not inconsistent with the Constitution of the Republic of Slovenia.

2.2 Judicial protection in financial investigation under CPCA

A financial investigation under CPCA is a secret investigation, which may take several years without the person under investigation even knowing that any investigation, which is supposed to be in the view of state bodies of a civil nature, is being conducted against him. State authorities (the Police, the Financial Administration of the Republic of Slovenia, the Customs Administration of the Republic of Slovenia, the Public Prosecutor's Office) can intervene in the human rights of this person without interruption and without proper judicial supervision

for large-scale financial investigations, dating back up to 10 years. The person is not even provided with adequate or effective judicial protection of his constitutional rights. After several years of violation of constitutional rights, even the judicial protection can not be effective, as it can cause irreparable damage to a person being investigated. In the financial investigation under CPCA, the person under investigation has no legal remedies against the actions of state authorities. The person is informed about the investigation or the result of the investigation only after the investigation was concluded at the hearing pursuant to Article 17a of the CPCA, i.e. right before filing a legal action for the confiscation of proceeds from crime. Given that the assets supposedly worth more than €50,000, which is the minimum for initiating the procedure, is being taken over in the procedure under CPA, more effective judicial protection in the financial investigation is to be expected. For example, as provided to the suspect in criminal proceedings. However, this is not the case in the case under CPCA, although the law itself refers to the provisions of the CPA that are applied in a subsidiary manner. Only timely provision of judicial protection is appropriate judicial protection (Maslovarić, Judicial protection in financial investigation under CPCA). The Constitutional Court of the Republic of Slovenia, by decision of Up-562/16 (UI-120/16) (Constitutional Court, 2017**a**) and Up-314/16 (UI-62/16) (Constitutional Court, 2017**b**) both of 9 November 2017 rejected an initiative the constitutionality of provisions under CPCA. The Constitutional Court did not accept the complainant's constitutional complaint for consideration because it did not show a legitimate interest. It is important to note that when considering the case, different decisions were taken by the constitutional judges related to the constitutional compliance with CPCA. The decisions showed that the constitutional judges did not share the same views on the constitutionality of the CPCA. The three constitutional judges did not agree with the final decision of the Constitutional Court in the aforementioned resolutions.

2.3 Reverse burden of proof

Democratic systems strictly adhere to the principle that the state is the one whose task is to prove criminal responsibility to the individual. The burden of proof is on the prosecutor, and not on the defendant. At the same time, the prosecutor carries the evidentiary risk. When in doubt, the court must forgive the accused. The presumption of innocence is an essential element of a fair trial, but today there is almost no system of criminal procedural law, which does not in the introductory articles define the presumption of innocence. With the introduction of the reversed burden of proof, if there are reasonable grounds to suspect that the assets originates catalog criminal acts stated in Article 10, paragraph 4 in the CPCA the potential perpetrator must from prove himself whether the law enforcement agencies are wrong or that the assets was actually acquired in a lawful manner. The next reason of a constitutional nature, which is contrary to the principle of the presumption of innocence, is the confiscation of assets even before a final conviction judgment is

issued. In comparison with CPA, the condition to initiate the illegal assets confiscation is determined by a final conviction judgment, while in CPCA only the lowest standard of proof is the reason for suspicion that a criminal act was committed (Rep, Ipavec, 2012) . Dežman (Rep, Ipavec, 2012) says that the regulation in the CPA seems to be entirely appropriate, since it already allows for the confiscation of assets, which is proved to have been obtained unlawfully by the defendant. Regarding the reversal of the burden of proof, Dežman was of the opinion that it was only a matter of tax and civil proceedings to reflect on it, but not in criminal proceedings (Rep, Ipavec, 2012). On the other hand, according to Dobovšek (2004), the reversed burden of proof is used as a form of the fight against organized crime. In this case, it involves seizure in criminal proceedings, it depends on the success of the trial, while the Civil Asset Recovery is independent of the final judgement in criminal procedings. This has its advantages since it is possible to convict the offender even when there is insufficient evidence. Civil Asset Recovery is known by the United States, Ireland, Great Britain, Italy, Australia, Slovenia, Ontario in Canada and South Africa, and it is also included in the customs legislation of most countries (Rejec, Longar, 2018). This is a possible weapon in the fight against (especially) cross-border crime and corruption since in these cases the assets obtained (usually) do not remain in the country of origin of the offence committed (Rep, Ipavec, 2012). In the judgment I Ips 281/2005 the Supreme Court (2006) of the Republic of Slovenia already took the view that the confiscation of objects in some cases under the Penal Code is compulsory and independent of the finding of identity.

3. »NOTORIOUS« RETROACTIVITY OF LEGAL PROVISIONS OR HOW THE ACT WAS NOT CONFIRMED DUE TO THE APPEAL OF THE HAIRDRESSER FROM PTUJ

Immediately after the entry into force and use of CPCA in 2012, the procedures for financial investigations and the subsequent actions for the confiscation of proceeds from crime started. Given the validity of CPCA and the current timetable, it is understandable that they dealt with cases in which the offences were committed before 2012 and even before 29 November 2011, since the cases that were subsequently committed were not yet or could not have happened. These were cases in which the offence had been committed before CPCA's entry into force, i.e. before 29 November 2011. For example, Andrej Lapornik, Aleš Bračko and Marta Kaiser, Senad Pavleković and Boris Janežič have names in four cases against which the SSPO filed an action and the court decided to return illegally acquired assets. Aleš Bračko and Marta Kaiser, and related companies Legitimus and Novota, which included the Akoya bar in Maribor, had to return to the country about €1.7 million of illegal assets after a final judgment. In the past, Bračko found himself in court, as he was suspected of comitting several crimes. In the court proceedings under CPCA, there was also his former partner Marta Kaiser as a related person to whom Bračko was supposed to have assigned

part of the illegally acquired assets. Boris Janežič, who is serving a five-year imprisonment in Dob for trading with cocaine, had his illegal assets of more than €500,000 worth finally taken away by the court. The state also seized assets to arms dealer Senad Pavleković, who has got a three-year sentence. He must pay back €119,700 worth of confiscation of proceeds from crime to the state. His friends Darko Palević and Aleksander Vodopija also got themselves into the lawsuit under CPCA. They helped Pavleković in the Clean the Slovenia campaign. SSPO in the Pavleković case failed to prove that his assets were illegal, therefore the judgment is not yet final. A trial against Mr Vodopija is still ongoing at the Ljubljana District Court. The court was of the opinion that the illegal assets came from the money from trading cocaine. Dragan Tošić's, known as the Balkan warrior, case in the SSPO lawsuit under CPCA ended in the first instance court to the detriment of Tošić. A complaint to the Higher Court followed due to the decision mentioned below. (Žišt, 2018). The ruling against the SDS President Janez Janša was annulled, as the prosecutor's office, according to the court, missed the deadline for filing a lawsuit for the confiscation of assets for over two years by the SDS president. The court also believed that after the annulment of the judgments in the Patria case, the basic reason and mandatory legal precondition for the commencement of the financial investigation (Mlakar, 2018) were no longer in the picture. In 2018, the Constitutional Court anulled part of CPCA due to the appeal of the hairdresser from Ptuj. Part of CPCA had been used retroactively for cases in which the pre-criminal or criminal proceedings started before its enforcement, i.e. prior to 2011. The Ministry of Justice reminded the Constitutional Court that their decision would have long-term and concrete consequences (Sa. J., 2018). As the Constitutional Court judges pointed out in the decision to annul the part of the law on the confiscation of proceeds from crime, the first paragraph of Article 155 of the Constitution bans "retroactivity", as provided by the law. Exceptions are, however, allowed, but only if public interest so requires and if this does not intervene with the acquired rights. Only assets that results directly from the offence can be taken away. For those criminal offences that were committed prior to the day of the entry into force of the law on the confiscation of proceeds from crime, in accordance with criminal law, only the proceeds that derived directly from the specific criminal offence were possible to be taken away. However, it was not possible to seize the assets of alleged criminals of criminal offences solely because their assets was disproportionate to their income, reduced by taxes and contributions, or because of the lack of evidence of the legal origin of the assets. Constitutional Court Judge Etelka Korpič - Horvat gave a partially adverse separate opinion. Contrary to the other constitutional judges who stressed the inadmissibility and unconstitutionality of the law of retroactivity, Korpič-Horvat assessed that the decision of the Constitutional Court to annul the controversial article of the law would wash away the origin of the assets that had been, until the statutory provision was repealed partially, or entirely of unlawful origin. (Constitutional Court, 2018). Considering that a lot of procedures are ongoing at a higher level, the question arises what this means for these other procedures. State Prosecutor General Drago Šketa is

convinced that this prosecutor's office is taking away effective tools and reducing the scope of financial investigations. SSPO estimates that the decision of the Constitutional Court already has extensive consequences for cases in which the procedures for the confiscation of assets are unlawful under the provisions of CPCA. The decision to seize the assets of an unlawful origin leaves some consequences. SSPO expects corrections of lawsuits. Two known criminal lawyers, who also represented clients in their legal actions with the State or SSPO for allegedly illegal assets, consider that in the case of their client, the constitutional decision regarding the CPCA does not mean anything, since their client did not file an extraordinary legal remedy, i.e. the requirements for the protection of legality in the Supreme Court, in regard to the confiscation of assets. If, however, the Supreme Court final decision was not known, then the court should take into account the last judgment of the Constitutional Court regarding CPCA. The mentioned constitutional decision on CPCA will not affect final judgments in relation to lawsuits under the CPCA, unless the defendants have filed an extraordinary legal remedy with the Supreme Court or the Constitutional Court and the courts have not yet decided on their appeals. The same story is awaited by judgments in relation to CPCA, which are not yet final and the clients have appealed to the higher court. According to Jelenič Novak, when deciding in such cases, higher judges will have to take into account the decision of the Constitutional Court. The Constitutional Court had already made decisions on complaints or assessments of constitutionality due to the CPCA. But only after seven years it found unconstitutional retroactivity (Žišt, 2018). This means that, inter alia, the confiscati of assets in the high-profile Balkan Warrior case could fall. The Prosecution believes that with this amendment to the legal provision of CPCA, the only tool for successful prosecution and the seizure of the illegal assets of suspected serious corruption and organized crime could be lost (Cirman, Modic, Vuković, 2018). The prosecutor's office had to deal with legal solutions that were not well thought over, which makes it difficult to exercise their jurisdictions. By June 2018, SSPO filed 24 lawsuits against the District Court of Ljubljana, which is the only one making decisions under CPCA for the whole of Slovenia. 15 lawsuits were filed on the basis of financial investigations ordered on SSPO and nine lawsuits based on financial investigations, ordered at district state prosecutor's offices, which are at various stages of the procedure in the total amount of €28.8 million. Seven lawsuits were decided against, four of which were finalized by law. The total value of the amount awarded is five million euros. Despite the fact that the constitutional court recognized only one article as unconstitutional, it is about decisions that have far-reaching and concrete consequences for the confiscation of proceeds from crime through civil proceedings in all cases of organized, economic and banking crime that occurred before that date. On the other hand, this is a long-term systemic decision or a superior standard, which will limit the respective legislator to take similar legal measures to deal with the most demanding and harmful forms of criminality in the future.

4. IS CPCA A SYSTEMATICALLY ESTABLISHED LEGAL SYSTEM?

Last year, Rejec Longar (2018) completed a comprehensive study focusing on legal, organizational, and implementation aspects of the model for the confiscation of proceeds from crime. At the same time, she was interested in the legal order in other countries and the opinion on the effectiveness of CPCA between the police officers and the prosecutor in Slovenia. For the purposes of this article, however, we focus only on the results of research relating to the legal aspect. She concluded that Slovenia did not have an appropriate normative framework set, since, for example, financial investigation was unclearly implemented in various articles under CPA. The regulation of the financial investigation and the insurance of the claim for material gain in CPA was not updated at the same time as the amendment to the Criminal Code - 1 introduced the concept of expanded seizure, which separates the concept of assets and proceeds. According to Rejec Longar (2018), the police and the prosecution service do not have the basis for investigating and insuring the assets of an individual suspected of having obtained it from a criminal act. In this case, in the cases of economic and organized crime, the prosecution is more likely to start a financial investigation under civil procedure. But the latter can be stopped at the execution stage, since it is not clear which body is responsible for the execution of non-monetary claims under the procedural law. The idea was even expressed that Slovenia did not only need a systematic legal system, but also a single multidisciplinary committee for carrying out financial investigations and asset seizure procedures and a new special asset management authority. The structure of the procedure leads to more successful completion of procedures, which is proven by Ireland, the United Kingdom, Italy and Bulgaria, where all phases of confiscation of assets are systematically regulated at both the normative and organizational level. The provisions in Slovenian legislation are unclear because it is not clear how different procedures should follow in terms of priorities. The latter in practice represents problems, for example, it is not clear what happens with civil proceedings if the suspect is acquitted of a criminal offence. At the same time, the legislation in certain parts, especially in the case of enforcement, is overrated, because it is not clear in civil proceedings who is responsible for it in relation to the CPCA. The regulation of the latter belongs precisely to the competence of the legislator. An undoubtedly systematically established legal system contributes to the success of completed procedures. The latter is the goal of each rule of law.

5. CONCLUSION

After 1990, there was a poorly regulated transition into a new institutional arrangement. The process of transition included denationalization, privatization with vouchers and privatization with managerial takeovers of companies. There were many uncertainties. Because of their institutional arrangements, there is a

crisis of legitimacy. The crisis of legitimacy can be said to be a systemic disease at least as severe as the financial crisis or economic recession. confiscation of proceeds from crime can mitigate the crisis of legitimacy. The new arrangement of the institute for the confiscation of proceeds from crime offered answers or solutions to many problematic areas of modern times in the fight against organized crime. This could be sufficient to allow for the incorrect retroactive effect of the law, the constitutional judge Korpič-Horvat (Constitutional Court, 2018) is convinced. In any case, it can be (or is) an effective method in the fight against many forms of criminal activity, but its effectiveness must nevertheless be assessed with the principles of criminal law, democracy and human rights and freedoms. The case-law demonstrates in the long run the inadequacy or inefficiency of the institute for the confiscation of proceeds from crime. For this, it is necessary to systematically change the sectoral legislation, which will enable more efficient prosecution of both economic and organized crime, and at the same time ensure more effective work by both the police officers and the prosecutors in this field. The systematically established legislative framework is undoubtedly a prerequisite for the effective confiscation of proceeds and unlawfully acquired assets. What is more, crime will not pay off anymore.

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UDK:

WITNESS PROTECTION PROGRAM

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Abstract

Until recently the state did not care much about the witness. The witness was viewed entirely as evidence, as a source of information about the criminal offense and the offender, with clearly defined rights and obligations. For the failure in fulfilling their duties, regardless of the risk that they are exposed to while carrying out the duty, the witness bore the consequences. However, modern forms of criminality and the more frequent and more concrete forms of intimidation have led the witness to bear more and more serious consequences while performing their duty. For this reason, being aware of the fact that the witness is nowadays the most important evidence, but also the fact that without the adequate protection of the witness the state could not benefit from the interrogation, the state has changed the attitude towards witnesses. New forms of protection introduced by the state provide a more humane position of witnesses in criminal proceedings, and they also contribute to more efficient crime suppression. The pronounced intimidation of witnesses imposed a need for the introduction of new forms of protection, both in criminal proceedings and outside. One of these new forms of witness protection outside the criminal procedure is the so-called *program protection of witnesses*. The program witness protection is applied to witnesses who are exposed to threatening on life, health, physical integrity, freedom or property, due to their giving of testimony, and it was created not only from the need to protect witnesses but also from the need for more effective fight against modern forms of crime, especially organized crime. The witness protection program, although a relatively new form of protection, has proved to be extremely effective in the countries that introduced it into its protection system. The author will present the most important features of the witness protection program with all its advantages and disadvantages.

Key words: *witnesses, witness protection program.*

1. INTIMIDATION OF WITNESSES

If we start from the general definition of the witness and their statement, the witness is evidence, their statement is the evidence base, and their testimony is the action of proving. The witness is *"a physical person who is not accused and who knows something about the facts that are determined in the criminal procedure and whom invites body of the procedure to give a statement about these facts."* (Bejatović, 2014: 304). The witness's statement is a declaration that a person who is a witness presents to the competent authority during the process about facts from the past, which he or she has observed (directly or indirectly), and which are important for proving these facts.

The statement of the witness is one of the oldest and very frequently used evidence, because there are very few crimes committed without the presence of a third person, and even a fewer number of defendants about whom another person cannot present some data from their lives (Stevanović, 1994: 249). The statement of the witness in practice is of multiple importance. Not only it is the most common evidence in criminal proceedings, but also serves as a source of information about other evidence, as a means of verifying established facts, as a means of identifying witnesses and assistance in finding other witnesses. (Ferizović, 2010: 28).

The position of the witness in criminal proceedings is determined by their duties and rights. When it comes to the duties of the witness, one of them is the duty of testifying. Testimony is a duty because it cannot be denied and sanctions are foreseen for its non-existence. The duty of testifying implies, inter alia, the obligation to give true statement. However, regardless of how true the testimony is, it does not generally support those who are defendant, primarily the perpetrators of crimes, and the intimidation of (potential) witnesses has become a common occurrence, present in the criminal proceedings of all countries of the world. The witness of any criminal offense may be exposed to the threat of intimidation, but witnesses of certain offenses are significantly more exposed to that danger. Here, first of all, we refer to organized crime where there is a lack of material evidence, and where the testimony of witnesses is even more valuable. It is precisely because of this significance of the statement of witnesses that there is serious determination and willingness to use violence and intimidation among the perpetrators of criminal offenses and their associates. (Lukić: 2008: 222) The greater the value of the statement of the witnesses, the greater the danger of intimidation.

The Council of Europe's recommendation on the intimidation of witnesses and the right to defense defines the intimidation as *"any direct or indirect or possible threat to a witness that may interfere with their obligation to express freely and without the influence of any kind"*. (Recommendation R (97) 13 on the intimidation of witnesses and the rights of the defense). Although scientific research on the intimidation of witnesses is still diffident, it is still sufficient to draw a conclusion on the growing prevalence of this phenomenon. The essence of intimidation is the effect on witnesses not to give statement or to give false statement; the perpetrators "*escape their own fears by intimidating others, who seek*

to protect themselves by refraining from reporting crimes and testifying or, by giving false testimony."(Brkić, 2005: 838).

Intimidation can be direct and indirect. Direct intimidation represents any act (threatening or the usage of violence) towards a potential witness, a witness or people close to him with the aim to make a potential witness or a witness give up the statement, change the statement or give a false statement. Indirect intimidation has the same goal, only that goal is achieved in a different way. In the case of indirect intimidation, the source of fear is not directly related to threatening and the use of violence, but to earlier behavior, that is, "voice" and the reputation possessed by the individual or organization. This type of intimidation has a much stronger effect, "*it affects a much larger number of people, it is about the created climate of terror and fear from a particular person, group or criminal organization, caused by an earlier revenge on witnesses who cooperated with the prosecution authorities.*" (Pajčić, 2009: 713). The forms of intimidation are different. The most common is the threat of physical violence or the use of physical violence, the destruction of property, or direct intimidation in the courtroom. Rare forms of intimidation are kidnapping or deportation of family members, (Lukić, 2008: 224) threats of loss of social reputation, economic threats, etc.

The consequences of intimidation are far-reaching. Intimidation of witnesses in one case will not only harm that witness and that case, but it will also have repercussions for all future cases. Witnesses, because of the fear for their own life and the lives of their loved ones, will not want to cooperate with the judiciary bodies, which will also negatively affect the quality and the results of the trial, or the interests of the criminal proceedings. Lost trust in the judicial system will lead to a break in cooperation between the potential witnesses and judicial authorities. For this reason, the witness must be protected from all forms of intimidation. Therefore, modern states, aware of the role that the witness has in the criminal proceedings and the dangers that are threatening them, are paying more and more attention to the protection of witnesses.

2. PROTECTION OF WITNESSES

2.1. Justification and types of protection

The value of the testimony in general terms is undoubtedly huge, because it is about bringing out important facts about a criminal matter that a person, as a reasonable being has found out. However, not even one source of evidence is its value in such a correlation with the subject as it is in the case of the testimony. (Dimitrijević, 1963: 194). For this reason, the protection of witnesses is very important. A potential witness, that is, a witness who, because of their testimony, fear for their life or the life of close people, will hardly decide to give a true testimony. Not only will they knowingly give false testimony, but also inadvertently. (Brkić, 2005: 837). Fear, especially if it is intense, affects consciousness, willingness, thinking, attention, observation, memory, i.e.*most psychic functions*. (Kovačević, Banja Luka: 2000; 61).

Only a witness who does not fear for their own safety and the safety of their closed ones can be useful in criminal proceedings. Security of witnesses and testimony without intimidation are the cornerstone of criminal proceedings and for this reason the protection of witnesses is the prior obligation of the authorities. Without adequate protection, the witness cannot perform their duties. That is why theymust have the right to protection. The duty of testimony that "is not followed" by the right to be protected against intimidation leads to an absurd situation where the system protects perpetrators of criminal offenses, and witnesses are exposed to potential victimization. (Ilić, Stanković, 2015: 194)

However, when it comes to the rights of witnesses, the right to legal and human proceedings, the right to compensation of travel expenses, the right to compensation for lost income, etc. are mentioned. Protection of witnesses is not treated in the procedural laws at all as the right of witnesses. *"It would be natural, however, that testimony as a general civic duty was followed by the special right of protection against intimidation and violence. It is a great injustice to oblige citizens to cooperate with state authorities in fighting crime and, without providing protection, expose them to the danger of becoming victims of new crimes."* (Brkić, 2005: 838). The state must not observe the witness *"exclusively as evidence who, with the threat of sanction, must perform the duties prescribed by the state, regardless of the risk for themselves and the close persons by performing their duties"* (Grubač, 2009: 267). The witness should be guaranteed *"the right to protection as a subjective public law that is a synthetic expression of protection against endangering a whole range of basic human rights: the right to life, freedom, personal security, the inviolability of physical and psychological integrity, property, dignity and privacy."* (Brkić, 2005: 839)*"The witness protection institution is an expression of a subjective public right to the protection of witnesses or other law-specified individuals (an active subject) in the case of a violation or threatening of their fundamental human rights due to intimidation, related to their role in criminal proceedings, which is entitled to the obligation to provide that protection by a competent state authority (a passive subject), with the aim of carrying out testimonies without delay, and, ultimately, fighting criminality more effectively".*(Brkić, 2014: 223-224).

Witness protection can be procedural and off-procedural. *The objective of procedural and off procedural protection of witnesses consists of the suppression of violence and any other danger that threatens the witness and the persons close to them from the accused and other persons in order to, being free from fear, is able to give free statement.* (Grubač, 2006: 269) Procedural protection consists of measures that are undertaken with the aim of concealing the identity of witnesses from the general public, as well as measures to prevent the physical encounter between the defendant and the witness. Procedural protection is provided only to persons who have a witness status in criminal proceedings. This protection is provided only as long as the procedure lasts, the longest until the final conclusion of the procedure. Criminal procedure authorities make decisions about the application of procedural measures of protection. They are also responsible for

their implementation. The off-procedural or program protection of witnesses is in fact police, physical, and technical protection. It is provided not only to witnesses, but also to others, close to them. Its duration is not related to criminal proceedings, it can be applied before the commencement of criminal proceedings, during the criminal proceedings (simultaneously with the measures of procedural protection), but also after the legally terminated criminal procedure. Special authorities make decisions about its application, outside the criminal procedure. Also, enforcement authorities are special. These protective measures do not serve directly to the criminal proceedings; they are delivered to the witness outside the courtroom, at the time when they do not perform their testimony duty. This protection is provided only to witnesses, or close to them, under certain conditions. Off-procedural protection provides a higher degree of witness protection, but it is more restrictive, as it is associated with higher financial costs. (Brkić, 2014: 342-349).

Witness Protection Program

The witness protection program is a *"set of physical and technical protection measures of a police nature"*. (Lukić, 2008: 251). Although models of witness protection programs in specific countries are specific, especially regarding the authorities responsible for its implementation, the essence of the witness protection program is the same everywhere. The aim is to provide the witness with additional protection before, during and after the criminal proceedings. Also, the criteria for entering the program, the inclusion process itself, the protection measures applied during the implementation of the program, its duration, "life in the program", and the problems they face are very similar.

Regarding the criteria for entering the protection program, the right to be included in witness protection program is given only to those witnesses, i.e., the persons whom they identify as close ones, who for their testimony or intent to testify, face a serious danger to life, health, freedom, and property. As a necessary condition for inclusion in the protection program, most of the legislation requires that the testimony of a person is significant, that is, a testimony without which the proof would be difficult or impossible. The suitability of witnesses is also very important in terms of their health, psychological ability, as well as their willingness to give up their lifestyle and "fit" into the rules of life that the program requires. For this reason, without exception, all the programs require the willingness of witnesses. Also, there is a requirement regarding the criminal offense. Witnesses of all criminal offenses cannot enter the witness protection program, but only witnesses of the crimes listed in the law. These are mainly crimes against the constitutional order and state security, crimes against values protected by the international law and organized crime. Some legislation foresees the possibility of applying the program when it comes to other serious crimes too, so the requirement is the prescribed sentence of 5 years or more, or 10 years or more, and more. The witness protection program, or the inclusion in the protection program *"should not be considered as a reward for testimony. Witnesses are included on the basis of a set of predefined criteria, including: the level of danger to the life of the witness (as*

a key element), the importance of the case, the decisive significance of the evidence for processing, the inability to obtain information from another source, the personality of the witness and their ability to adapt to a new life and family status of the witness (especially the number of family members to be included in the program. (Bakovski, 2013: 2-3).

As for the inclusion process in the protection program, it implies first, submitting a justification request for the inclusion in the program. This kind of request can be submitted only by those subjects that are legally determined, mainly the prosecutor or the judge or the president of the panel. The request is submitted by official duty or on the basis of initiatives from the witness or people close to them, or manager of correctional institutions, an authorized defense attorney, etc. A competent commission decides on the submitted request in the prescribed deadline. In order for the commission to obtain approval for participation in the program, three principles should be fulfilled: voluntariness, suitability and importance of the evidence for criminal proceedings**.** (Simović M., Simović V, 2016: 457). When the commission decides to apply the program, the persons entering the program and the service responsible for the existence of the program conclude an agreement on the application of the program. This contract is called a memorandum of understanding or just a memorandum. It defines the code of conduct of the parties in the program. This contract regulates everything that is necessary for the implementation of the program, from notifying both parties, witness statement on voluntary inclusion in the program, rights and obligations of both parties within the program, to the duration of the program, reasons for termination of the program, the date of the conclusion of the agreement, and the signature of the parties. The application of the protection program begins on the day of concluding the agreement.

The protection measures applied during the program are measures of off-procedural nature and generally include protection measures and support measures. Regarding protection measures, these are measures of physical and technical protection of persons and property, concealment of identity and data on ownership, change of identity and displacement measures.

Measures of physical and technical protection are measures that are undertaken with the aim of preventing the endangering of life, health, physical integrity, freedom and property of witnesses and persons close to him. They are applied in cases of abstract and specific danger to life and other goods of these persons, in the place where the person lives, resides while on the move.

A measure of concealing identity and ownership data consists of a temporary change of data in personal documents or ownership documents. Changing the data in these documents does not mean modifying the original data in official records. This is actually falsifying of documents, without the responsibility of the authorities that falsify them.

The change of identity consists of the alteration of all or only some personal data, but it may also involve the change of physical appearance. Considering that this is a measure that expects the witness to renounce from previous life and that witnesses are very reluctant to accept it, it applies only as an *ultima ratio*, that is, as

an ultimate protection measure. *"If a protected person rejects the measure, the only alternative would be long-term isolation from the environment and society, which can cause severe psychological consequences."*(Ilić, Stanković, 2015: 208). This measure involves creating a completely new profile of the personality of the witness. Although it is a very difficult measure for a witness, in addition to providing protection against intimidation, it has another good side: it provides protection against recidivism."

The displacement measure or the so-called relocation of witnesses is of particular importance. This measure involves the relocation of witnesses, their family or close relatives to another place within a state or even abroad. Depending on the seriousness of the threat, resettlement may be of a permanent or temporary character, while a criminal proceeding takes place. If necessary, relocation of witnesses can be done several times. This is mainly the case where the persons involved in the protection program arbitrarily leave the program or do not comply with the rules of the program, thus endangering themselves and other persons from the program, thus jeopardizing the effective implementation of the protection program. *"Unfortunately, there were attacks, even fatal, to relatives who did not participate in the protection program, and to witnesses who voluntarily left the program at a time when the security service found them unsafe."* (Lukić, 2008: 260). The displacement measure implies not only the transfer from the place of residence or permanent residence, but also the transfer from one prison institution to another.

Support measures aim to make the person involved in the protection program adapt easier and become independent as soon as possible. Support is not only in terms of financial assistance, but also includes legal, psychological, social and medical assistance.

The course and duration of the witness protection program generally depends on the assessment of the degree of danger threatening to the witness. The very course of the criminal proceedings does not have any significant role, since the application of the program is not related to criminal proceedings. The program can be applied before, during, and after the legally terminated procedure. As a rule, it lasts as long as there is a need for it and, of course, until the person involved in the program complies with the rules or until they give up, or arbitrarily leave the program.

Life in the program of protection, that is, life according to the rules of the program is something what the witness finds to be very difficult. The witness protection program, in particular individual measures, changes the life of witnesses completely. The witness protection program implies new life, new identity, new environment, new interests and a new job. That is why witnesses, in addition to protection measures, are provided with additional support measures that help them to adapt more easily to all restrictions and changes that the program implies. Not all witnesses can be beneficiaries of this program, therefore detailed checks are carried out and careful selection of persons who can enter the witness protection program. It is not accidentally that the suitability of the witnesses is a necessary condition for

inclusion in the protection program. The effectiveness of the protection program depends not only on the authorities, that is, the service that organizes and applies it, but also on the persons involved in the program.

As for the deficiencies of the protection program, financing is stated as the biggest weakness. Firstly, it is very difficult to predict the costs and plan the budget for these needs, and it happens that countries allocate significantly more funds than needed or, in an even greater problem, allocate less than needed. (Simović M., Simović V, 2016: 455-456). Some countries have fixed budgets and approved additional funds that can be used in case of need. Other countries direct illegally acquired property to the witness protection budget. Funding modalities are different, precisely because it is a very expensive program. It is precisely the *"price"* of the program that is described as the biggest weakness of this form of protection. Of course, this problem is particularly pronounced in poor countries. Certain difficulties are also created by the measure of relocation of witnesses, which is only suitable in large countries. Otherwise, international cooperation and assistance is necessary.

3. CONCLUSION

Regardless of modern technologies and their contribution to the establishment of facts, witnesses continue to be indisputable evidence in criminal proceedings. There are a small number of criminal offenses that are committed without the presence or knowledge of third parties, especially today when we have an expansion of organized forms of crime, which involve the participation of a large number of persons in the committing of criminal offenses. The fact that these third parties are the main source of information about the criminal offense, in fact, shows the importance of witnesses and their statements in criminal proceedings. It is therefore quite understandable why the perpetrators of crimes, their accomplices and close associates tend to intimidate witnesses, but also the tendency of the criminal procedure authorities to protect witnesses as much as possible.

There are various forms of witness intimidation, but there are also different forms of their protection. One of the new forms of protection is the protection of witnesses through the witness protection program. Among the developed countries there is no state that does not have some form of witness protection program. Among the most famous is the witness protection program in the United States, which is also considered to be the oldest program. The success of these programs varies from state to state. States that can provide conditions necessary for the implementation of the witness protection program have significant results. On the other hand, countries that do not have all the conditions for the application of witness protection programs have lesser results. In any case, the program protection of witnesses significantly improved the position of witnesses in the criminal procedure, and thus created the conditions for more efficient fight against contemporary forms of crime.

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UDK:

CRYPTOCURRENCY AS A NEW CHALLENGE OF THE ANTI-MONEY LAUNDERING SYSTEM

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Abstract

Developing technology has a number of consequences in technical, economic and social spheres. Since 2008, when Satoshi Nakamoto proposed the Bitcoin as a new electronic payment system based upon mathematical proof, its development, based on supply and demand ratio, raises the question of their existence. The advantages that the proponents of cryptocurrencies highlight encompass various unresolved issues, inter alia, the problem of (non) regulation, different attitudes towards its legal regulation, unpredictable value of the currency, and especially, criminal activity connected to cryptocurrencies. New currencies and payment techniques involve many unexplored possibilities of business activity on the global market and open up new avenues for individuals to use them for illegal activities. Moreover, the lack of supervision gives way to employing cryptocurrencies in different types of criminal activities, such as drug trafficking, terrorism financing and money laundering, while the methods of utilization are increasingly diverse.

According to the above stated, this article refers to the specificity of cryptocurrency, primarily the Bitcoin, and its role in the anti-money laundering system. The most attractive illegal virtual world activities, which can result in some of the greatest threats and challenges of the present age covered by the concept of cybercrime, will also be considered.

Key words: *cryptocurrencies, Bitcoin, money laundering, terrorist financing*

1 INTRODUCTION

Quotidian life is characterized by changes that are rapidly occurring around us, particularly visible in the field of technology. In addition to wholehearted support for novelties, inventions and ideas, at the same time, caution, scepticism and even contempt occur as well.

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Although the "Bitcoin fever" is not quite current, the question of regulation due to its potential for misuse remains a significant issue. In the past 10 years, the development of cryptocurrencies has brought novelties in the fields of finance, economics and law that are of great importance for their legal regulation, presenting thereof generally unprecedented legal challenges. Cryptocurrencies, such as Bitcoin, Ethereum, Litecoin, etc. are referred to as the currencies of the future, as well as the basis of modern finance. Every subject of financial transactions on the market such as real estate, hairdressing services, and even football player transfers, can be paid by cryptocurrencies.

Based on the U.S. Department of Justice Drug Enforcement Administration Report (2017), Bitcoin and other virtual currencies enable transnational criminal organizations to easily transfer illicit proceeds internationally [1] (p. 125). More attention should be paid to such new types of currencies as a possible means of payment in the future, along with the modality used by criminals to obliterate unlawfully acquired money from the law enforcement authorities. Many international organizations and institutions, such as the European Central Bank (ECB), the International Monetary Fund (IMF), and in particular, the Financial Action Task Force (FATF) seek to establish legal regulation of the cryptocurrency status by issuing opinions and guidelines, prompted by the aforementioned facts.

The development of cryptocurrencies raises numerous subjects such as legal regulation, the impact on individual economic activity and market laws in general, the utilisation of Blockchain technology etc. These are in the focus of this paper. Following the introduction, the second section will contemplate the definition of cryptocurrency, while the third section will specify the issues of Bitcoin and its legal regulation. The fourth section examines the basic links of money laundering and cryptocurrency, while the fifth section addresses legislative regulation of cryptocurrency from the aspect of money laundering and terrorist financing in the European Union. The conclusion is drawn at the end of the paper along with a discussion in the form of concluding considerations and the open issues of virtual currency impact on the effective implementation of anti-money laundering and terrorist financing measures.

2 CRYPTOCURRENCIES IN GENERAL

The cryptocurrency includes digital currencies with the cryptography as the basis for their action. Related to any other currency, cryptocurrencies represent a means of exchange in digital form. Although they are not issued by a given institution, they still fulfil some of the currency functions: a medium of exchange, a unit of account, and/or a store of value [2] (p. 4). Thus, cryptography, i.e. digitalisation as its core characteristic, stands out as one of the greatest advantages of cryptocurrency.

The difference between cryptocurrency, electronic money and fiat currency should be emphasized. Fiat money consists of traditional banknotes and coins and is thereby considered as a legitimate means of payment. To the contrary, electronic money represents a digital form of fiat money, defined by Directive 2009/110/EC

[3] as electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions, and which is accepted by a natural or a legal person other than the electronic money issuer. Unlike electronic money, cryptocurrency is defined as a type of unregulated, digital money, issued and usually controlled by its developers, and accepted among the members of a specific virtual community [4] (p. 13). The difference between electronic money and cryptocurrency has been specifically interpreted by the European Court of Justice in the case of Skatteverket vs David Hedqvist (Case C-264/14) in 2015.

One of the special features of cryptocurrencies can be distinguished by the fact that trading takes place on a peer-to-peer basis as a decentralized platform whereby two individuals interact directly with each other, without a separate server computer. According to the above-mentioned cryptocurrency system, transactions do not rely on intermediaries, thereby all electronic billing systems are based on cryptographic evidence instead of trust. The advantage of cryptocurrencies in respect to fiat money is their accessibility, security and simplicity, while cryptocurrencies and traditional cards as means of payment differ in lower transaction cost and faster transaction process.

Cryptocurrencies can be classified in several ways. A comprehensive overview of cryptocurrencies is provided by the ECB and classified as: closed virtual currency schemes (e.g. World of Warcraft Gold), virtual currency schemes with unidirectional flow (e.g. Facebook Credits) and virtual currency schemes with bidirectional flow (e.g. Bitcoin, Liberty Reserve, Second Life Linden Dollars). Closed virtual currency schemes have no connection to the real economy. They are used for purchasing virtual goods and services offered within the virtual community that cannot be traded outside the virtual community. A virtual currency scheme with unidirectional flow can be purchased using real currency at a specific exchange rate, however it cannot be exchanged back to the original currency. On the other hand, a virtual currencies scheme with bidirectional flow can be bought and sold according to the exchange rates with their currency as they are similar to any other convertible currency with regard to its interoperability with the real world [5] (pp. 13-14).

Besides the stated classification, the FATF states a simpler division by sharing cryptocurrencies to convertible and non-convertible, depending on whether they can be replaced by real money or intended as a part of a particular domain [6] (p. 4). The division into centralised and non-centralised cryptocurrencies is closely related. Centralised cryptocurrencies are issued and controlled by a central institution, while such authorities or controls do not exist in relation to non-centralised ones, rather they are based on a peer-to-peer network [7] (p. 15). All non-convertible cryptocurrencies are centralised since they have been issued for the purpose set by the central institution (Facebook Credits, World of Warcraft Gold, etc.), while convertible cryptocurrencies can be centralised or non-centralised. The last stated non - centralised convertible cryptocurrencies, such as Bitcoin, are relevant to the discussed topic.

3 SPECIFICITY OF BITCOIN

Bitcoin is the cryptocurrency first mentioned in 2008 in a scientific paper entitled "Bitcoin: A Peer-to-Peer Electronic Cash System" by the author under the pseudonym Satoshi Nakamoto. Decentralisation is its basic characteristic - without controlling or monitoring of some central institution, based on a peer-to-peer system. Thereby, the transaction can be carried out directly between the interested parties without intermediaries [8]. A software transaction platform is called "Blockchain" due to its basic purpose of recording and tracking transactions between cryptocurrency trading entities. Transparency of trading is one of the special features of cryptocurrency. Each transaction is irreversible and subject to verification. Trading entities can be described as semi (pseudo) - anonymous as a result of account owners' anonymity. The cryptographic addresses of the sender and the recipient of the transaction remain noted.

Although it is possible to determine the true identity of a participant within a Bitcoin transaction, an individual enjoys certain anonymity as long as he/she is not linked to an account address. Regardless of the initial advantages of cryptocurrency in terms of anonymity, the possibility of subsequent beneficiaries' identification partially discourages criminals and terrorists to use Bitcoin for illegal purposes [9] (p. 12). Due to its core features, cryptocurrencies represent a potential legal issue considering that they do not fall under the jurisdiction of any authority, institution, or state. Accordingly, banks and other financial institutions publish reports on cryptocurrencies, occasionally in the form of a warning, intending to create legal environment in a process of conducting transactions [10].

Non-centralised cryptocurrencies increase the risk associated to anonymity. User accounts are obtained online and are not subject to customer identification procedures required when opening a traditional bank account [11] (p. 16). Bitcoin addresses do not contain personal data or other links to the user's identity, and the system does not support any central institution or server. Software that would control and recognize suspicious transactions does not exist. When performing transactions, the Bitcoin protocol does not require identification or verification of the account owner in a scope of anti-money laundering due diligence measures, nor is the transaction review necessarily associated with the beneficial owner. This creates an additional problem of implementing due diligence that could not occur when using ordinary credit cards or internet payment systems [12] (p. 9).

Given the rapid development of cryptocurrencies, financial institutions and states worldwide have not been fully compliant with their policy of legal regulation, resulting in a varying definition of their legality: the Federal Republic of Germany recognizes Bitcoin as a medium of payment [13], the People's Republic of China accepts it only in certain activities [14], while in Bangladesh, due to the extremely strict money laundering laws, the use of cryptocurrencies can be the basis for an imprisonment [15]. It can be concluded that the legal regulation of cryptocurrencies largely depends on the geopolitical position of the state, as well as on specific social arrangements and the existing legislative framework.

The barrier to comprehensive legal regulation of cryptocurrencies is demonstrated through their unpredictability, supply and demand based price, illegal activities such as money laundering favouring global distribution and easy access, the taxation method, as well as the lack of information on the cryptocurrency trading entities [16] (pp. 580-581). As a result of these risks, many governments create and use platforms that allow identification of Bitcoin transaction participants in accordance with Anti-Money Laundering (AML) and Know Your Customer (KYC) provisions.

4 MONEY LAUNDERING AND CORRELATION TO CRYPTOCURRENCIES

Money laundering is most often considered as a process of making illegitimate funds appear legitimate [17] (p. 1). A wider definition encompasses the use of money derived from illegal activity by concealing the identity of the individuals who obtained the money and converting it to assets that appear to have come from a legitimate source [18] (p. 6). Technology development from fiat through electronic money to today's cryptocurrencies has caused changes in the definition of institutes it relates to, including money laundering. Accordingly, the European Parliament and Directive 2015/849 [19] defines money laundering and terrorist financing as precisely as possible to include the detected methodology and resources which are used.

The definition and scope of the cryptocurrencies, especially Bitcoin, are different. While the US Tax Administration considers it a property, European Union regards it as a currency which leads to the issue of its legal regulation and the possibility of taxation [20]. Consequently, it may be concluded that money regulation is a necessary factor in determining and linking Bitcoin and money laundering. As money laundering is a multiphase process, Bitcoin can be used in each of these phases [21] (p. 49).

The efficiency of money laundering differs on a case-by-case basis since it can be affected by many factors such as a market, legislation, amount and type of money etc. Cryptocurrencies and their global prevalence greatly increase the potential for illegal activities, such as money laundering or terrorist financing. The complexity of the transaction process suggests that cryptocurrencies rely on a complex infrastructure including multiple entities. Consequently, there is the issue of harmonization of national legislations, along with its implementation and monitoring, since it is often about the cases at international level. An additional overwhelming circumstance of the stated obstacle is the dynamic technological development that occurs on a daily basis.

Some of the methods associated with Bitcoin and money laundering include collecting funds through Initial Coin Offerings (ICO), since it is a rather facile way to transfer large amounts of money accompanied by partial anonymity. The use of the peer-to-peer platform and Bitcoin automated teller machines is also recent, however the usage of the "Dark Web" is a particularly interesting, especially the

hidden part of the "deep" Web that is not available through standard Web browsers. Dark Web is the portion of the “deep” Web that has been intentionally hidden and is inaccessible through standard Web browsers. Dark Web sites serve as a platform for internet users for whom anonymity is essential, since they not only provide protection from unauthorized users, but also usually include encryption to prevent monitoring [22] (p. 3).

The ultimate purpose of such programs is to provide greater anonymity to users, as well as anonymity in cryptocurrency transactions, as many "black markets" allow payment in cryptocurrencies only. The Dark Web offers a wide range of products such as weapons, drugs, child pornography, as well as the possibility to order a homicide, which testifies of constant progress in the black market development.

Shortly after its creation, Bitcoin attracted considerable attention of US and EU authorities as a direct result of its popularity among traders on the Dark Web. The notorious retail place on the Dark Web known as the "Silk Road" has only accepted Bitcoin as a means of payment method to enable customer anonymity operating through a hidden TOR network. The site started in 2011. Numerical indicators associated to the Silk Road are significant: total sales revenue was approximately USD 1.2 billion (more than 9.5 million Bitcoins), and over $ 80 million (about 600,000 Bitcoins) has been paid as a commission to the Silk Road. The hundreds of millions of dollars that came from the Silk Road transhipment has undergone the money laundering process. Ross William Ulbricht, the website owner, was arrested in 2013, and sentenced in 2015 to lifelong imprisonment without amnesty for drug abuse, money laundering and hacking.

Transnational criminal organizations frequently use cryptocurrencies due to their anonymity and convenience. Bitcoin is the most widely illegal drug sales payment method on the Dark Web black market and a common drug sales method on the international market. The broadness of its application is significant due to the global popularity, the media and entities that followed the rise of the cryptocurrency. Consequently, it is characterized by its remarkable attractiveness and market viability, which facilitates the use of cryptocurrency among users from all over the world, as well as international organizations and corporations.

5 EUROPEAN EFFORTS IN LEGAL REGULATION OF CRYPTOCURRENCIES IN RELATION TO THE ISSUES OF MONEY LAUNDERING AND TERRORIST FINANCING

Although cryptocurrencies have been in circulation for the last decade only, their definition from the money laundering and terrorist financing perspective at EU level has not yet been regulated. Money laundering and terrorist financing issues were regulated by Directive 91/308/EEC [23], which established standards for the financial sector protection system, as well as by Directive 2001/97/EC [24] extending the circle of reporting entities, along with the non-financial sector. Directive 2005/60/EC and Directive 2006/70/EC [25] extended the circle of

reporting entities as well, including the changes in accordance to the revised FATF Recommendations in 2003 [26] (p. 5). Finally, Directive 2015/849 was adapted to the recent conditions in the international market and encompasses new aspects of modern business.

The necessity to regulate cryptocurrencies is an important issue of Directive 2018/843 which defines virtual currencies as a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically [27]. In addition to the EU directives, the position posed by the FATF through 40 Recommendations should be emphasized, stating that countries should apply the crime of money laundering to all serious offences, with a view to include the widest range of predicate offences [28] (p. 12).

The opinion to amend Directive 2015/849 [29] was also given by the European Central Bank which supports the extension of the Directive's application in order to regulate the cryptocurrency exchange platform and custodial service providers since terrorists and other criminal groups can transfer money within the cryptocurrency network by concealing the transfers or by exploiting a certain level of anonymity these exchange platforms offer. Furthermore, cryptocurrencies pose a greater potential risk than traditional means of payment in the sense that transferability of cryptocurrency relies on the internet and is limited only by the capacity of the particular virtual currency's underlying network of computers and IT infrastructure. On the contrary, the ECB disagrees with the above-mentioned definition of cryptocurrencies, claiming that they are not currencies from the aspect of the EU law and that it would be more appropriate to consider them as a means of exchange, rather than as a means of payment [30] (pp. 2-3). Regulatory and legal adaptations can improve the ability of regulators, intelligence and law enforcement officials, and the banks and money service businesses abused by terrorists to better detect and halt terrorist use of virtual currencies [31] (p. 39).

6 CONCLUSION

Even though opinions on the viability of cryptocurrencies are divided, cryptocurrencies have a significant influence in the financial and business sectors. Over the last ten years, Bitcoin has proved to be a credible means of payment, including plenty of opportunities for money laundering or terrorist financing, which are not negligible. Moreover, the emergence of cryptocurrency has introduced numerous issues in the field of finance, law and economics with regard to the content of money itself, the extent of its definitions, the future of cryptocurrencies, the development of new technology necessary for their use, etc. Whereas cryptocurrencies can favour the financial market, stimulate economic development and contribute to the development of new information systems and business methods, it is important to recognize the negative side of technological

development along with the opportunities that make them attractive when conducting illegal activities. The greatest advantages of cryptocurrency, such as decentralization and partial anonymity, are their greatest vulnerability as well.

Although the use of virtual currency for illegal purposes emphasized the loss of confidence in their utility, such attitude is not constant, nor does it pose an unpreventable risk. However, it is pointless to argue that greater availability and technical sophistication do not pose a challenge to money launderers, as well as to the authorities preventing money laundering and terrorist financing, both nationally and internationally. The key to prevention is to identify a potential risk related to the use of cryptocurrencies, including legislative standardization of its definition and technological determinants of their content, the scope of their usage, and repressive measures stipulations when misuses are identified.

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UDK:

CRIMINAL LAW, CRIMINOLOGICAL AND CRIMINALIST ASPECTS OF COMPUTER FRAUD IN THE REPUBLIC OF NORTH MACEDONIA

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ABSTRACT

Cyber crime is becoming a serious security threat to modern world, and perpetrators use their knowledge, tactics and techniques of criminal activity with the misuse of information technology and the numerous advantages provided by the Internet with the sole purpose of misleading the victims and acquiring illegal property gain. In 2004, the Republic of North Macedonia accepted the Recommendations from the Convention on Cyber Crime and criminalized the criminal act "Computer Fraud" in Article 251-b in the Chapter on Criminal Offenses against Property of the Criminal Code of the Republic of North Macedonia. Cyber fraud differs from the classical deception as a specific crime that uses computer and information technology as a means of execution with its own specificities depending on the manner of execution and the use of tactics and techniques by the perpetrators. This paper presents a criminal law analysis of the criminal act "Cyber fraud", and the scope, structure and dynamics of the perpetrators of the said criminal act in relation to other property crimes according to the Macedonian Penal Code for the period 2007 - 2017. It also studies the operational combinations of the application of legal measures and actions for the detection, clarification and provision of relevant material evidence acceptable to the judiciary in order to successfully conduct criminal proceedings. Several cases of Macedonian criminal practice have been analyzed to the same end.

Key words: *cyber crime, cyber fraud, crime, perpetrators, evidence.*

INTRODUCTION

The advantages of information systems and computer networks in the overall social life do not remain undisturbed by organized groups and individuals who use computer-related knowledge in illegal criminal purposes in order to achieve illegal property gain by using tactics and techniques of perpetrators against

victims without the use of force and violence, but rather by applying methods and tactics through computer systems and networks and misleading the victims to cause damage to their property or funds.

Macedonian legislation has incriminated several cyber crimes in separate groups, one of which distinguishes the criminal offenses of computer crimes systematized in Chapter 23 Criminal Acts against Property ("Official Gazette of the Republic of North Macedonia"). This chapter systematizes three computer crimes: "Damage and unauthorized entry into computer system" in Art. 251, "Creating and importing cyber viruses" in Art. 251 - a and "Computer Fraud" in Art. 251 - b.

"Cyber Fraud" is incriminated as a separate criminal offense, criminal behavior that differs from the classic forms of fraud by its means of enforcement, which is the computer and the use of computer systems and networks for transmitting information and data for misleading (deceiving) the victims.

The classic fraud is characterized by bringing someone in misconception to do damage to their property. The perpetrator misleads a person by manifesting false information in order to cause damage to the victim and to gain benefit for himself. Fraud can be committed through direct contact with the victim or through the use of a medium. Unlike classic fraud, cyber fraud is committed by using computer systems and networks for placing information about a specific victim that will "believe" in the plain "false" information and will take actions that will cause his/her own damage in favor of someone else, as a "cheat" case via electronic communication.

The study of cyber frauds in this paper is conducted from the perspective of criminal law, and the criminological and criminalistic aspect for the purpose of finding a model for criminal investigation by applying legal measures and actions and pronouncing appropriate sanctions to the perpetrators, sending thus a message to the potential perpetrators that these criminal acts are discovered, processed and sanctioned.

1. UNDERSTANDING CYBER CRIME AND CYBER FRAUD

The international community is aware of the problem of cyber crime and it perceives this phenomenon of criminal behavior as a quality of modern world and the development of information technology.

For the suppression of *cyber crime*, the definitions that cover the *three aspects* are particularly important: criminal law, criminological and criminalistic. In the theory of criminal law, criminology, more definitions of the notion of cyber crime can be found. All definitions contain the fact that for the purpose of committing criminal acts it is necessary to use information technology and the computer as a means for criminal attack and electronic communication and placement of information as a type of criminal activity. Information technology and computer systems are used as objects of the criminal attack and Internet communication is used as a way of acting in a huge space and for a short period of time. In one of Bequai's original definitions: *"Computer criminality is defined as*

the occurrence of crimes where the computer appears as a means or object of protection, that is, the use of a computer in fraud, misappropriation or abuse, the purpose of which is the assignment of money or services, or carrying out political or business manipulation involving acts directed towards the computer."(Bequai, 1978).

Cyber fraud is also used in the descriptive method of specifying the criminal acts of perpetrators in defining computer criminality, in addition to the computer system approach, cyber forgery, cyber spying and sabotage and cyber crime theft (Sulejmanov, 2003).

Cyber crime is a general formulation that includes various shapes and forms of criminal behavior. Namely, it is a crime that is directed against the security of information (computer) systems as a whole or its individual part in different ways and with different means with the intention of gaining some benefit for oneself or for another (Jovanovic, 2002).

The most widespread definition in criminology defines *cyber crime* as a set of all kinds of delinquent behaviors by which data processing devices are used as a means of committing offenses or as a direct target for punishable offenses (Konstantinović & Nikolić, 2003).

Cyber frauds are part of cyber crime that is becoming a growing security threat to citizens, but also to legal entities, especially in the area of business communication and correspondence with business documentation. The acquisition of illegal property benefit is a motive for the performance of cyber frauds, and the use of knowledge, skills, and techniques allows criminals unlimited criminal activity from one point of the globe, whose consequences occur completely elsewhere in the world. It is precisely the area of criminal activity that allows criminals not to be detected, unauthorized, that is, to transform crime into a profession - a criminal profession (Konstantinović & Nikolić, 2003). Cyber fraud was defined for the first time in 1989 in a Council of Europe document, as inserting, modifying, deleting, or generating cyber data or computer programs, or otherwise affecting the data processing process that causes harm to others or to property, with the intention of acquiring unlawful property gain for oneself or for others.

2. CRIMINAL LAW ASPECTS OF CYBER FRAUD

Cyber fraud as a separate criminal act sanctioned by Macedonian legislation, is defined as a criminal act committed by perpetrators as follows:

(1) A person who, with the intention of acquiring unlawful property gain for himself or herself, by entering into a computer or information system false data, failing to enter true data or changes, deletes or suppresses computer data by falsifying an electronic signature or causes a false result in the electronic data processing and transmission in another manner, shall be punished with a fine, or with imprisonment of up to three years.

(2) If the perpetrator has acquired a greater property benefit, he shall be punished with imprisonment of three months to five years.
(3) If the perpetrator has acquired significant material gain, he shall be punished with imprisonment of one to ten years.
(4) A person who commits the crime from item 1 only with the intention of damaging another, shall be punished with a fine, or with imprisonment of up to one year.
(5) If the offense referred to in paragraph 4 causes more damage, the offender shall be punished with imprisonment of three months to three years.
(6) A person who produces, acquires, sells, holds or makes available to other special devices, means, computer programs or computer data intended for the commission of the crime from item 1 shall be punished with a fine, or with imprisonment of up to one year.
(7) The attempt for the crime referred to in paragraphs 1 and 4 shall be punishable.
(8) If the crime referred to in this Article is committed by a legal entity, it shall be fined.
(9) The special devices, means, computer programs or data intended for the commission of the act shall be seized.
(10) The offense referred to in paragraph 4 shall be prosecuted upon a private charge.

Macedonian legislation foresees sanctions for the perpetrators based on to the manner of commission, but also based on the amount of the unlawful property gain or the damage inflicted. It is also foreseen that legal entities shall be held responsible and fined in cases when the perpetrators act on behalf of and for the account of the legal entities.

Cyber fraud can be committed in several ways:

- By entering false data into a computer or information system.
- By not entering true data.
- With an electronic signature or
- In another way that has a significant impact on the results of electronic data processing and transmission.

Cyber fraud differs from classical fraud because the perpetrator and the victim do not know each other, they are not in physical communication, and there is no element of misleading by misrepresentation or false presentation of certain facts. The specificity is that they are not in physical contact, they do not know each other, the victim may not know that he is a victim, and the perpetrator uses his skills and the numerous opportunities that mass communication and data exchange via the Internet can provide. Additionally, cyber fraud is expected to become a massive criminal act, especially by falsifying electronic signature in business communication in the economic and legal sector, which is still not so common in our country. In this crime, however, it is obligatory to prove the intent of the offense for an unlawful property gain (Nikoloska, 2013).

3. CRIMINOLOGICAL ASPECTS OF CYBER FRAUD

3.1. Common shapes and forms of cyber fraud

Cyber fraud is expected to become a massive crime, especially by falsifying the electronic signature in business communication in the economic and legal sector, which is still not so common in our country. In this crime, however, it is obligatory to prove the intent of the offense for an unlawful property gain.

Cyber fraud is the most widespread form of cyber crime, which often causes enormous harmful consequences. In cyber fraud, the misconception refers to the computer in which incorrect data is entered, or the correct data is deliberately omitted, or the computer is used in any other way to commit fraud as a criminal law offense (Aleksić & Škulić, 2007).

Cyber frauds are carried out in many ways and computer offenses in this respect show great inventiveness. Fraudsters consider the computer as some kind of easy "bite", such as the human brain devoid of the power of delimiting the imaginary of the real, which manifests itself as a perfect victim (Bellour, 1981).

In the international practice, there are cases of child allowance payment to persons who do not have children, cash payments to fictitious companies that are specifically registered, operating for a short period of time and are then closed, cases of manipulation with addition of funds to cards of mobile phones, cases of "misrepresentation" of the need for treatment of certain persons, cases of "seeking financial assistance" for the perpetrators, "fictitious accidents" and so on.

The crime in which the computer uses false representation (display) implies that someone makes decisions on the basis of false information that would certainly be different if the real facts were known. In that sense, several scenarios of computer fraud are possible (Petrovic, 2007):

1. Approval of a loan on the basis of false data on the creditworthiness of the borrower;
2. Purchase of securities on the basis of false data on the sale, earnings and capital of the legal entity where the shares are bought;
3. Acceptance of someone's offer (terms and conditions) based on forged computer data and
4. Purchase of technical equipment based on false data on technological and engineering tests.

The first registered form of cyber fraud in the world was the *Nigerian fraud* that occurred in the early eighties with the rapid development of the Republic of Nigeria. This scheme of cyber fraud was constructed by students from the Nigerian University in order to attract "businessmen from the West" to invest in the oil business in Niger. This fraud is also found under the name of Advance-fee fraud, which involves investing in certain types of "business venture" with certainty, promising that a much greater benefit from the initial investment will come from that job. This form of cyber fraud, in addition to "Nigerian fraud", is also known as

the "Nigerian scheme - Nigerian scam", and under the names "Nigerian Letter", "Fraud 419" or "Scheme 419-419 fraud", "Nigerian bank fraud - Nigerian bank scam "," Nigerian money offer - Nigerian money offer, and so on.

Later, the forms of "Nigerian fraud" were gaining new forms of fraudulent behavior through electronic communication between the "perpetrator" and the "victim". A cyber fraud method is used, and most often through e-mails or messages designed in such a manner that the recipient of the message believes that the letter is sent directly to his address and is expected to "accept the offer". It is a form of fraud that is done by placing false data - messages related to gambling, fake messages related to charity, business offers, messages of inheritance from distant relatives abroad, etc.

These frauds usually start with misleading or persuading the "victims" to make a payment of funds according to the directions in the message. These are initially smaller amounts, and the messages are targeted to a large number of "victims", thus attracting more "victims" with smaller amounts, and the "perpetrator" collects larger financial amounts. The electronic messages are mostly "spam" messages sent from Internet cafes that are opened for this purpose and their working hours are at night after 22:00 hours in order to avoid the control of Internet operators and authorized officials from the competent state bodies.

The Nigerian fraud usually consists of the perpetrator sending an email message with a "false promise" of a certain property benefit or a monetary reward, and in order to transfer the money, the perpetrator requests certain personal financial data. Once he obtains the requested data, the perpetrator interrupts the relationship with the victim. Although many of the "potential victims" do not fall for these messages, a small portion of them "succumb to the promise" and give data or make certain payments to the indicated accounts. According to some surveys in the United States between 1980 and 2000, about 100,000 people gave in to this type of fraud and caused damage of over one billion dollars.

A special form of cyber fraud is the fraud associated with online sales. This fraud is committed in many ways by offering goods through special web pages and with indicated payment bills. After the payment is made, the goods are delivered with inadequate quality, or are not delivered at all. These frauds are usually carried out with international electronic sales, which is a particular problem in providing evidence, since very often the "deliverers" have justification that the goods were sent, but they were lost in postal traffic or damaged during transportation.

3.2 Scope, structure and dynamics of cyber fraud of the Republic of North Macedonia

The evidencing, monitoring and suppressing of crime and the introduction of prevention programs and actions are immediately connected with the possession of empirically tested knowledge about the phenomenological characteristics of the crime. If the society is to tackle this crime, then it must have a hold of scientifically tested notions about the phenomenon known as crime.

Consequently, its massive occurrence necessarily imposes the need for statistical methods and procedures of evidencing, monitoring and processing of the collected data, as well as their presentation in a way that provides an opportunity to understand its phenomenological characteristics, identify its occurrence and relations of etiological meaning, and thereupon set up crime prevention, elimination and eradication programs" (Arnaudovski, 2008).

The presentation and analysis of statistical data related to cyber crimes are necessary for the purpose of comparing the most frequently perpetrated acts and for the process of disclosing and/or reporting, even sanctioning the suspects involved in this type of crime. The statistics are also important in the context of improving the process of criminal investigation and in direction of providing forensic electronic evidence acceptable for the judiciary and relevant to the confirmation of the crime in line with determining the degree of guilt of the perpetrators. To that end, the UN adopted the Dublin Declaration in 2003.

The Declaration comprises ten recommendations, and the Sixth determines the need for building a European system of crime statistics and adopting a strategy for producing information necessary for analyzing and keeping track of the global tendencies related to this crime.

Year	**Art. 251**			**Art. 251 – a**			**Art. 251 – b**			**Total**		
	Re.	De.	Co.	Re.	De.	Co.	Re.	De.	Co.	Re.	De.	Co.
2007	**8**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**8**	**0**	**0**
2008	**6**	**7**	**7**	**4**	**3**	**3**	**4**	**3**	**3**	**14**	**13**	**13**
2009	**28**	**6**	**6**	**0**	**31**	**0**	**5**	**6**	**6**	**33**	**43**	**12**
2010	**37**	**27**	**24**	**0**	**0**	**0**	**1**	**1**	**1**	**38**	**28**	**25**
2011	**45**	**9**	**9**	**0**	**0**	**0**	**0**	**0**	**0**	**45**	**9**	**9**
2012	**23**	**25**	**21**	**0**	**0**	**0**	**0**	**0**	**0**	**23**	**25**	**21**
2013	**41**	**33**	**27**	**0**	**0**	**0**	**5**	**3**	**3**	**46**	**36**	**30**
2014	**30**	**14**	**14**	**0**	**0**	**0**	**0**	**0**	**0**	**30**	**14**	**14**
2015	**50**	**20**	**20**	**0**	**0**	**0**	**2**	**0**	**0**	**52**	**20**	**20**
2016	**74**	**18**	**16**	**0**	**0**	**0**	**0**	**0**	**0**	**74**	**18**	**16**
2017	**74**	**18**	**17**	**0**	**0**	**0**	**0**	**1**	**1**	**74**	**19**	**18**
Total	**416**	**177**	**161**	**4**	**34**	**3**	**17**	**14**	**14**	**437**	**225**	**178**

Table No. 1 ***"Scope, structure and dynamics of perpetrators of cyber fraud in the Republic of North Macedonia for the period 2007 –2017"***

The analysis of statistical data on reported cases (Re.), Defendants (De.) and convicted (Co.) perpetrators of criminal acts creates a picture of the course of the procedure from detection to conviction of the perpetrators of criminal acts, and to some extent, of the effectiveness of the competent authorities in the process of providing the evidence necessary for the judiciary to pronounce judgments to the perpetrators on the basis of relevant evidence for committed criminal acts and established guilt of the suspects, i.e. the accused perpetrators, in order to render effective court verdicts. The purpose of the analysis of the scope, structure and dynamics of property crimes is the perception of the situation in the Republic of North Macedonia with the cases conducted in the prosecutor's offices and the courts and extracting indicators for planning appropriate measures and actions intended to ensure solid and irreplaceable electronic evidence necessary to prove guilt and convict the perpetrators of the crimes for which they are suspected of or accused.

According to the analysis of the statistical data published in the Annual Reports of the State Statistical Office of the Republic of North Macedonia for the investigated period 2007-2017.

The research on the scope, structure and dynamics of property cyber crimes is aimed at analyzing statistical data in order to extract indicators on how cyber fraud is represented as a separate criminal offense within the total number of property cyber crimes. These indicators are needed to set up criminalist models of detection, clarification and providing evidence, but also for prevention against this crime, in order to warn the public that cyber crime, and thus cyber frauds are a reality in our country and point out their occurrence, especially highlighting the need to avoid providing personal data in electronic communication with strangers and be cautious not to fall for the "wishes" for "fast enrichment", as these cause victimization.

According to the statistics presented in the Annual Reports for the investigated period 2007 - 2017, data can be extracted that out of the total number of 416 reported perpetrators of property-related cyber crimes, 17 perpetrators of “Cyber Fraud" have been reported according to Art. 251 - B or 4.08%. Most cases were reported under the crime "Damage and unauthorized entry into a cyber system" according to Art. 251. This is anticipated information because in criminalizing an act, the investigators recognize the elements of cyber fraud, especially in the part of unauthorized penetration, where certain fraudulent behavior is used.

From the aspect of dynamics of cyber fraud in the investigated period, it can be noted that this offense was reported only in the period 2008-2010 and in 2013 and 2015. From the aspect of indictment of the reported perpetrators, out of the total 17 reported perpetrators, 14 were charged and convicted. In other words, the percentage of indictment is 82.4%, the same is with the percentage of conviction, which points to the fact that the criminal investigation provides quality evidence that is accepted in court.

From the research done, the indicators imply that in the Republic of North Macedonia computers distort reality. According to the analysis of the reported and charged perpetrators, the prosecution authorities provide quality and acceptable evidence to the judiciary on the basis of which convictions are rendered. However, the small number of procedures for reported perpetrators of computer frauds are an indicator that either not all cases are reported by the victims, or the criminal police should build a pattern of recognizing computer fraud, but also a model for encouraging the citizens to report cases of victims or potential victims, and in particular for warning the citizens to be cautious in their electronic communication, especially with unknown persons, and in the electronic communication of legal persons for special cases with electronic addresses of their business partners and in electronic commerce. Criminological researches are in function of investigating computer frauds, that is, directing the attention of criminalists to recognize the elements of computer fraud and take measures primarily for prevention and then repression. Preventive measures should indicate that this crime is real and exists in our country, that it is a serious crime and anyone can be a victim and contribute themselves to becoming a victim.

For the purpose of recognizing the shapes and forms of computer fraud, the Macedonian criminal practice has identified a case in which the victim is a legal entity which, without a full verification of the electronic address of its business partner, pays funds to another "fictitious" legal entity. Namely, in one of the cases of the Macedonian police, a citizen of the Czech Republic presented himself in the period from 5 March to 27 April 2016 as the owner of a legal entity (PC) based in Spain with whom a manager (victim) of a legal entity from Gostivar (town in North Macedonia) had established business cooperation via e-mail. The business cooperation was carried out with electronic orders, electronic invoicing and electronic communication regarding the payment of invoices. In one of the orders sent to the electronic address of the Macedonian legal entity, a request was received for payment of the first installment of one of the orders, but the request was from an identical firm with which they cooperated. The money in the amount of 3,600 Euros was paid, but on the "wrong bill" indicated by the "fictitious company".

CRIMINALIST ASPECTS OF CYBER FRAUD

Cyber fraud, as well as other forms of cyber crime, have their own modus operandi - which is constantly changed by the perpetrators with new elements related to the use of computer technology and criminalist informatics, and the instrument of operation (instrumentum operandi) is actually a criminalist feature on the basis of which this crime is distinguished as a separate group of crimes with loss of property, financial and other forms of criminality.

As a specific feature, the location of the criminal activity is determined (locus and radius operandi) from the perspective of the possibilities of information technology that enable criminals to act from one point on the globe, and the consequences are felt on the other end of the world in a short period of time or at

the same time. The result of such crime are multiple victims at different ends of the world. Another significant criminalistic characteristic is the time of execution (tempus operandi) which indicates the period from the criminal act to the criminal consequence, and especially the consequences that occur at the same time in different parts of the world on victims who do not contribute at all to become victims (Boskovic, 1998).

The place where the cyber crime is committed is linked to the location of the computer which is used for the criminal operation, but the criminal attack or the consequence may take place at the other end of the world. Most often the consequence occurs at the moment of the criminal activity, although it may last for a longer time period, and the consequence can occur after a certain period of time and at multiple locations around the globe (cyber frauds).

A particular specificity of cyber crime, and therefore cyber fraud, is the very process of criminal investigation that should be tactful and operational, but also a process with a team approach to work, with the involvement of a team of lawyers - public prosecutor, informatics expert – a forensic and a criminalist. Their role of reciprocal exchange is crucial because they all investigate from their own point of view and ultimately assemble all "pieces in the mosaic" to determine "the real criminal situation". Team approach is crucial, but in the process of criminal investigation, a plan of action is required to determine the professional and technical resources necessary to take the necessary legal measures and actions in an appropriate manner and by applying appropriate tactics, techniques and methods in order to ensure solid and acceptable evidence for the court.

Four theory steps are investigated (Rosenblatt, 1995), as follows: an initial investigation, trapping the attacker, detecting an attacker's identity and detaining or arresting him. There are also studies to investigate a computer incident in seven steps: to eliminate what is obvious; to formulate a hypothesis for the attack; to reconstruct the crime; to detect the computer from which the attack was carried out; to analyze the computers that are the source, the target of the attack, and those who served as intermediaries; to collect evidence, if possible, the computers themselves; to formulate conclusions and provide evidence to the investigators and to persons who, according to the law, prosecute the perpetrators (the prosecutor).The clarification, the provision of electronic evidence, its analysis and expertise are in the domain of computer forensics. Forensics provide electronic evidence from the scene of a computer crime.

With each computer incident, there is a source, path, and victim. It is this connection that should be explained by forensicists by linking electronic evidence, and criminal investigators by analyzing all the evidence into one unity. This analysis should remove any suspicion that there is a crime, and not a technical error (James & Norbi, 2009).

The steps of a criminal investigation are actually tactical investigation with planning of when, where and who will take concrete measures and actions. And what is particularly important is how to find and provide evidence. In addition to the traditional measures and actions, Macedonian legislation also foresees special

actions for temporary seizure of computer data and data stored in computers and similar devices for automatic, ie electronic data processing, devices for data collection and transfer, data carriers and subscribers with information provided by the service provider. By a special decision of the judge in the pre-trial procedure, and upon the proposal of the public prosecutor, protection and storage of computer data can be determined, while it is necessary, and for a maximum of 6 months, then the data is returned, unless it is involved in the commission of computer criminal acts prescribed by law (Article 198 of the Criminal Procedure Code of the Republic of North Macedonia).

In direction of the use of good operational combinations is a case clarified by the Macedonian police when a detected case of computer fraud committed by a three-member organized criminal group was committed in the following manner:

"One of the perpetrators illegally purchased SIMBOX equipment and together with the other two perpetrators purchased SIM cards and enabled the use of the equipment, thereby terminating the illegal transmission (transmission) of GSM traffic and radio frequencies to a number of additional mobile operators. For the period of criminal activity of 7 months, the reported cases were in the amount of 295.155 denars. "

In the process of clarification, several measures and actions were used under the Law on Criminal Procedure. When conducting searches in the homes of suspected perpetrators, the police found and confiscated the files, a memory card, one SIMBOX charger, a cell phone and a large number of SIM cards and other objects. The temporarily seized items were processed by digital forensics and appropriate evidence was extracted. The operational combination of operational - tactical and investigative actions resulted in secured evidence that was used in the charge against the three perpetrators.

The manner of enforcement in the said case and the above-mentioned case indicate that the perpetrators use computer techniques, as well as appropriate criminal tactics and techniques of criminal activity in order to achieve unlawful property gain, rather than classic crimes of fraud or theft, with the similar purpose of creating a financial gain.

CONCLUSION

Cyber fraud is one of the cyber crimes provided for in the Criminal Law of the Republic of North Macedonia. This criminal act is an integral part of most of the definitions of cyber crime indicating that it is a typical cyber crime for which it is necessary to use a computer and computer networks and systems as a means of criminal attack, and in certain situations and as an object of criminal attack. Macedonian criminal practice has seen more cases of criminal behavior and provided evidence of cases that are investigated and criminal proceedings that have been completed or are ongoing. What can be concluded is that the process of clarification and provision of evidence is successful in the detected cases based on the analysis of the statistics that indicate that over 80% of the reported perpetrators

are charged and convicted. However, the fact that a small number of perpetrators have been reported for this criminal offense of "Unauthorized damage and penetration into a computer system" is that the criminalistic characteristics of these two crimes are similar, and even if it is a case of cyber fraud, in certain situations a procedure is initiated for another act. And this is an indicator of the need for continuous education and professional development of both the operational workers and public prosecutors in charge of the classification of criminal offenses and the prosecution of perpetrators.

What is especially important is that the perpetrators of cyber crime do not choose location or "victims", they only choose the possibility for "criminal and easy earnings". They follow business relationships, especially for legal entities, and create similar addresses and indicate "business partners" for "wrong payment". Numerous are the means of execution, but appropriate methods and ways should be found to alert the public, especially the "business sector" for possible manipulations and their overstretching in business communication, especially with foreign partners, but also warn the citizens that "frivolity and greed for money" can lead them to inflict damage upon their account.

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UDK:

CONTEMPORARY TRENDS IN FORENSIC PHOTOGRAPHY

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Abstract

Forensic photography is one of the oldest criminal methods used for different purposes. Starting from the mugshot photography (police registration photographing), stereophotogrammetry, to crime scene photography, there are several aspects of the use of photography in criminalistics.

When photographing, several rules are used, from the general to the special, photographing at an angle of 90 degrees, under a slanted light, and etc. There are also some rules for taking photographs of the crime scene, where the success of the production of the photo album largely depends on the expertise of the photographers. On the other hand, the successful photographing, as part of the crime scene investigation, together with other material evidence, depends on the success of the court procedure, which has the ultimate goal of proving a specific criminal offense and its perpetrator and imposing an appropriate criminal sanction. The authors in this paper give an overview of the types of photography and their application within the scope of the crime scene investigation, analyzing how and in what way the photography is realized in specific field conditions, and make a comparative analysis of the Macedonian and German criminalistic experience, regarding the discourse about a European certification of the crime scene investigation with DIN EN ISO/IEC 17020 and 17025. In doing so, a conclusion is drawn about the rules that should be observed when taking photographs at the crime scene, in order to successfully complete the entire procedure for proving a crime, of course along with other actions, such as reflective reconstruction, static and dynamic phase of inspection, sketching, raising traces, etc.

Keywords: *photography, insights, traces, evidence, etc.*

INTRODUCTION

Criminalistics as a science uses numerous methods from other sciences that are used to prevent committing criminal offenses, but also to detect crime perpetrators. Criminalistics is a multidisciplinary science because it uses numerous scientific methods founded in other sciences, adapted for the needs of criminalistics.

Methods can be divided into general and special. General methods are used by all sciences, and the special ones are specific only for certain scientific disciplines. In the criminalistic technique, besides the universal dialectical method of cognition, the following general methods are used: observation, description, measurement, comparison, and experiment. Special methods are specific to a particular science or a group of related sciences. Thus criminalistics methods are classified as special methods because they are used only in criminalistics, and their task is with specially adapted scientific and technical methods to reach the goal that is specific to the criminalistic technique. In the crime technique, traceological methods that are used in the processing of all traces in relation to a crime or an event are very important. Traceological methods are closely related to the methods of crime photography which, by special photographic procedures adapted for the needs of the criminalistic technique, document all the actions that are performed during the inspection and expert evidence (Maksimovic, Todoric, 1995).

As an addition to these methods, graphoscopic methods of analysis of handwriting, mathematical methods, methods from the sciences as chemistry, biology, physics, and many others are applied in the criminalistic technique.

It can be concluded that photography is an important part of the crime technique because it is an integral part of numerous activities in the procedure for proving the crime and identification of the perpetrators. Criminalistic technique has numerous examples of using photography for different purposes, but perhaps the most important is the photo documentation that is made during the inspection of the crime scene. Regardless of the usage, however, when photographing, certain rules should also be respected: objectivity, urgency, thoroughness, gradualness, and articulateness.

CRIME SCENE INVESTIGATION

The crime scene investigation is an investigative action consisting of direct sensory observation, determination, and clarification of certain circumstances and facts that are significant for the procedure of a particular criminal event. The purpose of the crime scene investigation is to determine the existence of a crime, to establish evidence, identify the perpetrator, etc. (Malish Sazdovska, Nikolovski, 2018)

During the crime scene investigation, all necessary measures and activities for preservation of the site should be taken, in order not to be contaminated. This is accomplished by securing the scene, determining the perimeter, banning the access

of uninvited persons, talking to the witnesses, etc. A very significant and thoughtful reconstruction is also very significant because it analyzes the approach to the scene, the possible location of traces and objects of the crime, the direction of the escape of the perpetrator and all other aspects important for the inspection.

The crime scene investigation is carried out by inspection teams consisting of a chief and members who have expert knowledge for performing insight, quality finding, interpretation, selection, and fixing of facts and circumstances. During the crime scene investigation, other specialists and expert witnesses of certain specialty may also be engaged. All data received shall be recorded in a record book signed by the chief of the crime scene investigation, but there is an opportunity for the expert to explain and confirm his findings and conclusions with a written document, report or remark or in some other way with a video technique, a collection of samples, etc. (Zarkovic, 2017).

When making a photo-elaborate it is mandatory to specify which photographs are recorded in a static, and which are in a dynamic phase of inspection. This is a very important moment in order to avoid confusion when photo documentation is viewed by persons who were not present during the inspection.

PROBLEM DEFINITION FOR FORENSIC PHOTOGRAPHY

The forensic photography in criminal cases is one of the most important possibilities to secure and visualize several evidences for the following court proceedings, because not all evidences can be shown in the court. The documentation of the crime scene for example, secured and collected evidences like a murder knife, a DNA-track, a finger print etc. and last but not least the very important fluid evidence tracks which allows to reconstruct the progression of events, such as bloodstain marks for example which allows to count the number of hurts as well as the direction of hurting (Brodbeck 2011).

Following to the pragmatism movement outgoing from the United States in the 1870, George Herbert Mead explained with his symbolic interactionism how humans develop practical considerations and to people's utilization of general symbols to make perception images and implications, as well as for deduction and correspondence with others (Mead 1993; Blumer 2009).

The two main founders of semiotics, Ferdinand de Saussure, who developed a dyadic sign concept, and Charles Sanders Peirce, who developed a triadic sign concept, dealt with this human use of symbols, an approach to communication theory that goes far beyond the use of pure language. The term semiotics, which was taken over from medicine by the philosopher John Locke in the 17th century and borrowed from the Greek word semeion, describes the doctrine of signs (Locke 1689).

While the dyadic sign concept of de Saussure’s is limited to the linguistic "significant" and its phonetic image, i.e. to a purely linguistic sign (Saussure 2016, 14, 77 ff), Charles Sanders Peirce additionally considers the real object in his

triadic sign concept: “A sign, or representamen, is something which stands to somebody for something in some respect or capacity. It addresses somebody, that is, creates in the mind of that person an equivalent sign, or perhaps a more developed sign. That sign which it creates I call the interpretant of the first sign. The sign stands for something, its object. It stands for that object, not in all respects, but in reference to a sort of idea…” (Peirce 1903, CP 2.228)By this realization that the conception of the receiver, an interpreter of the sign from the sender and this idea (interpreter of the 1st sign) is identical, but is not a complete match, Peirce brought the theory of the drawing process, semiosis. There is an endless drawing process which assumes that each character has traces of another character. Contrary to de Saussure, the Perspective changes representation of the signs in the modern age and receives a new orientation and guiding idea: It is now assumed that the value of characters in their relations with each other is anchored. Thus each sign does not only express its presence, but at the same time the absence of other signs that mean it (Peirce 1903, CP 2.228).The characters are thus embedded in relationships to each other, similar to a fishing net in which knots are signs and connecting cords are relations represent. Signs such as pictures, words, gestures and smells convey information of all kinds in time and space. In sign processes (semioses) signs are constituted, produced, received and distributed. Without semiosis, cognition, communication and cultural meanings would not be possible (German Society for Semiotik 2019).Signs must thus be regarded as culturally charged information mediators or messengers, which on the one hand express something and on the other are perceived identically by people in the same cultural circle. The sign is, so to speak, a symbol and placeholder for something else: “aliquid stat pro aliquo“ (Jakobson 1975, S. 16).

SCIENTIFIC QUESTION AND METHODICAL RESEARCH

Following this theoretical background, each forensic photography is a sign for the crime scene, evidence or the progressing of events in the crime scene and thereby refers to past events. Also, the pictures in the file are those signs. But, the picture can only be a specific frame from the crime scene conserving the photographs view and perception of the crime scene. In order not to get arbitrary images of crime scenes and evidence, there must be structural guidance for the crime scene and evidence photography. The first scientific question is: which regulations exists in Germany, on European level and in North Macedonia? Methodically, they can be collected by literary research. To answer the question if there is a common sense or even an international standard we have to make comparative analyses.

FORENSIC PHOTOGRAPHY

Forensic photography is used to photograph events, activities, objects, people, etc. Forensic photography differs from general photography only in the

manner of its application. Namely, the basic principles of photography are the same, the same technical means are used for its application, but the ultimate goal and usage is different. Most commonly, forensic photography is used in the forensic technique because in this way the perception of the specific characteristics of the persons, events, and traces is permanently performed. Namely, by photographing, the visual features of persons, objects, events, etc. are noted.

Forensic photography is divided into three areas: registration (blue-white) photography, operative photo gallery, and investigative photography (Maksimovic, 2000).First, the registration photography is used as a personal description method, which enables identification of the person according to the photograph. Such photography was done on a precisely determined scale; with two poses: full face and right profile, in a separate room with artificial lighting. Additionally, the left half profile as a way of photographing is also added. Besides the registration, operational photography is used in order to solve the tasks for deterring the perpetrators of crime and suppressing the criminality. Operational photography can be a crime scene investigation photo, size (proportional) photography and stereo-photogrammetry; secret (covert) photography and projection photography (Maksimovic, 2000).

Crime scene investigation photography

The main task of photographing the scene during the crime scene investigation is the recording of all the important facts pertaining to the criminal event. In addition, a photo-elaborate is prepared, which together with the record and the sketch from the scene, can give a complete picture of the event.

The basic rule of photographing at the scene is to take photos from the general to the special. If there is a need for photographing the wider look at the scene, a panoramic photograph can be made, which can be circular or linear. When taking a closer look at the scene, systematic recording of objects and traces is performed and macro-recording may be applied. Night photographing should be avoided, but if it is obligatory, flash and light accessories should be used.

When making a size (proportional) photograph, the object is taken at a right angle and a scale is placed beside it. Stereo-photogrammetry imitates photographing with two cameras and in two phases: recording and restitution according to the photos.

A crime scene investigation photo can also be used to reconstruct a scene, as it visually presents the scene on the spot. The photo-elaborate is treated as material proof of the crime scene. It is known that the crime scene investigation has a static and dynamic phase, and also the work of the visual photograph is divided. In the static phase, prior to the photographing, an examination of the place is made and the objects and traces that need photographing are secured, and then all the objects and traces at the scene are marked in order to accurately observe the position of each detail. The marking is carried out with numbers, and if there are small traces with arrows. Only after that, the photographing is done. In the static

phase photographing is done without moving the objects and traces, and from the general to the individual (Maksimovic, Todoric, 1995).In the second phase of the crime scene investigation, there may be a need for re-photographing, usually on certain parts of the scene and traces. Namely, the dynamic phase implies moving of the objects and traces, which can lead to finding new traces. Also, at this stage, latent traces of papillary lines can be induced, which should be photographed.

Secret photography

The purpose of the secret photography is photographing a person who is unaware that he or she is being intentionally photographed. This is done by a hidden camera, either manually or automatically, and more recently used a semi-automatic recording. Hidden cameras can be placed in different objects, such as a clock, ring, button, etc. For recording from a distant place cameras with telephoto, lenses are used.

The secret photography with a hidden camera is most often realized on an open space in urban conditions, for example, from a parked vehicle, from a van, but also behind a curtain, a window, etc. Semi-automatic secret surveillance with a hidden camera can also be performed during passport control at airports. A special photo camera can be installed and hidden over the chair where the official person is sitting while checking the passports. The camera can be activated by pressing a button under the chair while going through the passport. There is also automatic recording in the banks and other institutions where all the people entering the facility are automatically photographed (Maksimovic, Todoric, 1995).

Projection photography

This mode of photography involves making large photographs in the form of a poster. Thus, photography can be projected through a slide projector, an overhead projector, and a computer video projector. Most often this method is used in operational planning.

Investigative photography

The investigative photography may be macro photography, microphotography, usage of invisible radiation in photography, and taking photos under different lighting conditions. The macro photography is used for photographing small objects, but also for profoundly recording of traces in the field of expert evidence, especially for terrain traces. Microphotography is used for very small objects, in ballistic expertise and in comparison of a contentious and un-contentious projectile from firearms. Invisible radiation in investigative photography is realized by applying infra-red light, X-ray, ultraviolet rays, etc. Investigative photography can also be recorded with a tilt light, piercing light and a circular light.

THE LACK OF REGULATION IN GERMANY

There is a huge lack of regulation rules on how to deal with forensic photography. Normative rules or formal best practice manuals which have to be applied do not exist neither in the national German law nor on European level. The formal normative law rules in Germany only define that police have to start an investigation, if they have knowledge about a committed crime there have to be an investigation and that evidences have to be secured, but not how (§§ 94ff, 152 (2), 163 (1) Strafprozessordnung).

In the forensic crime scene work for the collection of objective evidence, there is a broad consensus among the actors involved across disciplines on the fundamental necessity of quality assurance standards such as those standardized in DIN EN ISO/IEC 17020 and 17025. In terms of content, these normative standards are certainly subject to a controversial discourse between individual disciplines but also among the actors involved. The German forensic science institutes, for example, play a major role in the European Network of Forensic Science Institutes (ENFSI), whose membership requires accreditation according to DIN EN ISO/IEC 17025 (ENFSI 2016, 3), in the development of a European ISO standard, ISO/TC 272 - Forensic Science, for quality standards in the crime scene work and in the handling of evidence objects. One of the controversial points within this discourse is the applicability and transferability of normative laboratory standards in the crime scene work, for which an audited solution was presented in ILAC-G19:08/2014 (International Laboratory Accreditation Cooperation). A large number of different forensic standards were also written down in the Best Practice Manuals (ENFSI). At the national German level, too, such quality assurance measures, which were an outflow from a "AG Kripo", were already largely introduced in the manual ,,ATOS,, (Clages & Ackermann 2017, S. 325f; Deutscher Bundestag 2016).

Informal rules

The following informal rules created through practical needs with a focus to get evidences in court and convict the accused of a crime.

Common sense: Of course there is a common sense in German criminalistics literary which is part of the police training and study. The focus of this article is crime scene photography, a part of police photography including recognition service, search, observation, and documentation of events, traffic controls, recording of traffic accidents, and more. We have to differ crime scene photography in three views: oriental, overview photography, and focused photography. First you have to make pictures for showing where you are. Then you make pictures to document the crime scene by overviewing it, and last, you pick out special evidences plane-parallel in a 90 degree angle, format-filling and dimensioned. Last but not least you have to document your photography in a crime scene report for reconstructing it in court (Reich Andreas 2017, S. 467f.).

Photography techniques: There are several photography techniques used by police. The old analog photography is in favor of the newly digital photography more common. With both of them you can create panoramic pictures which overlap with each picture about 10 to 20 percent as well as round overview pictures in rooms on the same way. With newly techniques like Photogrammetry, where you make dimensioned pictures in opposite directions, 360-High-Dynamic-Rance-Photography or 3D-Laser-Scannings, which are used to create a digital dimensioned crime scene model, are mostly used by specialized units called responsible for serious crimes (Reich Andreas 2017, S. 469f.).

Theoretical and practical consequence

If the theoretical knowledge is transferred to the structural practical actions and the lack of normative requirements for crime scene photography, the logical conclusion is that it depends on the one hand on the knowledge and on the other hand on the sub-subjective view of the police officer securing evidence and, as a consequence, on the competence and or availability of special units and their special technology, which quality the crime scene photography has.

The solution solving this arbitrary and accidental crime scene photography into an accountability one is to implement normative rules like a best practical manual and define when and how special equipment has to be used. The base for this implementation must be our international compartment research.

MACEDONIAN EXPERIENCE

Handling at the crime scene in the Republic of Macedonia is regulated by the document titled Handbook for handling material traces from the crime scene, prepared by the Criminal Investigation and Expert Unit in 2018 as part of the twinning project with the European Union.

According to this Manual, photo documentation includes:

- general overview of the crime scene;
- a closer look at the spot (before and after marking the traces);
- photographing all the marked traces and objects (Manual, 2018).

Photographing methods are also defined, as follows:

- panoramic photography, for taking photos of an object in parts, in cases where it is not possible to cover the entire subject in one photograph;
- metric photography, in order to measure all the objects, and from the taken photography to determine all sizes and distances;
- size (proportional) photography, in order to determine the size of the object or its parts, by placing a measurements;
- biometrical photography, which fixes the characteristics of the face of the person in order to identify them; and

- production photography refers to obtaining a picture of flat surface objects, for example a document or a drawing.

Regarding the application of the standards DIN EN ISO / IEC 17020 and 17025, in the Ministry of Interior in the Criminal Investigation and Expertise Department, the European standard DIN EN ISO / IEC 17025 is not implemented in the photography, but only in the Chemical and Biological Laboratory, in the department for controversial documents and in ballistics and mechanoscopy.

CONCLUSION

Criminal photography is an important method especially in the criminalistic technique; there are various methods for photographing and generally accepted ways of photographing the scene. It should be noted that there are different purposes for applying this method, identifying persons and objects, fixing material traces at the scene, making a photo elaborate, etc.

But as for the application of DIN EN ISO / IEC 17020 and 17025 in the part of criminal photography, our experience is, that these laboratory standards cannot be adapted to crime scene investigations. It is also questionable if there is a need for a normative rules and standards for crime scene photography, because there is a high degree of conformity how to photograph on crime scene, except of the already described and following theoretical based demand: Crime scenes must generally be photographed in a kind which allows investigators and experts to reconstruct a digital animated version from the crime scene. This is possible by using advanced photography techniques like the described Photogrammetry, 360-High-Dynamic-Range-Photography or 3D-Laser-Scannings. The consequence of this disregard may be that subsequently suspected traces at the crime scene can neither be found nor reconstructed.

In the Republic of North Macedonia, although there is a developed Manual in accordance with the above standards, it still does not have practical application, because that process is very expensive. In future, efforts should be made to fully implement and unify the procedures for carrying out the crime scene investigation, and within that, the photography at the crime scene.

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UDK:

APPLICATION OF THE PHYSICAL-CHEMICAL METHODS IN DETERMINATION OF DOCUMENT FALSIFICATES

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Abstract

Forgeries of documents (contracts, diplomas, receipts, etc.) are increasingly common cases in court proceedings throughout Europe. One of the methods for detecting forgeries of such documents by using physical-chemical (F-H) methods - spectroscopy, chromatography, electronic microscopy - is the analysis of the traces created by the means of writing on the documents. The paper presents the application of the F-H method in the concrete case of determining the counterfeit of the receipt, the analysis of the writing materials in the forensic laboratory. The organic and inorganic composition of the pencil was analyzed by comparative method in the controversial and undisputed samples. After summing the obtained results, it was determined that certain digits in numbers on the examined receipts were subsequently corresponded. By comparison to other elements on the examined receipts, it was concluded that all the receipts examined were forgeries.

Keywords: *Forensics, forgeries of documents, materials of writing, laboratory analyses.*

1. INTRODUCTION

When examining various disputable documents it is often necessary to solve a number of problems with the means of writing, by which the disputed document is printed or signed. One of the most common questions raised about the means of writing (often wrongly referred to by the outdated name - "ink"), is whether certain suspicious parts of the text of the disputed document were written with the same means of writing as the rest of the text, or whether the parts of text were written with the same means of writing [1, 2]. It is known that the means of writing are made so that the quantitative relationship (sometimes qualitative) of some substances used for there manufacturing are different for different

manufacturers. Also, substances used by the factories for manufacturing specific means of writing, very often contain foreign substances (micro traces of impurities) - contaminants. By detecting these contaminants and by their comparative analysis, the difference/similarity of the compared means of writing is very often successfully determined. The mitigating circumstance in solving this problem is that with this type of forensic expertise, two or three documents/means of writing are always given so it is often possible, while applying various laboratory methods for examination of means of writing, to determine certain properties of compared means of writing that differ from one another [3-7].

In this paper, several physical-chemical (P-C) methods of analyzing the means of writing two receipts and the paper base are presented, in order to determine whether they were forged. The analysis took place in a forensic laboratory. Organic and inorganic composition of the means of writing was analyzed by comparative analysis of the disputable and indisputable samples.

2. DESCRIPTION OF SUBMITTED SAMPLES

For the needs of the forensic expertise, a total of three receipts was delivered. Two receipts for the monatery value of 1,100,000.00dinars and one for the monatary value of 50,000 dinars, which were dated 17/02/2010, 18/02/2010 and 08/02/2010 respectively are shown in figures 1-3.

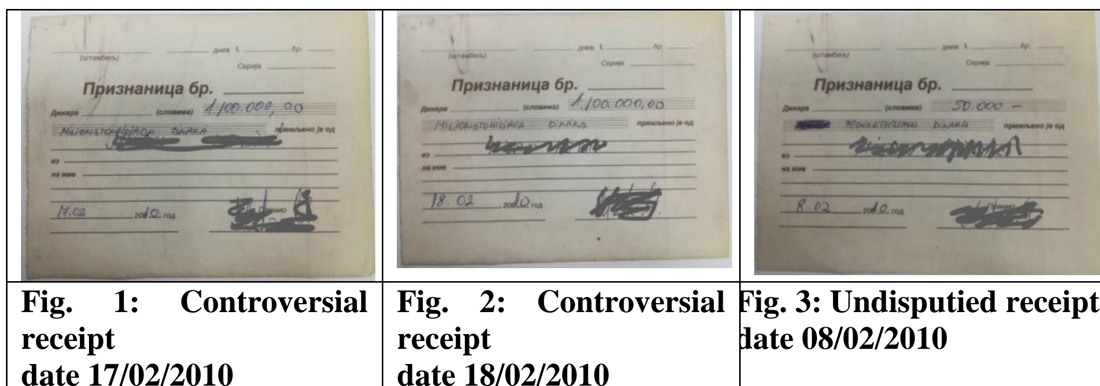


Fig. 1: Controversial receipt date 17/02/2010	**Fig. 2: Controversial receipt date 18/02/2010**	**Fig. 3: Undisputied receipt date 08/02/2010**

In order to determine whether this is about counterfeiting of values, i.e. whether some of the digits of the mentioned numbers were written with a different kind of means of writing then the rest of the digits, an analysis of disputable elements of the delivered disputable receipts and of the contraversial/undisputable receipt was conducted using physical-chemical methods.

3. PHYSICAL-CHEMICAL ANALYSIS

For the needs of physical-chemical analysis the following laboratory methods were used:

- With the infrared spectrophotometry with Fourier transformation (FT-IR), done with the instrument “Thermo Electron Corporation” type “Nexus 6700”, ATR Tehnicom (Attenuated Total Reflection);
- Gas chromatography with mass spectrometer (GC/MS), done white the instrument “Agilent” type GC-MSD5973;
- Electron microscopy with electro-dispersive x-ray spectrometer (SEM/EDS), done with the instrument “JEOL-Tokyo", type JSM-6390LV.

The aforementioned methods were used to examine the means of writing used to write the following numbers on all examined receipts:

- In case of the indisputable receipt dated 08/02/2010 with a monetary amount of 50,000.00 dinars, the first digit 5 and the last digit 0 were examined in order to compare with the digits from the other two receipts;
- In the case of the disputable receipt dated 17/02/2010 with the monetary amount of 1,100,000.00 dinars, the first and the second digit 1 are examined and compared to the digits from the other receipts.
- In the case of the disputable receipt dated 108/02/2010 with the monetary amount of 1,100,000.00 dinars, the first and the second digit 1 are examined and compared to the digits from the other receipts.

3.1. Infrared spectrophotometry (FT-IR)

With the method of infrared spectrophotometry with Fourier transformation (FTIR) and ATP technique examined details of samples were directly recorded, without previous preparation and sample treatment. The of FT-IR analysis are shown in Figure 4.

By comparing the obtained FTIR spectrums from Fig. 4, it is concluded that there are no deviations in position and intensity of functional groups of organic composition of paper of examined receipts, that is, spectral tapes of examined samples are located at the same wavenumber. This result indicates validity of the receipts in all cases.

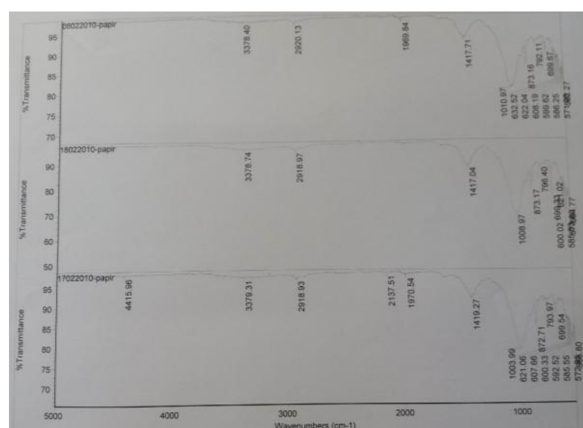


Fig. 4: Spectrum of FTIR paper receipts

In the same way, the first and last digit of the number 50,000.00 were examined, and on the obtained spectrum no deviations of location and intensity of functional groups were observed. This result indicates the use of the same means of writing on examined numbers. Afterwards the first and second digits of the number 1,100,000.00on the "contraversial" receipts (dated 17/02/2010 and 18/02/2010) were examined. Results of the FTIR analysis are shown in Figures 5 and 6 respectively.

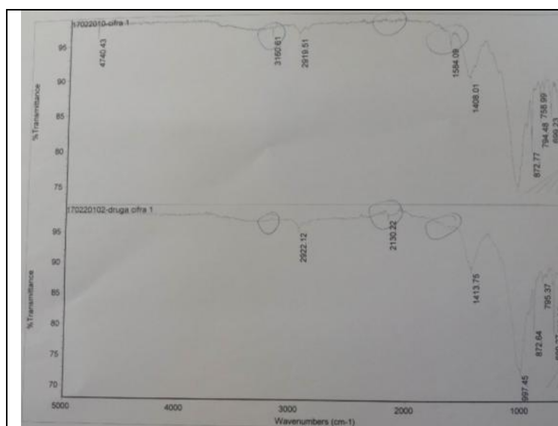


Fig.5: FTIR spectrum first and second digit 1 in 1,100,000 (date 17/02/2010)

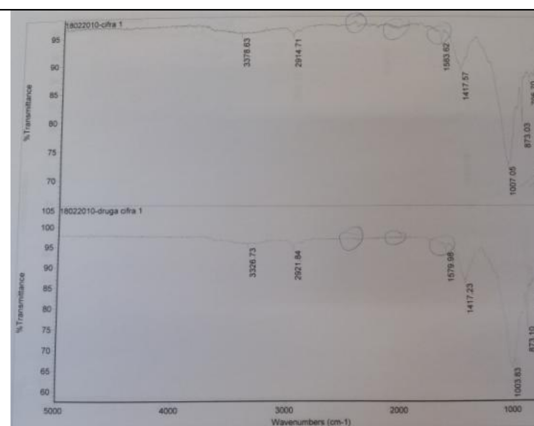


Fig.6: FTIR spectrum first and second digit 1 in 1,100,000 (date 18/02/2010)

By analyzing peaks in the spectrum a deviation can be observed in location and intensity of functional groups at the first digits of numbers 1,100,000.00 on both receipts (from 17/02/2010 and from 08/02/2010. Observed deviations are shown close-up in Figures 7 and 8.

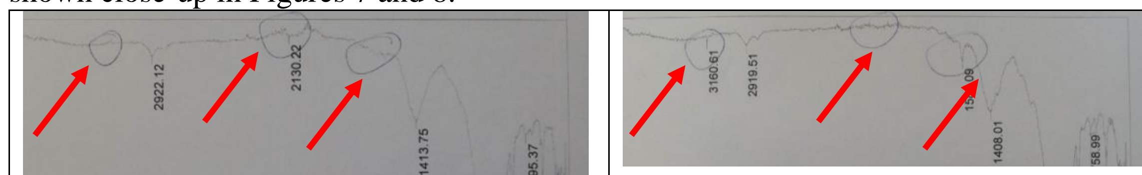


Fig. 7: Inlarged FTIR spectrum on the first and second digit 1 (date 17/02/2010)

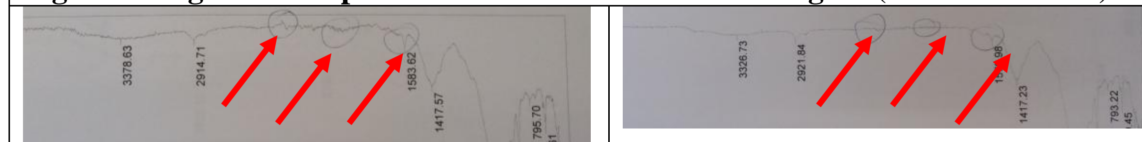


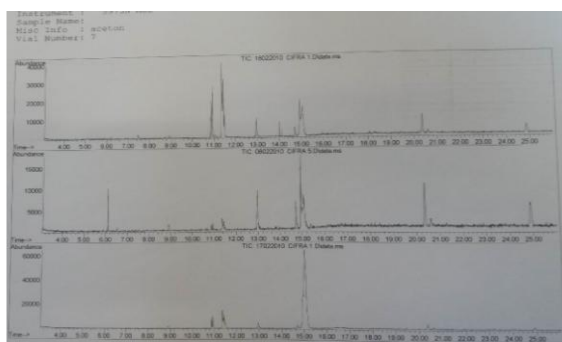
Fig. 8: Inlarged FTIR spectrum on the first and second digit 1 (date 18/02/2010)

In inlarged figures the observed deviation in location and intensity of functional groups is more pronounced which pointes to differences in used means of writing of two digits in number 1.100.000,00.

Confirmations of this result requires at least one more physical-chemical method to get the same result. That is why the examination of the receipts uses two more methods: gas chromatography with a mass spectrometer, and electronic microscopy.

3.2. Gas chromatography

The procedure of using the method of gas chromatography with mass spectrometer (GC/MS) requires sample preparation. For that purposes, an organic solvent (acetone) is used to dissolve the means of writing from specific parts of the sample. First, the samples of means of writing in the first digits of all three receipts were covered. Results are shown in Fig. 9.



First digit 1
(date 18/02/2010)

First digit 5
(date 08/02/2010).

First digit 1
(date 17/02/2010)

Fig. 9: Chromatograms GC/MS of the first digit for all tree receipts

From figure 9 it can be seen that all three chromatograms are completely different, which indicates that in all three cases different means of writing were used.

Further analysis covered two digits 1 in number 1,100,000.00with dates 17/02/2010 and 108/02/2010. The results obtained from GC/MS analysis are shown in selected chromatograms in Figures 10 and 11:

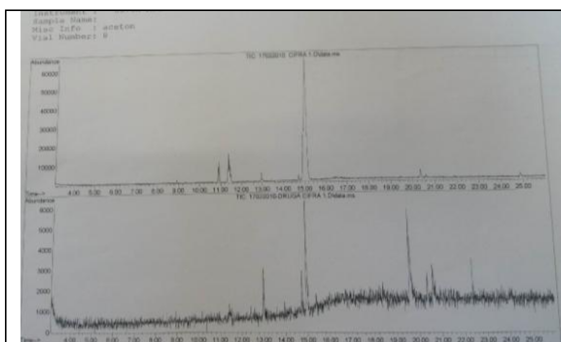
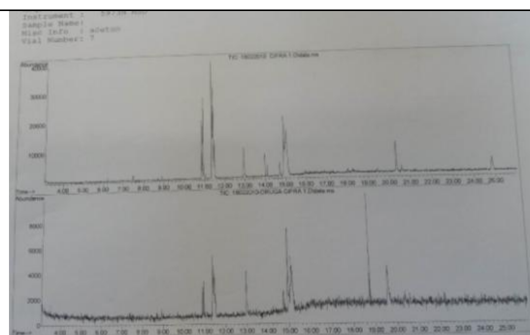
	

Fig. 10: Chromatograms GC/MS on the first and second digit 1 in 1,100,000.00 (date 17/02/2010)	**Fig. 11: Chromatograms GC/MS of the first and second digit 1 in 1,100,000.00 (date 18/02/2010)**

Using comparative analysis on obtained chromatograms, a difference is ascertained in retention time and intensity of the sample of the first and second digits 1 of the receipts dated from 17/02/2010 and 108/02/2010 which indicates the use of different means of writing for the two digits in both cases.

3.3. Electron microscopy

In order to use the method of electron microscopy with energy dispersive x-ray spectrometer (SEM/EDS), the preparation of the sample is necessary. This is done by cutting specific parts from examined sample receipts (because of the geometry of the sample carrier housing), as well as steaming the sample with 24-carat gold.

The SEM/EDS analysis of digit 5 in number 50,000.00 and the last digit 0 of the same number are shown in figures 12 and 13, while a more detailed data is shown in tables 1 and 2.

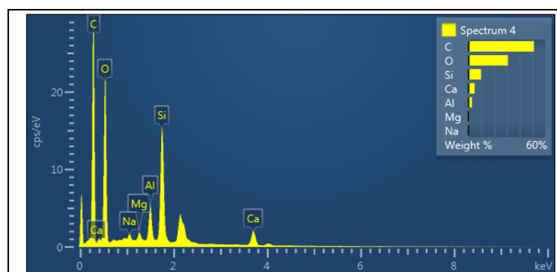


Fig. 12: SEM spectrum of the digit 5 in 50,000.00 (date 08/02/2010)

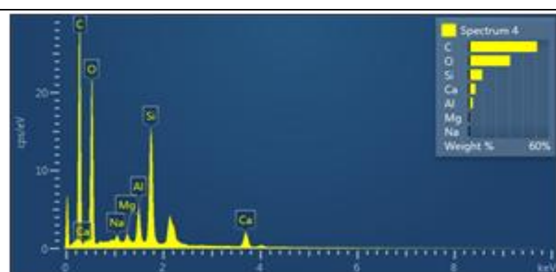


Fig. 13: SEM spectrum of the last digit 0 in 50,000.00 (date 08/02/2010)

Analyzing the results of the SEM/EDS analysis of digits 5 of the number 50,000.00 and the last digit 0 of the same number, shows that there are no differences in the spectrum, neither in line intensity nor in the element type. For precision sake, tabular values from Tabels 1 and 2 are compared. Table 1 contains the spectrum of SEM of digit 5 and Table 2 contains spectrum of the last digit 0 from 08/02/2010.

Table 1: SEM spectrum of the digit 5 in 50,000.00 - date 08/02/2010

Element	Line Type	Apparent Concentration	k Ratio	Wt%	Wt% Sigma	Standard Label	Factory Standard	Standard Calibration Date
C	K series	1.32	0.01324	51.08	0.20	C Vit	Yes	
O	K series	2.11	0.00711	30.76	0.18	SiO2	Yes	
Na	K series	0.05	0.00022	0.44	0.03	Albite	Yes	

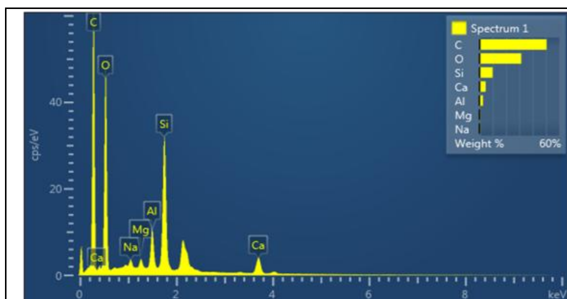
Mg	K series	0.05	0.00034	0.56	0.03	MgO	Yes	
Al	K series	0.25	0.00176	2.65	0.04	Al2O3	Yes	
Si	K series	0.89	0.00704	9.78	0.08	SiO2	Yes	
Ca	K series	0.38	0.00343	4.74	0.09	Wollastonite	Yes	
Total:				100.00				

Table 2: SEM spectrum of the last digit 0 in 50,000.00 - date 08/02/2010

Element	Line Type	Apparent Concentration	k Ratio	Wt%	Wt% Sigma	Standard Label	Factory Standard	Standard Calibration Date
C	K series	3.28	0.03277	51.09	0.16	C Vit	Yes	
O	K series	4.72	0.01590	30.71	0.13	SiO2	Yes	
Na	K series	0.13	0.00054	0.47	0.02	Albite	Yes	
Mg	K series	0.12	0.00077	0.54	0.02	MgO	Yes	
Al	K series	0.53	0.00377	2.64	0.03	Al2O3	Yes	
Si	K series	1.93	0.01532	9.80	0.05	SiO2	Yes	
Ca	K series	0.70	0.00629	4.75	0.05	Wollastonite	Yes	
Total:				100.00				

By analysing elements in samples and their intensity, no deviation is found, which indicates that both digits were written with the same means of writing.

Further SEM/EDS analysis is carried out on the first and the second digit 1of number 1,100,000.00 dated 17/02/2010. The results are shown in Figures 14 and 15.



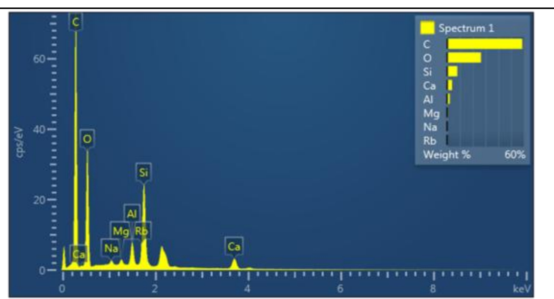


Fig. 14: SEM spectrum of the first digit 1 in 1.100.000,00 (date 17/02/2010)	**Fig. 15: SEM spectrum of the second digit 1 in 1.100.000,00 (date 17/02/2010)**

The analysis of Figures 14 and 15 clearly indicates different intensities of some lines in the spectrum (oxygen (O) and silicon (Si)). However for actual conformation it is necessary to determine these differences. This is most clearly noticed from the tables displaing the results by which the observed graphs are obtained in Figures 14 and 15. These tabular results are given in Tables 3 and 4.

By analyzing the values from the tables, the presence of the chemical elements is noticed, but a significant difference in the intensity of most elements is observed (C, O, Al, Si and Ca). The elements in which this is noticed are highlighted in both tables.

The noticed differences indicate that different means of writing were used in writing the first and second digit 1 in the number 1,100,000.00dated 17/02/2010

Table 3: SEM values for the first digit 1 number 1,100,000.00 from 17/02/2010

Element	Line Type	Apparent Concentration	k Ratio	Wt%	Wt% Sigma	Standard Label	Factory Standard	Standard Calibration Date
C	K series	2.69	0.02686	**50.46**	0.14	C Vit	Yes	
O	K series	4.49	0.01510	**31.42**	0.13	SiO2	Yes	
Na	K series	0.12	0.00051	0.49	0.02	Albite	Yes	
Mg	K series	0.11	0.00071	0.56	0.02	MgO	Yes	
Al	K series	0.49	0.00353	**2.58**	0.03	Al2O3	Yes	
Si	K series	1.85	0.01463	**9.86**	0.05	SiO2	Yes	
Ca	K series	0.77	0.00692	**4.63**	0.06	Wollastonite	Yes	
Total:				100.00				

Table 4: SEM values for the second digit 1 in 1,100,000.00 from 17/02/2010

Element	Line Type	Apparent Concentration	k Ratio	Wt%	Wt% Sigma	Standard Label	Factory Standard	Standard Calibration Date
C	K series	3.24	0.03242	**58.81**	0.14	C Vit	Yes	
O	K series	3.30	0.01112	**26.50**	0.12	SiO_2	Yes	
Na	K series	0.08	0.00036	0.37	0.02	Albite	Yes	
Mg	K series	0.08	0.00051	0.43	0.02	MgO	Yes	
Al	K series	0.36	0.00259	**2.03**	0.03	Al_2O_3	Yes	
Si	K series	1.39	0.01105	**8.00**	0.05	SiO_2	Yes	
Ca	K series	0.60	0.00535	**3.87**	0.06	Wollastonite	Yes	
Total:				100.00				

Finally, the SEM/EDS analysis was done on the first and second digit 1of the number 1,100,000.00 dated 08/02/2010. The results are shown in Figures 16 and 17.

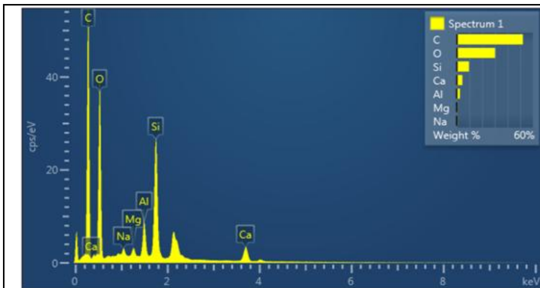


Fig. 16 SEM spectrum for the first digit 1 in 1,100,000.00 (date 18/02/2010)

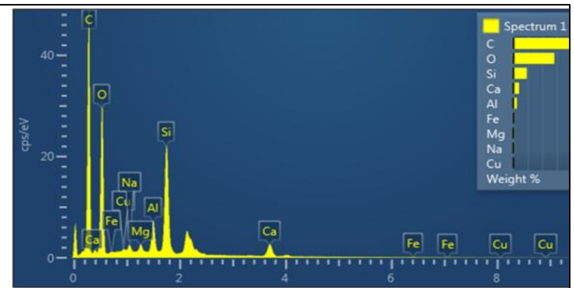


Fig. 17: SEM spectrum of the second digit 1 in 1,100,000.00 (date 18/02/2010)

The analysis of Figures 16 and 17 also indicates different intensities of some spectral lines (of oxygen (O) and silicon (Si)), but also the presence of new elements (Fe and Cu). Due to more detailed analysis, the corresponding values in the tables on the basis of which the conclusions were made were also observed in these spectra. These tabular results are given in Tables 5 and 6.

Table 5: SEM values of the first digit 1 in 1,100,000.00 date 18/02/2010

Element	Line Type	Apparent Concentration	k Ratio	Wt%	Wt% Sigma	Standard Label	Factory Standard	Standard Calibration Date
C	K series	2.43	0.02426	**52.16**	0.15	C Vit	Yes	
O	K series	3.67	0.01235	**30.27**	0.13	SiO2	Yes	
Na	K series	0.11	0.00045	0.50	0.02	Albite	Yes	
Mg	K series	0.09	0.00061	0.55	0.02	MgO	Yes	
Al	K series	0.41	0.00294	2.49	0.03	Al2O3	Yes	
Si	K series	1.55	0.01225	9.60	0.06	SiO2	Yes	
Ca	K series	0.64	0.00567	4.42	0.06	Wollastonite	Yes	
Total:				100.00				

Table 6: SEM values of the second digit 1 in 1,100,000.00 date 18/02/2010

Element	Line Type	Apparent Concentration	k Ratio	Wt%	Wt% Sigma	Standard Label	Factory Standard	Standard Calibration Date
C	K series	2.16	0.02163	**53.84**	0.19	C Vit	Yes	
O	K series	2.92	0.00981	**28.31**	0.15	SiO2	Yes	
Na	K series	0.09	0.00039	0.51	0.03	Albite	Yes	
Mg	K series	0.07	0.00047	0.51	0.02	MgO	Yes	
Al	K series	0.34	0.00246	2.44	0.03	Al2O3	Yes	
Si	K series	1.28	0.01013	9.28	0.06	SiO2	Yes	
Ca	K series	0.49	0.00434	3.94	0.07	Wollastonite	Yes	
Fe	K series	0.07	0.00072	***0.73***	0.18	Fe	Yes	
Cu	L series	0.03	0.00029	***0.44***	0.06	Cu	Yes	
Total:				100.00				

By analyzing the values from the tables, the presence of the same chemical elements is observed in which a significant difference in intensity of C and O is noticeable. But in the SEM spectrum of the second digit 1 in the number 1,100,000.00 some new elements (Fe and Cu) appear.

The noticed differences in the SEM spectrums indicate that different means of writing were used in writing the first and second digit 1 in the number 1,100,000.00dated 18/02/2010.

a. Traseology analysis

The last analysis of the examined samples was also carried out with the use of the electron microscope. This time, the electron microscope was used to observe the traces of the means of writing left on the paper. The appearance of the examined samples, made by using the electronic microscope, is shown in the following Figures 18-21.

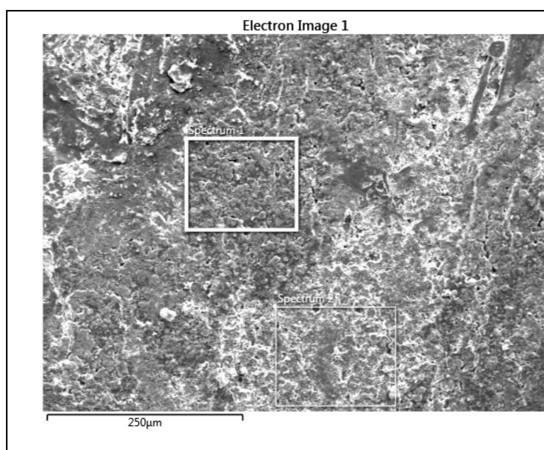


Fig. 18: Trace of the means of writing in the first digit 1 in 1,100,000.00 dated 17/02/2010 (square-place recording)

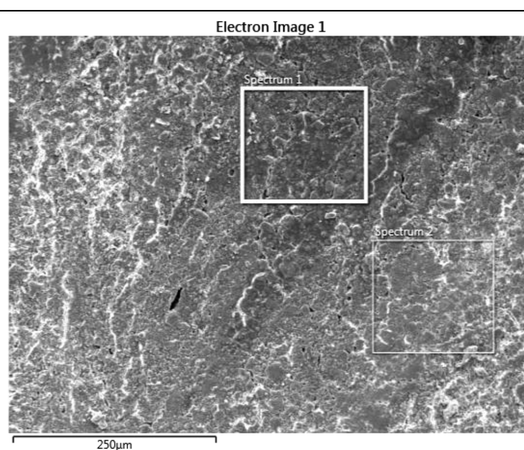
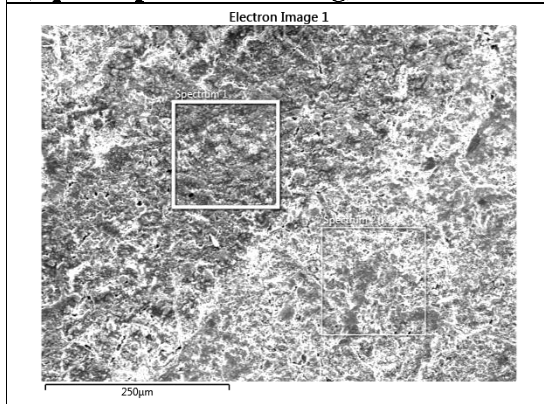


Fig. 19: Trace of the means of writing in the second digit 1 in 1,100,000.00dated 17/02/2010 (square-place recording)



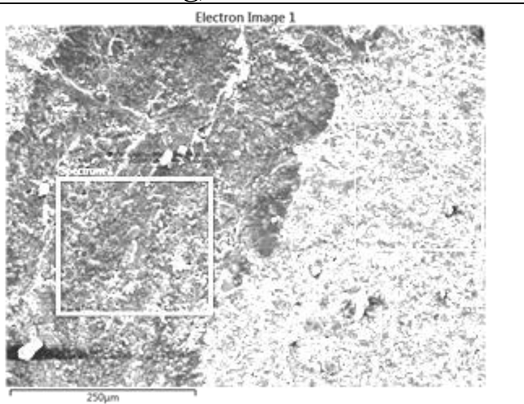


Fig. 20: Trace of the means of writing in the first digit 1 in 1,100,000.00 dated 08/02/2010 (square-place recording)	**Fig. 21: Trace of the means of writing in the second digit 1 in 1,100,000.00 dated 08/02/2010 (square-place recording)**

Summing the obtained results after conducting the physical-chemical analysis of the means of writing for the first and second digit 1 in numbers 1.100.00,00 the following is ascertained:

1. The comparative analysis of the obtained FTIR spectrums revealed that there are **deviations in location and intensity of functional groups** of the samples of the first and second digit 1 for receipts dated from 17/02/2010 and 18/02/2010, and the spectral tapes of analyzed samples have different wavenumber and intensities.;
2. The comparative analysis of obtained GC/MS chromatograms **revealed a difference in retention times** and intensity in samples of the first and second digit1 in receipts dated from 17/02/2010 and 18/02/2010;
3. The comparative analysis of obtained SEM/EDS spectrums revealed a **difference in intensity of chemical elements** in samples of the first and second digit 1 in receipts dated 17/02/2010 and 18/02/2010, .e. in the following chemical elements C, O, Al, Si and Ca, as well as in the trace of Na and Mg.

4. CONCLUSION

The presented research of the means of writing on the subject receipts, provided results of the applied laboratory methods that are shown herein. The used methods are very reliable for examining microtraces of coloured materials, both on paper and on other surfaces. In this way, the counterfeiting of the receipt was determined. The differences in the organic and inorganic composition of the means of writing, as well as the comparative analysis, are very graphically depicted.

Of course, it is known that expensive and sophisticated laboratory analyzes are not always necessary, but in simpler cases, the analysis of means of writing (commonly known as "ink") can also be carried out by chemical analyzes using certain corrosive organic solvents (acids, alkalis, oxidation-reduction means).

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UDK:

PROCESSING THE SCENE OF ENVIRONMENTAL CRIME DURING SITUATIONAL EXPERTISE

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Abstract

Environmental pollution in the current conditions is a serious problem not only in the Republic of Macedonia, but also in global frames, especially in circumstances of a limited approach to natural recourses. However, media such as water, air and soil play a significant role in creating healthy human environment, and they also represent the main factors or participants in the ecosystems.

Environmental crime means a crime which is ranks high in the total crime rate, however its dark number is significant. The population or the citizens are not sufficiently educated and do not possess a high level of awareness to recognize and at the same time report environmental crimes. Therefore, it is of utmost importance that the discovered ecological crimes be proven and have adequate sanction for their perpetrators.

Environmental forensics investigation starts by processing the scene of the environmental crime using appropriate forensic examination equipment and the best techniques and methodology of situational expertise for detecting the causes of pollution, and of course, the perpetrator or the offender.

The authors of this paper explain the best techniques and methodology for processing the environmental crime scene during situational expertise regardless of the polluted medium: water, air or soil.

***Key words**: environmental crime, crime scene processing, situational expertise, forensic examination etc.*

1. INTRODUCTION

Human ingenuity that leads to continuous technical and technological development is aimed toward a great comfortable standard, directly implying environmental consequences such as: rapid spending of the natural resources, pollution of all media - water, soil and air, and of course, destruction of all ecosystems in the these media. Therefore, the problem of environmental protection is increasingly pronounced every day, and thereby the actuality of ecological crimes is on the rise. Without knowledge of the natural laws, it is not possible to protect the environment and prevent pollution, but also without the knowledge of the legal provisions that regulate the issue sof ecological crimes, it is not possible to prove and properly punish ecological crimes.

In the final definition of criminality, we will adhere to the already stated conclusion that criminality is defined by its legal definition in a wider sense, but also taking into account its sociological determination. Namely, the term criminality means "the totality of crimes committed on a certain area within a certain period of time that are subject to formal control, but also its sociological determination". Criminality, as one of the most dangerous, hardest and most complex individual and mass socially negative phenomena, inevitably burdens our civilization. However, when it comes to deviant behavior and environmental degradation, there is still no public understanding of its danger and ensuing consequences. From a relatively marginal phenomenon, which, at the very beginning, was a concern only for the adamant supporters of the environmental movements, the phenomenon of environmental pollution has proved to have immeasurable dimensions in our century. Today's reality is narrowing the human living space, losing the basic parameters for quality and healthy living. Criminality, like any other phenomenon, is expressed in historical concreteness and carries with it the characteristics of its time, place and conditions that enable its occurrence and its development. It is a notorious fact that criminal activity is very diverse, both in its character and appearance. In this context, the pollution of the environment, that is water, air, soil, plant and animal life, as a contemporary form of criminal behavior, is progressively and uncontrollably growing and threatens to completely destroy the wildlife.

Different authors define ecological crime differently. Namely, starting from the narrower understanding of criminality, under ecological crime we mean a group of criminal acts endangering the environment. It is, hence, certain types of activities that are aimed at endangering the environment and, as such, they are incriminated as criminal acts in the Criminal Code. Since the offenses are also acts which pollute the environment, only to a lesser level and with lesser social danger, we can also treat them as part of environmental crime.

In order to study ecological crime, we will accept its definition in a broader sense: Ecological crime actually covers those crimes that are regulated or incriminated in Chapter XXII of the Criminal Code of the Republic of North Macedonia and constitute criminal acts against the environment, but also violations

in the field of environmental protection provided for in other legal regulations. There are many forms of endangering the environment, in the form of criminal acts provided for in the Criminal Code, which in fact constitute ecological crime.

The term "dark number" means a number of committed, but undiscovered crimes, but it should also be noted that ecological crimes account for a significant portion. The reasons for the "Dark Number" of environmental crimes are:

• Insufficient vocational training for expert investigation and disclosure of such acts;

• Insufficient treatment of this kind of crime and inciting these crimes within another type of crime;

• Attention only to the concrete crimes rather than to the "abstract" ones, and

• Insufficient inter-institutional cooperation, for example, the police - inspection services.

2. SITUATIONAL EXPERTISE FOR PROVING ENVIRONMENTAL CRIME

When determining and evaluating a relevant fact, it is necessary to apply special professional skills and knowledge in the phase prior to the formal initiation of the procedure, at the site of the situation, or in other words, so-called situational expertise is performed. As mentioned above, the expertise should take into consideration the rapid change of the situation on the spot, which is conditioned by many factors. Therefore, there is a danger of losing the existing traces and objects of the crime, which makes it difficult to provide sufficient and quality data and material evidence that would clarify and prove the crime. To avoid this, it is necessary to carry out situational expertise that would lead to a reduction in usual information deficit (Sazdovska, 2007: 154).

Many authors (Murgoski, 2011: 243) also believe that the situational expertise should be performed even during the inspection in its dynamic phase, because it can contribute to avoiding the information deficit which arises from the application of only traditional evidence.

The idea for a full expert study at the site is also highlighted (Sazdovska, 2007), including the conclusion. Thus, forensic expertise should take place at the scene in the following cases:

1. When answering the open questions, it is important to examine not only the specific material evidence, but also the situation at the site;

2. When success of the expert study depends on investigating the interconnection between the traces and the various objects at the scene, and

3. When material evidence cannot be supplied from the scene to a criminal laboratory, due to its size or the danger of its exposure to alteration or damage due to transport.

A characteristic of the on-site criminological expertise is that the operational worker formulates questions or a terrain protocol for the investigation of all media (water, air and soil) or prepares SOPs (Standard Operating Procedures)

that provide a great advantage, and of course, uses adequate check lists for each media separately.

The Situation analyst (in addition to the checklist, SOPs and a sampling guide) must perform the following actions in order to obtain key information:

1. Provide or preserve the site in the state in which it has been found, by prohibiting access to all, except the trained staff.
2. Observe the scene or act by: recording videos, photographing, sketching at the scene and other remarks that are entered in the minutes and check lists;
3. Examine "In Situ" the basic possible standard physical-chemical parameters of the medium on which the expertise is carried out.
4. Carry out systematic sampling.
5. Package, mark and label the samples.
6. Conserve the sample.
7. Fill in the system registry for actions taken.
8. Transport and submit the physical evidence for further and detailed forensic examination (Latifi, 2018: 245).

3. PROCESSING THE SCENE OF ENVIRONMENTAL CRIME

Understanding what crime has been allegedly committed and who was involved is the first step. Organizing and planning a case using a team approach is very critical, as is communication between team members. Often, multiple government institutions or agencies are involved in a case, which makes communication a bit of a challenge. Each team member must have a clear objective and be careful to do a detailed job on his own piece of the investigation. However, interaction with the other team members is also necessary to ensure continuity.

Experts, either internal or outside organizations or institutions, can be especially valuable when they understand and communicate the interplay between legal requirements, science and technology and the allegedly committed crime. Experts should not only understand their own field, but should be able to explain their opinions clearly and openly to their team members, to the prosecuting attorney and of course to the jury without preference or consideration.

Upon a notification of a committed environmental crime, the Situation analyst should first secure the scene and insist on collecting useful information, and immediately begin to work on processing the site by determining the "ecological dimension" of the ecological crime.

The processing of the place of the event should be conducted with special care without any hesitation, because the state of the technical mechanisms, chemical reactions or other developments in the site or space determined as the ecological dimension of the crime continuously change the conditions in which we should provide material evidence (Latifi, 2014: 469).

In the case of ecological crimes, where processing the site of the event is carried out on large surfaces, including large territories of soil, water and air (except in cases of environmental offenses in indoor air when the exact ecological

dimension of the work is determined), the difficulty of providing evidence, among other things, is the fact that the relevant substances in water, soil and air change very quickly, organic matter is lost, others change temperature, enter into various chemical processes and change their chemical conditions, disperse, degrade, etc. Therefore, it is important, given the aforementioned situation, to conduct situational expertise that will enable rapid site processing, provide sufficient material evidence and traces in a professional manner, and preserve and timely transport the above evidence to other investigative institutions. If it is necessary to process the site of an event in a larger area, a sufficient number of processing and expertise members should be engaged so that the surface is be divided into several sectors. If an environmental offense is of such nature that it is impossible or difficult to determine the center of the crime, the processing of the site starts from the already divided points, so that the processing of the various sectors is performed according to a spiral that narrows down. If the place of execution of the ecological crime has a pointed clear configuration, with only one pointed direction, then the processing is carried out linearly.

Once the field works begins, the crime scene should be secured, checked carefully for safety hazards, and well documented, using photography, video recordings and extensive written notes. Prior evaluation of the manufacturing processes and waste management procedures will provide information necessary for the finalization of the on-site sampling decisions. Often before sampling, a chemical “hot zone” is established and delineated. Everyone permitted into the area should have current safety training and appropriate level of personal protective equipment (chemical resistant protective workwear, gloves, hats and glasses).

When possible, field measurements should be performed according to the accepted SOPs (Standard Operative Procedures) and be well documented. Field monitoring and measurement equipment should be maintained and calibrated, and periodically checked to ensure it is working properly. All these steps are recorded (even those steps that occurred prior to entering the site). In the US, a chain of custody is usually required to be maintained for any item that will be introduced in the legal proceedings. Interviews should be recorded along with field activities, such as sampling and environmental measurements. Marking, labeling, preservation of environmental and waste samples, transportation and observance of any applicable quarantines should be part of the permanent record of the site visit (US EPA NEIC, 2001: 17).

4. SAMPLING AND TECHNIQUES FOR PROVING ENVIRONMENTAL CRIME

Sampling equipment can be as simple as a shovel and sophisticated as a computer controlled robotic sampling device. Specialized sampling devices are available for many situations. The selected device should be appropriate to the material being sampled. Each sampling device should be inert to the material being sampled. Devices and equipment that are used more than once are often cleaned in

advance and decontaminated between uses. Disposable sampling devices sometimes are the best choice. The used sample containers should be from a known source inert to the material being collected, and free of any interferences to later sample analysis. How samples will be packed, secured as evidence, and transported to the laboratory for analysis should be considered according to the SOPs and field personnel on the site.

Any object, trace or impression that can provide information about the incident under investigation is the subject of physical evidence. This section examines the main principles involved in the quest for the collection, packaging, labeling and storage for such items. The supportive principles involved in the search and dealing with objects of physical evidence are the same, regardless of the work being investigated (Jackson & Jackson, 2009: 17).

What is most important during sampling of environmental crimes should be the location of the criminal event, i.e. the "ecological dimension of pollution", which facilitates further work and begins with the application of protocols, standard operating procedures, sampling techniques, methods of sampling, their preservation and sample transportation (Latifi, L., Sazdovska, M.M., & Troshanski, S. 2015).

Proper sampling for environmental crimes is important for the following reasons:

1. Properly taken samples give accurate results.
2. Correct pollution results imply credible evidence of environmental crime.
3. The application of check lists and standard operating procedures removes any obstruction or error in sampling or conserving the sample.
4. Knowing all relevant facts about the scene, the medium being analyzed, the reasons and the motives for the criminal act, and the possession of the correct results are indispensable for successfully recording the material evidence and its successful presentation to the judicial authorities.

The sampling methods in ecological crimes depend on:

- the goal that is to be achieved;
- the chemical nature of the medium being analyzed;
- the location of the object being analyzed (in addition to the location, the position is also subject to special attention to its close surroundings, due to potential other pollutants that can compromise the real causes and motives of the crime).

The sampling techniques should fulfill the following criteria:

- to be an integral part of the object or system being analyzed;
- not to be contaminated during operation;
- not to compromise or contaminate reagents while handling;
- not to use non-calibrated sampling instruments;
- not allowing or avoiding change of condition of the samples during conservation and transport (Latifi, 2018: 246).

According to the schematic guideline for air sampling, the Preliminary Considerations are followed by the Sampling Procedure and finally by the Overall Procedure. The Sampling Procedure contains 5 main points, such as: *Sampler*

efficiency, *Extraction efficiency* (EE), *Analytical method recovery* (AMR) (through digestion, solubility etc.), *Effects of storage* and *Interferences to the sampling procedure.* The Overall Procedure contains *5* main points as follows: *Detection limit of the Overall Procedures* (Spectroscopic methods, Chromatographic methods etc.), *Reliable Quantitation Limit* (RQL), *Sampling reproducibility, Analytical reproducibility,* and *Qualitative analysis.* The Overall Procedure is followed by the Preparation of written reports.

Soil samples should be collected at locations throughout the hot spot site. If possible, these should be randomly selected and equally spaced. However, the presence of notable differences in physical soil qualities (such as staining) may necessitate the preferential selection of a sub-set of sampling locations. Soil samples should be collected using a stainless trowel or shovel, and be collected from the top 10 cm depth (surface soils). Samples are deposited into a stainless steel tray and are stirred into a homogenous mixture. Samples are then placed into one or more 125 ml or 250 ml glass jars. According to the schematic guideline, the sampling procedure goes as follows: ***Pre-Sample preparation*** (identification of the sampling site, preparing the jars and the data sheet and the check list), ***Cleaning the soil sampling equipment*** (rinsing the equipment and the working gloves with water or acetone), ***Sampling steps*** (filling in the data sheet and check list with general info, cleaning the equipment, collecting five sub-samples between 1 and 20cm below surface from an area 1m x 1m, samples placed on the glass jars and labeling with specific info and at the end the sample storage), an a ***Final check*** (ensure that the data sheet has been completed including photos, site map and GPS readings).

When water is sampled, it should be borne in mind that the surface water and drinking water samples are not sampled in the same way, but the common point may be if the drinking water is taken from surface water-intake, in which case a water sample is taken according to the techniques applicable to surface water prior to intake, and a sample of drainage tap water but with a technically applicable sampling for drinking water.

River waters - Systematic sampling from periphery to the center of pollution. For river water, it is important not to take water for a sample close to the shores, because the concentration of trace elements is higher where the speed of water is greater, in contrast to those in areas where the speed is lower. The sample is first taken from the lower parts of the river, then from the upper parts, but also from the place where we suspect is the point of contact of the river with the pollutant. The number of samples taken depends on the pollution, size and length of the river. Together with the sample, a sample of the sediment is taken, but the first sample is taken for chemical or biological analysis, and then the sediment sample is taken, in order to avoid blurring the samples for analysis. In order to have a clearer picture of the intensity of the pollution or pollutant, sampling is done in the direction of leakage, both in width and depth.

Lakes and water from reservoirs - consideration should be given to vertical stratification or stratification of pollutants as a reason for reducing the dissolved oxygen concentration when crossing from the surface towards the bottom. It is

therefore desirable to take samples in three different layers, one meter below the surface, one meter above the bottom of the lake and one sample between these two. It should be noted that the concentrations of polluting substances are higher near the coast, as well as near places where rivers and canals leak into the lakes.

According to (Latifi, 2018: 256) Standard Operating Procedures have these main points, but it must be noted that these standard operating procedure in the approach refer to taking representative samples from surface waters (streams, rivers, lakes, wetlands, ponds, small natural water basins, etc.). It covers samples taken from depth, as well as from the surface of the water: *purpose, scope and tasks*, responsibilities, *method of work and guidance for the sampling* (The open bottle is dipped below the surface of the water until it reaches a depth of 25 cm. If the water has small depth, it should be ensured that the sample will not be contaminated by the sediment from the bottom, in most cases the bottle should be filled right up to the top to exclude the presence of air; when the bottle is filled as needed, it is removed from the water and the cover is safely screwed in. If storage / preserving agents are present, care must be taken that the bottle is not clogged and avoid any contamination in the flow of water. The bottle is closed and indicated), *Operational technical equipment*, *Obstacles and potential problems*, *Sampling procedure or sample*, *Site selection*, *Preserving and preserving agents*, *Decontamination*, *Safety at work*, and finally *Quality control*.

5. CONCLUSION

From all of the above, we can conclude that human innovation and ingenuity lead to far-reaching consequences on the environment, nature, directly affecting all ecosystems, and thus lead to an increase in environmental crimes. In order to prevent ecological crime, knowledge of the natural laws and legal regulations is required. Environmental crime covers all criminal offenses incriminated in our penal code, but of course at the same time, includes violations in the field of environmental protection. It can also be concluded that ecological crime accounts for a prominent place in the total "Dark Number" of crimes.

In order to avoid the rapid change of the situation on the site, conditioned by many factors, as a consequence of which, there may be a loss of the existing traces and crime objects, which makes it difficult to secure the number and quality of material evidence, it may be freely concluded that in this case it is necessary to apply situational expertise in the dynamic phase in order to avoid the information deficit.

The criminalist specialist, in our case the Situation analyst, in the phase of processing the environmental crime scene should first determine the "ecological dimension" of the criminal act, but since it is usual that in the case of ecological crimes, site processing is carried out on large surfaces, it can be concluded that the situation analyst should engage a sufficient number of members and the large area is divided into sectors, which are later processed according to the helix that is narrowed if the center of the crime becomes more difficult to find. However, if the

crime site has a pointed straightforward configuration in one direction only, then the Situatiion analyst decides on linear processing.

It may be concluded that sampling is of great importance in situational expertise, hence it should be performed correctly, following the usual Standard Operating Procedures and the Rulebook on Sampling which prescribe the sampling methods and techniques that the Situation analyst uses to obtain quality material evidence of the pollution or the criminal act. Of course, it should be taken into account that in the surface water sample, there is a difference between sampling from flowing and standing water bodies, while in air sampling the difference is whether we sample in open or closed areas; in the soil it is important to carry out the sampling at the center of pollution.

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UDK:

CHARACTERISTICS IN INVESTIGATING AND PROVING ROBBERIES

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Robberies are one of the most serious property crimes, since they involve the use of coercion in order to deprive the victim of his/her valuables and gain unlawful material profit. Besides property damage, the social danger of robberies is also reflected in the fact that the use of coercion can cause serious consequences for the victim.

Investigating and proving robberies is conditioned by their criminological and criminalistic characteristics, which are manifested by the personalities of the robbers, the objects of the attack, as well as the manner and means of committing the robberies. Certain actions for proving guilt, such as the identification of a robber by a victim or a witness, have limited use in robberies, since the use of force or intimidation of the victim or witness can lead to a state of intense stress, which affects their abilities to notice and remember the physical appearance of the offender. Therefore, material evidence is crucial in proving this crime, which requires meticulous crime scene investigation and certain types of expertise, especially DNA and fingerprint expertise, along with anthropometric and comparative expertise.

Keywords: *robberies, investigation, proving, robbers, victims, evidence*

1. INTRODUCTION

Violent property crimes, such as robbery, traditionally arouse great public attention because of the fact that the object of attack is a human being. In addition, the frequency and variety of their manifestations, the severity of the consequences thereof, and the manner and means used in their execution, categorize them into offences with a high degree of social danger.

Given that robberies can be committed both in an open and enclosed space, no one is fully protected from becoming a victim of robbery under some circumstances. In addition to the particularly vulnerable categories, such as the elderly, children and women, young men can also become victims of robberies and the place of commission may even be the living space of the victims in which they feel safe and protected. Another troublesome fact is that use of firearms as a means

of commission of robberies is increasingly frequent, which can lead to serious injuries of the victims (Kolarević, Paunović, 2017: 160).

The manner of commission of robberies often involves a violent and sudden attack on the victim that leads to a state of great fear and shock, disabling the victim to identify or recognize the robbers. As putting on a mask is one of the most common preparatory actions of the robbers, the possibility of identification by the victims and witnesses is further limited, which causes difficulties in investigating and proving the robberies, especially in case of absence of material evidence. Therefore, material evidence is crucial in investigating and proving robberies, which implies the necessity of professional and quality crime scene investigation.

Robberies are a complex crime which demands specialized investigators with great knowledge of investigating and proving tools and techniques, especially with the ability to use an indicative method and adequate analysis of all the elements of this offense (Marinković, Lajić, 2019). Police officers who are the first to arrive to the crime scene must be trained to collect relevant information from the victims as soon as possible and to identify potential witnesses, as well as to keep the crime scene in an unchanged state until the arrival of the crime scene investigators. Since the main goal of the robbers is confiscation of movable property of the victims, searching the apartment and other premises that have been used by the suspect and temporary seizure of found items are very important proving actions in any investigation of the robberies, along with various types of expertise of traces and items that are related to this crime. In accordance with the principle of persistence, such proving actions must be taken even in cases when a long period of time has passed from the execution of robbery until the moment of identifying the perpetrator.

2. THE FIRST MEASURES WITHIN THE OPERATIVE PROCEDURE IN THE INVESTIGATION OF ROBBERIES

The most common way of receiving information that a robbery has been committed is the report of the victims, primarily by telephone, so there is an urgent need for the police dispatchers to find out the initial information about the crime, such as: the exact location where the robbery was committed, the description of the perpetrator, the amount of property damage and the possible existence of injured persons. The criminal act of robbery is treated by the police as an event that requires urgent action, and therefore, in the shortest possible time, the available patrols are referred to the potential crime scene. The initial interview with the victim must be primarily focused on giving details related to the description of the perpetrator, the means the offender used to commit the robbery and the direction of escape along with the description of the transportation vehicle. After collecting the initial information from the victim, the Emergency Service of the competent police station through its means of communication notifies all police patrols of the event and refers them to the crime scene. If the robbery is reported immediately after its commission, the possibility of the police officers to capture the perpetrator increases.

One of the most important tasks of the police officers who respond first to the scene is to secure the crime scene. The police officers must treat every place of the scene as a potential place of commission of the crime, assuming that the offense continues, until it is determined differently, so the priority must be safety of all present persons (U.S. Department of Justice: Office of Justice Programs, National Institute of Justice, 2010). Police officers must identify the victims and potential witnesses and collect information such as: the number of perpetrators and their physical appearance - gender, age, body constitution, clothing and footwear; the means of execution and masking, but also the specifics, such as the way of walking and talking; the type and severity of material damage, especially if the seized items have characteristics that distinguish them from other, similar items (e.g. banknotes with marked serial numbers, jewelry, etc.). In case the perpetrator uses a vehicle, important information includes: the model and make of the vehicle, its color and registration number and the number of accomplices in the vehicle. Police officers are obliged to identify and temporarily retain all persons who were presented at the crime scene, in order to provide statements of any potential witnesses. All information must be communicated to the Police Emergency Service and the other field patrols, which can block the narrower and wider crime scene and the police officers will stop every vehicle or person that corresponds to the description of the perpetrator. Such actions, if taken timely, may result in the discovery of the perpetrators or the items that they discarded during the escape.

As part of the crime scene processing, it is important to find all the items and traces that can serve as evidence in the criminal procedure and to protect them from changes, damages or contamination (Žarković, 2005). The most important are the means used for committing the robbery, the items related to the crime and the items which indicate the identity of the offender and his activities at the crime scene, especially fingerprints of the offender that are found at the crime scene, the victim or items from the crime scene. In addition, footwear traces and blood traces have great relevance, especially in case when the victim puts up active resistance, inflicting thus injuries to the offender. All traces of biological origin must be adequately protected and packaged, because only proper handling and storage of this type of traces can enable DNA analysis.

3. SEARCH AND TEMPORARY SEIZURE OF ITEMS

The search of the apartment and other premises and persons is one of the investigation actions that significantly restrict human rights, especially the measure of procedural coercion that is undertaken in order to obtain items and traces that can be used in determining facts important for the criminal proceedings (Žarković, Kesić, 2019). In criminalistics practice, the search is one of the most common actions in the investigation of robberies, due to the fact that the victim is deprived of movable property, and that the perpetrator uses the appropriate means for committing the crime, which can be found in the possession of the suspect, in his apartment or other premises he uses.

The significance of the search action is increased if it is carried out immediately after the robbery, because there is a probability that the perpetrator has not transferred, discarded or dismantled the items and traces related to the robbery. In some cases, the public prosecutor takes into account the period of time that has elapsed from the actual commission of the robbery when deciding upon the police request for conducting a search. However, both police officers and the public prosecutor must be aware that, even after a prolonged period of time from the commission of the robbery, there is a possibility for finding relevant items and traces (for example, there is less probability for finding a money and other valuables that the perpetrator had taken away, but clothes and footwear and other means used by the perpetrator for masking or as a means of commission can be found).

Before conducting a search, police officers must be familiar with the characteristics of the suspect: with the crimes he has previously committed, whether he has a tendency towards violent behavior and resistance, as well as with the characteristic of the case, especially with the manner and means of committing the robbery, the nature and characteristics of the seized items, the clothes and shoes which the perpetrator wore during the execution of the offense, and all other facts that may be of importance during the search. The search of the apartment and other premises should be performed in a certain order, from room to room and police officers must be careful in conducting then search, because items and traces can often be found in hidden places.

In case of finding an item that can be evidence in court, it is necessary to show it to the witnesses, as well as the place where it was found. All seized items must be described in the search report, together with a certification of the temporarily seized items which must be handed over to the actual owner. In practice, police officers only enumerate the seized items in the search report, without specifying their characteristics, and then describe them in more detail in the certification. It is a negative practice, because the seized items must be described in the same way in the search report as well as in the certification, because they conduct two separate investigation actions that must be documented on different types of forms. Furthermore, it is necessary to appoint one police officer who will make the search report, and who will not actively participate during the search. In case of finding and confiscating the items, it is desirable that the clerk, as well as the witnesses, see the items and the place where they were found in person, because of the reasons of later testimony in court.

Temporary seizure of items is an action for proving guilt that is most often carried out along with the search of the apartment and other premises of the suspect. In case of robbery, the most frequently seized items are those used or obtained through the commission – primarily the means of commission (e.g. weapons or other dangerous means), clothing and footwear worn by the perpetrator during the commission of the offense, the vehicle used for arriving at and leaving the crime scene, the mobile phone with a corresponding card used in the period before, during and after the robbery, as well as all other items which must be

confiscated according to the Criminal Code or items that can be used as evidence in the criminal procedure.

4. EXPERTISE AS AN ACTION IN PROVING A ROBBERY

Robbery is a violent property crime, since the perpetrator deprives movable property by use of threat or force directed to threaten the life or body of the property holder. In practice, robbers, beside verbal threats, also use different types of weapons and tools to intimidate victims and to force them to surrender their property. Robbers often use firearms that are not in their legal possession when carrying out the robberies, which is why the ballistic expertise has a great significance in investigating and proving robberies, especially in cases where weapons, missiles or shells are found at the crime scene. Ballistic expertise will determine whether the found weapon is technically correct and functional for use and whether that weapon was fired (Bjelovuk, 2016). In case that only missiles or shells are found at the crime scene, after finding the weapon, expertise will determine whether the found missiles or shells were fired from it. Ballistic expertise can also determine the ballistic paths of the projectile, the distance between the victim and the perpetrator and their position at the moment of firing. In case that the robber is found and arrested immediately after the commission of the crime, the traces of gunpowder which remain on the hands of the robber after firing bear great significance.

In case of finding traces containing biological material, biological expertise will be conducted and the most reliable method of identifying the perpetrator is the DNA analysis, which uses genetic markers as a criterion for distinguishing persons. At the crime scene, criminal technicians can find biological traces such as: blood, saliva, hair and tissue on the victim’s body or clothes and on the items found at the crime scene. In order to create preconditions for biological expertise, all biological traces must be adequately fixed and extracted from the scene, and then compared with the DNA profiles of the person whose identity is known. Criminal identification methods based on DNA profiling provide outstanding opportunities in investigating and proving robberies (Zdravković, 2012). Beside DNA profiling, one of the most used methods for identifying the robbers is identification based on the fingerprints found at the crime scene, especially considering the fact that the base of fingerprints is larger and more complete com[pared to the base of DNA profiles and that the expertise is simpler and cheaper.

Anthropometric and comparative expertise also has significance, since the commission of the robbery is often documented with video surveillance recordings. Investigators must check the existence of video surveillance in the object where the robbery was committed, and send the footage to the photo laboratory in which the photographs of the robbers will be made. In case of identification, the robber must be forensically registered, and his photographs can be compared with the photographs made from the video surveillance recording. In cases when the perpetrator is masked, his height and body constitution are of particular importance (Marinković, Lajić, 2019: 197). In case of finding clothing and footwear worn by

the robber during the commission, these items must also undergo expert examination.

In case where the robber uses a vehicle to arrive to and leave the scene, an expertise will be carried out, because biological traces of the robber and any accomplices may be found in the vehicle. Also, investigators can request an expertise which will determine whether any tire traces found on the scene correspond with possible tire damage on the vehicle that has been confiscated from the robber or his accomplices and whether the characteristics of the vehicles observed on the video surveillance (e.g. model, type, registration marks, visible damage, etc.) correspond with the characteristics of the confiscated vehicle.

5. EYEWITNESS IDENTIFICATION PROCEDURE

Robbery is a criminal offense that involves direct confrontation between the perpetrator and the victim and investigators use an identification procedure to test a victim's or witness' ability to identify the suspect as the perpetrator, especially in cases where robbers do not wear a mask or are insufficiently masked, so the victim or the witness are able to see his physical features. However, this action of proving guilt has its limitations because of the psychological state of the victim during the commission of the crime, which is characterized by great fear for his/her own life, shock and emotional excitement. Therefore, the victim is sometimes unable to describe the physical appearance of the perpetrator. The same problem occurs with the person who has testified the crime, especially if it involved a serious bodily injury or death of a person.

The eyewitness identification procedure is an extremely stressful situation for witnesses, because of the repeated confrontation with the perpetrator. For these reasons, it is necessary that investigator explains all the details relevant for the procedure of identifying the perpetrator, with the emphasis on the fact that the perpetrator cannot see the witness during the recognition. One of the most important tasks in conducting a recognition action is to form the line-up – the persons placed in line with the perpetrator must correspond with the description given by the witness, which increases the possibility of true identification. Also, the suspect deserves impartial recognition, in the sense that he does not differ in any way from the innocent persons (e.g., if a suspect has red hair, all other persons in the line-up must be redheaded) and the investigator must emphasize to the witness that if he cannot remember the perpetrator's physical appearance or he cannot confirm with certainty that the suspect is the person in the police line-up, he can freely declare that without hesitation (Baić, 2018). In order to ensure evidence, it is necessary that the public prosecutor is present, and it is desirable to ensure the presence of the suspect's attorney during the recognition phase, in order to prevent any later remarks by the defense attorney on the recognition in the criminal proceedings.

All persons in the police line-up receive instructions on how to behave and must follow the instructions of the police officer who is on the other side with the victim - for example, the victim may ask to see the faces in a profile or to utter the

words spoken by the perpetrator during the robbery. The line-up usually consists of 5 to 7 persons, so that the eyewitness can have all the faces in his/her field of vision. Recognition can be repeated, with people changing their positions in turn, after which the police officer asks the eyewitness if he/she recognizes the suspect with certainty or with a certain degree of probability. In an ideal case, the eyewitness will recognize a certain person as the perpetrator of the robbery with a confidence of 100 percent. After the recognition has been completed, the police officer will make a record, which will be signed by all present persons.

In addition to person recognition, there is a procedure for identifying the items, which implies that the victim or witness first describes the characteristics of the item, after which the police officer presents to him the disputable item together with other unknown items with similar characteristics to those previously described. In cases of robbery, the identification of the items is most often performed by the victims, who know well the characteristics of the items that had been in their possession for a certain period of time (Žarković, Ivanović, 2017: 340), which is the reason why the recognition process is much simpler than the recognition of the perpetrator whom the victim perceived at the moment of the robbery.

6. HEARING THE SUSPECT AS AN ACTION OF PROVING GUILT

The statement of the suspect as an action of proving guilt is a type of personal evidence, since the source of the facts is the person who directly observes or finds out the facts using his own senses (Jovašević, 2006: 274). According to the provisions of the Code of Criminal Procedure in the Republic of Serbia, a hearing of the suspect is allowed in the investigation (Ivanović, Baić, 2016), whereby certain conditions are required to make the suspect's statement a proof in the criminal proceedings (Article 289).

In the process of investigating a robbery, in addition to the situation in which the investigators invite a person as a suspect for the purpose of his hearing, it is not a rare situation in which certain persons are invited as citizens who may have information about the committed robbery, and during the interview they are suspected about being involved in the crime. Such persons may, through their behavior or statements, disagree with the established facts or raise the suspicion of the police officers. The police officers may invite a person to take a polygraph testing to determine the relationship of that person with the robbery, and the refusal to take the polygraph testing may cause a certain degree of suspicion. There are also rare situations in which a person voluntarily agrees to take a polygraph test, believing that he is able to manipulate his own reactions, which is clearly shown on the obtained results. Faced with the fact that polygraph test has shown his deception, or that it has shown a reaction to certain relevant issues related to the robbery, the person may decide to admit his involvement in the commission of the robbery or to point out to another involved person. In case the person is not the direct perpetrator of the robbery, but an accomplice, he/she develops a growing

interest and motivation to provide all the requested information in order to reduce his/her participation in the criminal offense.

The hearing of a suspect in the investigation phase requires the consent of the suspect and his/her testimony must be given in the presence of his/her attorney, respecting all the rights that belong to him/her as the defendant. A public prosecutor can attend a hearing, but he can also entrust the hearing to the police officers, who will deliver a record of the hearing without delay. In this case, the record of the hearing may be used as evidence in criminal proceedings.

7. CONCLUSION

Investigating and proving robberies is accompanied by numerous difficulties that arise from the very nature of this crime. Unlike other property crimes, such as fraud, extortion or blackmail, in which the identification of persons and items is significantly simpler, in cases of robbery, a certain number of victims are unable to provide an adequate description of the robber, and recognize him as the perpetrator. A quick and sudden attack on the victim and the masking of perpetrators are factors that influence the ability to use the recognition of a person as an action for proving guilt, which emphasizes the importance of material evidence, the need for quality crime scene processing and undertaking appropriate expertise.

DNA analyses and fingerprint identification are one of the most important expert examinations in resolving and proving robberies. One of the problems which are encountered in practice is the lack of a unique DNA database of crime perpetrators, so after finding biological material and making a DNA profile thereby, they must be checked through a DNA database of three institutions: the Faculty of Biology in Belgrade, the National Criminal Technical Center at the Ministry of Interior of the Republic of Serbia and the Forensic Medicine Institute. Another problem occurs with the material and technical capabilities of these institutions which perform DNA analysis for the most serious crimes committed on the territory of the Republic of Serbia.

Numerous difficulties also arise in the hearing of the suspect and obtaining his statement in which he confesses his involvement in the robbery, bearing in mind that the penalty for the commission of the basic form of this offense is two to ten years. One of the possibilities for which the suspects are interested is signing a settlement with the public prosecutor in exchange for mitigation of the sentence. In some cases, the suspect is interested in confessing his guilt if he receives confirmation from the prosecutor that after the hearing he will not be detained and he will have the possibility to defend himself in the criminal proceedings as a free person.

Bearing in mind the complexity of investigating and proving robberies, enormous effort and knowledge of police officers is required, as well as the respect of all criminal and procedural rules. Identifying the perpetrator is just one of the

tasks of the police in achieving the ultimate goal, which is to prove this criminal offense in criminal proceedings and bring justice to the perpetrator.

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UDK:

NIKOLA TESLA`S TELEGEODYNAMICS MORAL AND SECURITY ASPECTS

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Abstract

It is well known that *geophysics* is a subject of natural science concerned with the physical processes and properties of the Earth and its surrounding space environment.

The subject of this research is the so-called Nikola Tesla`s TELEGEODYNAMICS (the mechanical earth-resonance concept) and Tesla's inventions in that field. This technology has its roots back to an earlier and tremendously productive decade in Tesla's life, beginning in the early 1890s.
For the purposes of this research, the method of content analysis will be used as the main method.

The authors of this paper intend to explain the moral and security aspects of the so-called geophysical weapons and the technology that was developed by Nikola Tesla a century ago.

Key words: *Nikola Tesla, telegeodynamics, earthquake machine, geophysical weapons, security aspects.*

1. INTRODUCTION

The achievements of Nikola Tesla in the field of science are undisputed. One such achievement is *telegeodynamics*, the mechanical earth-resonance concept. This coin was determined personally by Tesla. There is much research on this concept, and nowadays the term "tectonic weapons" is also commonly used.

This discovery of Nikola Tesla among others is inherently morally neutral. It depends on the scientists, for what purposes it will be used. This technology is strictly used for malicious purposes. Besides the morality, security aspects are also important here. This paper presents the concept that Tesla presented as well as the motive why it should have been applied as such.

Therefore, the main hypothesis for the purposes of this paper will be: if the concept of telegeodynamics is used for malicious purposes, it is a real threat to security in general.

2. HISTORICAL BACKGROUND

A "tectonic weapon" is a device or a system which could create volcanic eruptions, earthquakes, or similar events by interference with the earth's geological processes. Such weapons are a source of concern in official circles. For example, US Secretary of Defense William S. Cohen, on 28 April 1997 at the Conference on Terrorism, Weapons of Mass Destruction, and US Strategy, University of Georgia, while discussing the dangers of false threats, said: "Others are engaging even in an eco-type of terrorism whereby they can alter the climate, set off earthquakes or volcanoes remotely through the use of electromagnetic waves" (Federation of American Scientists, 1997).

The 1978 Convention on Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques is an international treaty that prohibits the use of environmental modification techniques. By this Convention, each State Party expresses commitment not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage, or injury to any other State Party (UN, 1977:4).

The treaty created a list of phenomena that could result from the use of this climate weapons, such as:

- hurricanes, earthquakes, and tsunamis;
- an upset in the ecological balance of a region;
- changes in weather patterns - clouds, precipitation, cyclones, and tornadic storms;
- changes in climate patterns;
- changes in ozone currents;
- changes in the state of the ozone layer; and
- changes in the state of the ionosphere (Advisory Service on International Humanitarian Law, 2003).

2.1 Nikola Tesla`s TELEGEODYNAMICS

Tesla`s *earthquake machine* is a mechanical oscillator which is basically a machine that produces vibrations (Abramović, 2015:113; 2016:149). By producing these vibrations, a machine could be made to resonate with different structures. The oscillator machine is based on the principle that every substance, when stimulated, has a resonant frequency. If the frequency is matched and amplified by external force (such as the oscillator machine) any material can be literary shaken to pieces.

For example, to demonstrate the power of resonance, we can take a wine glass and pull it down with an object as it vibrates to its braking point. Next to it, we can set a microphone connected to an oscilloscope to see what frequency the glass vibrates at. Then we will set that frequency on the signal generator which is going to play it back to an amplifier into a speaker. As the vibrations increase intensity, the glass will start to shake more and more and eventually, as we turn up the volume, the glass will break. This is like a mini earthquake. And Tesla`s earthquake machine could to do this, but on a much larger scale.

Nikola Tesla revealed that an earthquake which drew police and ambulances to the region of his laboratory at 48 E. Houston St., New York, in 1898, was the result of a little machine he was experimenting with at the time which "you could put in your overcoat pocket". Tesla said: *"I was experimenting with vibrations. I had one of my machines going and I wanted to see if I could get it in tune with the vibration of the building. I put it up notch after notch. There was a peculiar cracking sound. I asked my assistants where the sound came from. They did not know. I put the machine up a few more notches. There was a louder cracking sound. I knew I was approaching the vibration of the steel building. I pushed the machine a little higher. Suddenly all the heavy machinery in the place was flying around. I grabbed a hammer and broke the machine. The building would have been about our ears in another few minutes. Outside in the street there was pandemonium. The police and ambulances arrived. I told my assistants to say nothing. We told the police it must have been an earthquake. That was all they ever knew about it"* (Inventions & Experiments / Electro-mechanical oscillator & Tesla's Earthquake Machine).

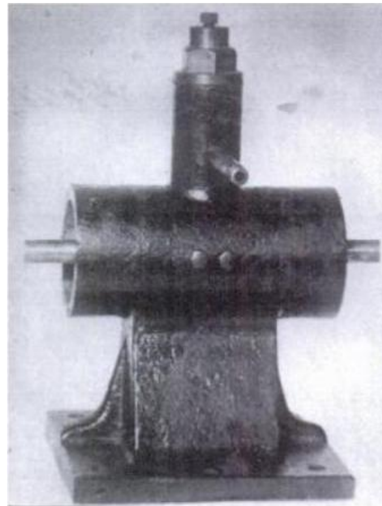
Picture No.1.This is a mechanical oscillator designed by Nikola Tesla. By experimenting with this oscillator in 1898, he inadvertently caused an earthquake in Downtown Manhattan.

Source: https://teslaresearch.jimdo.com/oscilators/mechanical-oscilator/.

Some reporter asked Tesla at this point what he would need to destroy the Empire State Building and he replied: *"Vibration will do anything. It would only be necessary to step up the vibrations of the machine to fit the natural vibration of the building and the building would come crashing down. That is why soldiers break step crossing a bridge"* (Inventions & Experiments / Electro-mechanical oscillator & Tesla's Earthquake Machine).

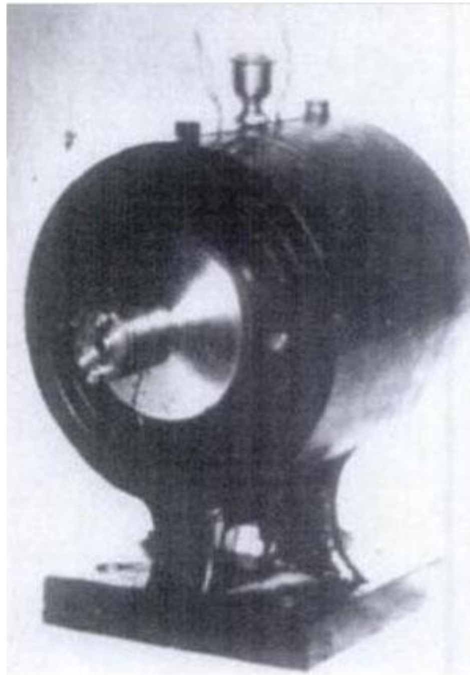
Tesla's mechanical power transmission system, which he called the "art of telegeodynamics", was based primarily upon his reciprocating engine invention, US patent No.514,169 - Reciprocating Engine from February 6, 1894. The electromechanical oscillator was originally designed as a source of isochronous (frequency stable), alternating electric current used with both wireless transmitting and receiving apparatus. In the dynamical system theory, an oscillator is called isochronous if the frequency is independent of its amplitude. An electromechanical device runs at the same rate regardless of changes in its drive force, so it maintains a constant frequency in hertz.

Picture No.2.Simple mechanical oscillator used in first experiments - Original reciprocating steam engine, latter fitted with coils and magnetic fields to produce currents of precisely constant frequency.



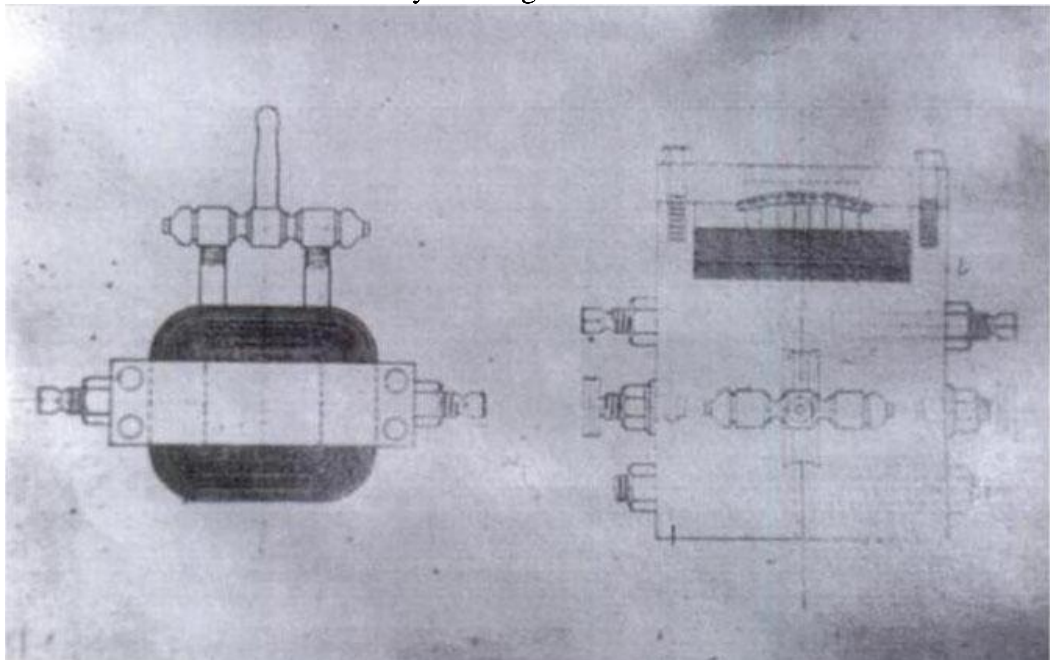
Source: https://teslaresearch.jimdo.com/oscilators/mechanical-oscilator/.

Picture No.3.Another type of mechanical electromechanically controlled mechanical oscillator.



Source: https://teslaresearch.jimdo.com/oscilators/mechanical-oscilator/.

Picture No.4. Diagrammatic representation of small high frequency mechanical and electrical oscillator used in many investigations.



Source: https://teslaresearch.jimdo.com/oscilators/mechanical-oscilator/.

This drawing - Picture No.4, shows the construction in detail. Here is the field coil, and here are conductors in the intense field, the valves for air supply, and the stops for limiting vibration. The stronger the field was excited, the stronger the vibration became, but just the same, while the amplitude changed, the isochronism was not disturbed. Tesla wanted to explain why these machines were also the means of obtaining the best results in the wireless work. The machine at the Houston Street laboratory with which Tesla could obtain any difference of phase, as well as that machine at 35 South Fifth Avenue, both were the means of running a motor in perfect isochronism. That is, if we connect a synchronous motor to these machines and drove it with currents of a different phase, we obtained an absolutely uniform rotation, constant in time, and when we connect this motor directly to an alternator, we obtain from the latter currents of absolutely constant frequency, all the more readily as we tune the circuit of the alternator to the same frequency (Inventions & Experiments / Electro-mechanical oscillator & Tesla's Earthquake Machine).

John O'Neill in his book - *"Prodigal Genius: The Life and Times of Nikola Tesla",* says:

> "Telegeodynamics is the transmission of sonic or acoustic vibrations, which can be produced with comparatively simple apparatus. There is of course much sonic equipment available now for different applications, but this has little or nothing to do with Nikola Tesla's oscillator-generator. What Tesla proposed represents a new technology in sonic transmission even today. In Tesla's oscillator-generator, a resonance effect can be observed. Since resonance seems to be an ever-increasing effect with this oscillator-generator, it can be concluded that there must be a great source of energy available through it. Why can a resonance be created in the oscillator-generator when it cannot be created in an ordinary reciprocating engine? With the oscillator-generator, all governing mechanisms are eliminated. On the other hand, consider the car engine. Starting with the cylinder, a reciprocating motion is converted into rotary motion by a means of shafts, cranks, gears, drivetrains, transmissions, etc. These parts all consume work by friction, but the greatest loss occurs in the change from reciprocating to rotary motion. At each point every varying inclination of the crank and pistons work at a disadvantage and result in a loss of efficiency. In Tesla's oscillator-generator, the piston is entirely free to move as the medium impels it without having to encounter and overcome the inertia of a moving system and in this respect the two types of engines differ radically and essentially. This type of engine, under the influence of an applied force such as the

> tension of compressed air, steam, or other gases under pressure, yields an oscillation of a constant period. The objective of the Tesla oscillator-generator is to provide a mechanism capable of converting the energy of compressed gas or steam into mechanical power. Since the oscillator-generator is denuded of all governing devices, friction is almost non-existent. In other words, the piston floats freely in air and is capable of converting all pressure into mechanical energy. Our objective in building the engine is to provide an oscillator which, under the influence of an applied force such as the elastic tension of a gas under pressure, will yield an oscillating movement which will, within very wide limits, be of constant period, irrespective of variation of load, frictional losses, and other factors which in ordinary engines change in the rate of reciprocating. It is a well-known principle that if a spring possessing a sensible inertia is brought under tension, i.e., being stretched, and then freed, it will perform vibrations which are isochronous. As far as the period in general is concerned, it will depend on the rigidity of the spring, and its own inertia or that of the system of which it may form an immediate part. This is known as Simple Harmonic Motion. This simple harmonic motion in the form of isochronous sound vibrations can be impressed upon the earth, causing the propagation of corresponding rhythmical disturbances through the same which pass through its remotest boundaries without attenuation so that the transmission is affected with an efficiency of one hundred percent (1944; Nikola Tesla Mechanical Oscillator;).

Margaret Cheney in her book – *"Tesla: Man Out of Time"*, is writing some details about the following subject. In her book she writes:

> "He attached an oscillator no larger than an alarm clock to a steel link 2 feet long and 2 inches thick. For a long time nothing happened, but at last the great steel link began to tremble, increased its trembling until it dilated and contracted like a beating heart, and finally broke. Sledgehammers could not have done it", he told a reporter, "crowbars could not have done it, but a fusillade of taps, no one of which would have harmed a baby, did it."
>
> Pleased with this beginning, he put the little oscillator in his coat pocket. Finding a half-built steel building in the Wall Street district, 10 stories high with nothing up but the steelwork, he clamped the oscillator to one of the beams. "In a few minutes I could feel the beam

> trembling. Gradually the trembling increased in intensity and extended throughout the whole great mass of steel. Finally, the structure began to creak and weave, and the steelworkers came to the ground panic-stricken, believing that there had been an earthquake. Before anything serious happened, I took off the oscillator, put it in my pocket, and went away. But if I had kept on 10 minutes more, I could have laid that building flat in the street. And with the same oscillator I could drop Brooklyn Bridge in less than an hour."

The main patents of Nikola Tesla for this technology are the US Patent # 514,169 - Reciprocating Engine, US Patent # 517,900 - Steam Engine and the US Patent # 511916 - Electric Generator (The U.S. Patents of Nikola Tesla, No d).

3. LUMINOUS EFFECTS OF TECTONIC AND IONOSPHERIC ACTIVITY – possible experiments with the advanced Tesla technology

A surge in tectonic activity may produce various optical effects in the atmosphere: luminous columns, stripes, lightnings, flame, glowing sky, etc. During Matsushiro moderate earthquake's swarm in mid-1960s earthquake lights were pictured the first times. Below is a photo of stable glow (which lasted for 96 seconds) taken on September 26, 1966 (Ol'khovatov, No.d, 46).

Picture No.5.Ionospheric reactions – luminous effects.

Source: http://olkhov.narod.ru/tunguska.htm.

On April 22, 1974 immediately before the earthquake hit Kiangsu province in China, people saw a bright streak of light in the sky. Sparkling and glittering with the "lightnings" dancing across it, it proceeded from southwest to northeast. The spectacle went on for some 3-4 seconds. In another Chinese province,

Liaoning, fiery columns and balls flashed up in the sky on February 4, 1975, and a "flame" shot up toward the sky at the time of the earthquake. The precursors of the Tangshang earthquake in the Chinese province of Hopeh on July 28, 1976, were revealing in a way. About half an hour before the disaster, a bright flickering light was spotted in the distance. Instantly, it was transformed from red to silvery blue, and then lengthened into a blinding white strip that darted across the sky and went out immediately. The eyewitnesses had the impression of a nuclear explosion. At the time of the earthquake an engine driver saw a lightning in the form of 3 blinding light beams, which were followed by 3 mushroom-shaped smoke columns. (Ol'khovatov, No.d 46-47).

The 2017 Chiapas earthquake struck at 23:49 CDT on September 7th (local time; 04:49 on the 8th UTC) in the Gulf of Tehuantepec off the southern coast of Mexico, near the state of Chiapas, approximately 87 kilometers (54 mi) southwest of Pijijiapan (alternately, 101 kilometers (63 mi) south-southwest of Tres Picos), with a Mercalli intensity of IX (*Violent*). The magnitude was estimated to be M_w 8.2. Another one, a week later happened in Central Mexico. An earthquake struck at 13:14 CDT (18:14 UTC) on 19 September 2017 with an estimated magnitude of M_w 7.1 and strong shaking for about 20 seconds. Its epicenter was about 55 km (34 mi) south of the city of Puebla. The quake coincidentally occurred on the 32nd anniversary of the 1985 Mexico City earthquake, which killed around 10,000 people. The 1985 quake was commemorated, and a national earthquake drill was held, at 11 a.m. local time, just two hours before the 2016 earthquake. The 1985 Mexico City earthquake struck in the early morning of 19 September at 07:17:50 (CST) with a moment magnitude of 8.0 and a Mercalli intensity of IX (*Violent*).

Strange phenomena happened there. During the earthquake a light appeared in the sky that looked like a lightning storm, but it was not. They looked just like the earthquake in Matsushiro on September 26, 1966. These lights we can see on the next two pictures:

Picture No.6. Earthquake lights in sky over Mexico City from M_w 8.2 Magnitude earthquake in Mapastepec, Chiapas, September 7th 2017.

Source: https://www.youtube.com/watch?v=aY14QQBwPCs

Picture No.7. Earthquake lights in sky over Mexico City from M_w 8.2 magnitude earthquake in Mapastepec, Chiapas, September 7th 2017.

Source: https://www.youtube.com/watch?v=aY14QQBwPCs

Apart from this, unknown sounds have already been captured in various places around the World. These may be associated with atmospheric changes or low frequency acoustic emissions in the range from 20 to 100 Hz, modulated by ultra-low infrared waves of 0.1-15 Hz. The causes of their occurrence are different: earthquakes, volcanic eruptions, hurricanes, storms, and artificial interventions into the atmosphere or the earth's mantle. That kind of sounds were heard and filmed in

Slovakia on the same day when earthquake in Chipas happened (on that day was the earthquake in Mexico. After the earthquake was sounded this strange sound in Slovakia, 2017).

The strange thing is that the clouds had some strange unnatural formation. Interesting is the fact that a year ago, the same phenomenon was also seen and heard again. (Apocalyptic strange sound was heard again in Slovakia, 2016).

Picture No.8.Unntaural formations of the clouds over Slovakia.

Source: https://www.youtube.com/watch?v=k9VKbFu9Wz0

4. CONCLUSION

Undoubted is the role of Nikola Tesla in the discovery of this technological advancement. All of this information is in favor of the hypothesis. If the concept of telegeodynamics is used for malicious purposes, it is a real threat to security in general. Now it is the moment of morality which plays the main role in science. Tesla's idea was, with the help of this technology, in the event of an earthquake of great strength, to reduce it for example, from 8 M_w to 3 or 4 M_w, which would minimize the damages. But, this part of his philosophy was not taken into account.

The enhancement of his technology is a normal consequence. What Nikola Tesla did, was just the beginning of a new field in science. As for the earthquake light that occurs, this is the same light that Tesla created in July 1903 with the Wardenclyffe Tower on Long Island, New York. While he was testing the tower he "excited" the ionosphere. Although we do not have pictures of that time, we now know how it looked in 1903.

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UDK:

EXAMINATION OF A WITNESS, LEGAL AND PSYCHOLOGICAL ASPECTS

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Abstract

Testimony in criminal proceedings is a common duty of all persons. Testimony is an obligation;one cannot refuse to testify and sanctions are envisioned for rejection of this obligation. The duty of testimony implies the duty to respond to the call, the duty to take an oath, and the duty to give a full and true statement. It is not always easy to get a full and true statement. The examination of witnesses is a complex evidence action that implies knowledge of not only the legal basis, i.e., the procedural provisions governing the issue of testimony, but also the rules of crime tactics, and knowledge in the field of psychology is especially important. The authors will present the legal and psychological aspects of the examination of witnesses in this paper.

Keywords: *witnesses, examination, law, psychology.*

INTRODUCTION

Regardless of modern technologies and their contribution to the establishment of facts, witnesses continue to be indisputable evidence in criminal proceedings. There are a small number of criminal offenses that are committed without the presence or knowledge of third parties, especially today when we have an expansion of organized forms of crime, which involve the participation of a large number of persons in the commission of criminal offenses. The fact that these third parties are the main source of information about the criminal offense, in fact, shows the importance of witnesses and their statements in criminal proceedings.

In the doctrine it has been shown for a long time that witnesses are "eyes and ears" of justice (Bentham, 1823, according to Margarit, 2017). The basic criminal-tactical goals of successfully conducting a witness examination are composed of establishing mutual trust and cooperation between the examiners and the witnesses (Simonović, 2004: 158). The witness should be motivated by correct treatment and favorable psychological contact to cooperate in order to determine

the material truth, or to ensure a credible and complete statement. In order to fully examine the statement of the witness, among other things, it is necessary to assess the persons who may appear in the role of witnesses and to determine objective or subjective conditions that may influence the perception and memory of criminal facts or circumstances. Judicial practice has shown that these conditions are very important in the reconstruction of events (see more in Margarit, 2017).

The most important biological characteristics for the effect of the statement and the way in which the witness would react, originate from their age and gender (Grasberger, 1958: 217). For the purposes of this work, we will focus our attention on the special sensitivity of the witness due to their underage or overage. Witnesses who are particularly traumatized due to their personal characteristics and / or experience of the crime are particularly sensitive (Krapac, 2012). These are witnesses who are not objectively affected by the danger of the defendant or his associates, but regardless of the lack of risk of being threatened, particularly sensitive witnesses have a subjective sense of danger.

The answers to these and other questions of relevance to the proper way of examining the witnesses and assessing the credibility of witness statements in the proceedings are provided by the psychology of evidence, the field of judicial psychology that deals with the study of psychical processes involved in making and giving statement (Aleksić, Milovanović, 1993: 238). In the last two decades, the interest for knowledge in the field of experimental and general psychology has increased rapidly in the foreign judiciary, as it has been established that this knowledge helps the examiner to get a statement from the witness, which will give maximum effect (Clark, 2011).

LEGAL ASPECTS OF EXAMINATION OF THE WITNESS

The procedural and legal status of witnesses in criminal proceedings is determined by their rights and duties. As for the rights of the witness in criminal proceedings, there are rights that all witnesses have in the criminal proceedings (e.g. the right to compensation of travel expenses, the right to compensation for lost salaries, the right of witnesses to protection against insults, threats and other attacks, etc.) and the rights enjoyed by certain categories of witnesses, such as particularly sensitive witnesses, juvenile witnesses, potential witnesses. As for the duties of the witness, the witness is obliged to respond to the call, to take an oath, and to give a true and complete statement. Also, the witness is obliged to notify the court about the change of residence address. The duties of witnesses are aimed to obtain the testimony as good as possible, and if the witness fails to perform their duties without justified reasons, certain sanctions are foreseen for this. It is mostly a measure of forced detention and pecuniary punishment.

Procedural laws regulate the procedure of hearing of the witnesses consisting of three stages: the appearance of witnesses, their examination, and assessment of the statement. As for the appearance of witnesses, persons who are likely to be able to provide information about the criminal offense, the perpetrator

of the criminal offense, or other important circumstances are called for witnesses.[26] As for the examination of witnesses, as a rule, witnesses are interrogated verbally.[27] Before the examination, witnesses are acquainted with their rights and duties, as well as the consequences if they fail to perform their duties. After the general questions posed to the witness,[28] the witness is called to present everything that they know about the case. The subject of witness testimony is the sensory observation of a fact from the past that is important for criminal proceedings. In order to check, supplement, or clarify their testimony, the witness may be asked questions. When witnesses are children and juveniles, procedural laws always foresee special provisions and special rules of the examination. Regarding the assessment of the testimony of the witness, it is considered that "the assessment of the probative value of the statement of the witnesses is the most difficult of all assessments of the probative value of the actions of hearing. The basic problem in assessing the statement of witnesses is to determine to what extent the statement of witnesses on facts coincides with the actual situation" (Simović, 2005: 320).

The most common reasons for the incomplete statement of witnesses are mistakes in observation, memory shortcomings, own imagination of events, as well as errors in reasoning (Simović, 2005: 321, according to Krapac: 286). In addition to true statement, witnesses can also give false and misleading statements. A false statement is a statement that, motivated by personal interest, fear, etc., does not coincide with the actual event for reasons that depend on the consciousness and will of the witnesses. Misleading statement is also a statement that does not coincide with the actual event, but for reasons beyond the consciousness and the will of witnesses.

Misleading statement occurs due to errors in observation, memory and reproduction. Observation is the first basic element on which the testimony of witnesses depends. It depends on a number of factors, such as external ambient circumstances, professional knowledge, occupation, interest, as well as the age and the gender of the person who observes, or the ability of their senses. As for the memory, it also depends on different circumstances, on the strength of the stimulation of the senses, on the degree of attention, on the psychophysical condition of the person at the moment of observation. The reproduction of witness statements depends largely on the witnesses themselves, their ability to express, their expertise and education, as well as their will, desire and readiness to give a full and true statement (Kresoja, 2006: 272-275). When assessing the statement of

[26] This is a material requirement for the examination of witnesses. The second condition is of formal character, and it relates to the giving of a process initiative to call the person and to examine him as a witness.

[27] There are categories of witnesses that cannot be examined verbally, such as dumb and deaf people, and in their case there are special rules of examination.

[28] General questions relate to his personal information: the name and surname of the witness, the name of one parent, the date of birth, place of residence, address, occupation, as well as the relationship of the witness with the suspect / accused and the injured party.

the witness, it is firstly assessed whether the statement is true or false, and whether it is correct or wrong (Simović, 2009:398).

As for the probative value of the statement of the witness, one general conclusion cannot be drawn. It is clear that there are witnesses who provide valuable information for criminal proceedings, but the fact that the statements of some witnesses have no probative value should not be ignored. The Court, when assessing the statement of the witness, should use the knowledge acquired by judicial psychology. Procedural laws generally prescribe the general scope of the examination of witnesses, while the criminalistics of tactics and judicial psychology deal with specificity of taking statements from certain categories of witnesses. These sciences take particular account of the circumstances surrounding the personality of specific witnesses, beginning with age, gender, intellectual and psychological characteristics, etc. (Škulić, 2010: 227). Given the limited scope of work, we will limit our exposure to the cognitive specificities of particularly vulnerable witnesses, pre-school children and the elderly.

PSYCHOLOGICAL ASPECTS OF THE EXAMINATION OF THE WITNESS

When it comes to the psychological concept of the statement, in general and forensic psychology it is defined as conveying certain psychic content, which arise from the action of more complex and interrelated psychic processes: the process of observation, the memory process, the process of reproduction, and the process of thinking (Rot, 1983: 131) that intertwine each other and form a firm unity.

Examination of children. Knowing the functioning of the child's psychological apparatus is important for the proper assessment of the child's statement. The main difficulty in examination of small children is how to make them think on their own. Only with this it is possible to achieve that the children tell something about the controversial event (Grasberger, 1958: 219). Children are subject to suggestions and are often unable to distinguish between facts and fantasy. They can, without malice, be victims of sexual fantasies. Ceci and Bruk (Ceci & Bruk, 1993) found that there are significant differences when it comes to suggestiveness among children of different ages. Pre-school children are more susceptible to suggestive effects than older children or adults (Zorić, Mikuš, 2007, according to Milosavljević-Đukić, Tankosić, 2018). Suggestibility is especially emphasised if additional questions are imposed to the child due to the lack of connection in his story (Milosavljević-Đukić, Tankosić, 2018). A child does not understand abstract questions, and with each concretization of the question there is a growing danger of suggestion (Aćimović, 1987: 257). Even if children process large amounts of information, their testimony is of little use if their memories are subject to wrong impressions. Most psychologists agree that suggestibility decreases with age (Brkic, 2013).

The ability of a child to design a complex event and the order in space and time is critical (Melton 1981, according to Rozell, 1985). Children under the age of

eight have difficulty in accurately determining whether an event occurred in the past before or after some other event. According to some studies (Weiner & Hess, 1987) in which children aged 5 to 6 years were examined as witnesses, it was found that they were able to give fair answers to objective questions: e.g. "Did a man knock before he went inside?" or to recognize the face of a criminal. It should be borne in mind that children in that age use wrong terms, their language skills are very limited, they have no ability of thinking and making logical conclusions.

Unlike older children, younger children are naive and are not prone to personal calculations (Pejovic-Milovancevic, 2014, according to Milosavljevic-Djukic, Tankosic, 2018). “Children do not suppress the truth, because they are naïve; the fools do not suppress it, because they are reckless; and the mind under the influence of wine does not suppress it, because the suppressing mechanism of inhibition is temporarily paralysed by alcohol” (Münsterberg, 1908: 47). It is important to emphasize that younger children have no capacity to think of a detailed elaborate story (Milosavljević-Đukić, Tankosić, 2018).

Numerous psychological studies conducted on the adult population have shown that memory is actually a reconstruction, which would mean that children, even adults, interpret the past, correct themselves, add and delete information that does not fit into their perceptions of themselves and the world that surrounds them (Zorić, Mikuš, 2007, according to Milosavljević-Đukić, Tankosić, 2018). For example, victims of child abuse are often unable to recall the abusive event, especially if the abuser was a close relative rather than a stranger. However, Anderson (2001, according to Groome, 2004: 31–32) suggests that the phenomenon of repression (i.e. the selective forgetting of disturbing traumatic memories) could be explained by inhibitory mechanisms activated by the retrieval of competing memories, in accordance with the new theory of disuse. Further evidence for the high susceptibility of child witnesses to post-event contamination comes from a recent study by Poole and Lindsay (2001, according to Groome, 2004a:52), in which children aged 3–8 years took part in a science demonstration. The children then listened to parents reading a story that contained some events they had experienced and some that they had not. Subsequent testing revealed that many of the fictitious events were recalled as though they had been experienced. When the children were given instructions to think carefully about the source of their memories (known as “source monitoring”), some of the older children withdrew their incorrect reports, but this did not occur with the younger children in the sample. The authors concluded that the possibility of contamination from post-event information was a serious concern with very young child witnesses, who seem to have particular difficulty in monitoring the source of a memory trace (Groome, 2004a:52).

Kassin, Tubb, Hosch and Memon (2001, according to Groome, 2004a:53) carried out a survey of 64 experts on eyewitness testimony, and found that there was a clear consensus view (using a criterion of 80% of the experts being in agreement) that the contamination of testimony by post-event information, the importance of the wording of questions posed to witnesses, the influence of prior

attitudes and expectations on testimony, and the suggestibility of child witnesses were now supported by sufficient evidence to be presented in court as reliable phenomena.

Researchers are just beginning to understand the important individual differences in children's response to stressful events (Baker-Ward, Gordon & Merritt, 1993, according to Myers, Saywitz & Goodman, 1996). Several researchers studied children's memories for horrifying events such as witnessing homicides of loved ones, kidnappings, and sniper attacks on schools (Robert, Pynoos & Spencer, 1984, according to Myers, Saywitz & Goodman, 1996). As one would expect, children traumatized in these ways demonstrate both accuracies and inaccuracies of memory.

Children are not aware of the way in which their memory works, and their recording depends largely on the help of the person who talks to the child, because inadequate interview techniques are often the cause of contamination of children's statements (Ceci & Bruk, 1993).

Examination of elderly people. Ageing can be defined as a process of changes in the sense of decline, which is correlated with the flow of time, and becomes visible after maturity and inevitably ends with the death of the individual (Smiljanić, 1987, according to Brkić, 2013). One particular type of witness is a witness who belongs to a group of very old age (Grasberger, 1958). Due to individual differences in the pace of ageing, psychological age-related periodisation is difficult (Brkić, 2013: 195), so the beginning of ageing is associated with different years of life, 65, 70 or 75 years. Age is not the reason why a person would be excluded as a witness in advance, but it is the fact that has to be kept in mind when examining the witness, and assessing the credibility of their testimony. It is therefore necessary to know some of the specific features of those psychic functions of the elderly which are closely related to the giving of the statement. The most important of these functions are observation and memory (Brkic, 2013: 195).

Elderly people usually have reduced ability of observing in the first place. The visual acuity becomes significantly reduced, and the productivity of performances is no longer at an earlier level (Grasberger, 1958: 230). Elderly eyewitnesses are perceived similarly, in that they are viewed as honest yet having faulty memories (Ross et al., 1990, according to Bornstein, 1995). Elderly subjects are similarly disadvantaged when their memory for details is assessed with a recognition test employing a multiple-choice technique (e.g., “The assailant wore: (a) dark brown pants; (b) light blue pants; (c) blue jeans; (d) light brown pants”; taken from Yarmey & Kent, 1980, according to Bornstein, 1995). Their performance can be as good as younger subjects if a yes-no recognition test (e.g., “The assailant’s pants were dark brown-yes or no?”) is used (List, 1986, according to Bornstein, 1995), though they sometimes perform worse than young adults using this format as well (Loftus, Levidow, & Duensing, 1992, according to Bornstein, 1995). Due to the reduction of visual acuity and the adaptation to darkness in late years, it should be checked what was the light at the moment of perpetration and perception of the crime (Brkić, 2013).

People at a very old age in terms of memory seem to be very quivering (Grasberger, 1958: 232). Old witnesses make a greater number of mistakes when identifying innocent people as perpetrators. Although it is clearly less important to be able to identify a bystander correctly than the perpetrator, older subjects' inferior memory for bystanders can make them more likely to identify a bystander as the perpetrator (Yarmey, 1984, according to Bornstein, 1995), a potential error with very undesirable consequences. They are less confident in their memory and statement even when they give an accurate statement (Weiner & Hess, 1987). Accordingly, if the witness's ability to remember events and give verbal descriptions is emphasized, the senior eyewitness is likely to be less credible than a younger adult (Ross et al., 1990, according to Bornstein, 1995).

There are reasons to suspect that older adults would be highly suggestible as well. Lindsay (Lindsay & Johnson, 1989) has re-conceptualized the misinformation effect in terms of "source monitoring". When the witness then falsely remembers a piece of information as part of the event, rather than as a suggestion, he or she has committed a source monitoring error, which impairs the ability to remember the original event details correctly.

In addition to observation and memory, hearing in elderly people is not only reduced but, as a rule, weakened (Grasberger, 1958: 230). The trial experiment can be used to check even if the witness simulates deafness (for example, by suddenly dropping a heavy book on the floor, behind his back and monitoring his reaction).

It should be borne in mind that elderly people with impairments of certain sensory organs, nerve pathways, or nervous centers can compensate these deficiencies with greater support of other senses that are better preserved.

CONCLUSION

Examination of witnesses in criminal proceedings is a complex act requiring knowledge of not only procedural provisions, but also knowledge of criminalistics of tactics and psychology. There are general rules for the examination of witnesses that are generally applied to all witnesses, but there are also specific rules related to certain categories of witnesses. Since categorization of witnesses differs from law to law, we have not been guided by categories defined by procedural laws, but we have pointed out some specificities of examination of children and elderly people.

Nowadays, it is considered that, in terms of the credibility of the child's statement, no a-priori views should be taken: the child's statement should be evaluated for each case in particular, and we should be more cautious and more critical than usual (Brkić, 2013). It is important that professionals who talk to the child know and understand the child's perspective well, and that they can adapt to it (Srna, 2011: 23). It should be kept in mind that the child's examination is their choice, not the obligation (Milosavljević-Đukić, Tankosić, 2018).

The old person is the same as the child. Their statement, in principle, is neither accurate nor false. These statements, due to richer sources of error, only

require greater care and special precautions when using them (Grasberger, 1958: 232). Due to the increase in the share of the elderly in the total population, nowadays there is a greater likelihood of their appearance as a witness than it used to be (Brkic, 2013).

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UDK:

POLICE STRUCTURE MANAGEMENT THROUGH THE POLICE INTELLIGENCE MODEL

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Abstract

One of the conditions that need to be fulfilled by countres in process of joining the European union is the implementation of police intelligence model, as part of the negotiation Chapter 24. It is a brand new concept of management in Intelligence-led and planned operative policy. It is important to emphasize that the new concept is not intended to abolish current categories of police intelligence management – that would not be purposeful nor possible. Yet, police intelligence model brings certain changes in quality, i.e. it upgrades management functionality which should overcome the weaknesses within the traditional police management. This essay will have those upgrades and changes as the focus point. We will focus on the characteristics of police structures management within the police intelligence model.

***Keywords**: police intelligence model, police, police organization, management, police agency.*

1. INTRODUCTION

Proper management is necessary for successful functionality of any organization, police included. It represents an entire process of activities done in order to complete police functions needed for accomplishments within the state.

The theory of police intelligence management has not been developed in former Yugoslavia for a long period of time. Momcilo Talijan (2004:48) claims that management of inner affairs since 1983 up until the dissolution of Yugoslavia did not have any theoretical fundamentals. It was only based on voluntary grounds, like experience and the intuition of managers. After the underdevelopment that lasted for more decades, certain socio-political conditions and the growth of general management disciplines brought to the numerous improvements and new assets. Police management has been an integral part of subjects that were introduced to higher schools and faculties. At the same time, influx of new models in police work under western influence got the police management a theoretical

substance. So besides the changes in police tactics and philosophy of police work in general, significant changes happened in management functionality. In 2013, on a conference held in Zagreb, Croatia, the following key arguments were defined: recession, the rights of employees, standards of human rights, new concepts of police work, new technologies, citizens' demands, quality service, new generations of the employed, globalization, etc. (Blagac, 2013). What is significant for this essay is the new concept of police work (within the community, police intelligence model) where large portions refer to management. Even though police intelligence model has been applied in Croatia for five years already before the conference is held, and community work even longer than that, Croatian police still represents a traditional police organization and full implementation of those models is not possible without changes in police management (Blagac, 2013:198).

Republic of Serbia is also intensively working on implementation of police intelligence model to their police system that being one of the obligations in EU integration process (negotiation chapter 24). Implementation of police intelligence model, as we said earlier, definitely implies significant changes in police management, i.e. ultimately overcoming the traditional model of management. It is important to mention that the new concept is not intended to abolish current categories of police intelligence management – that would not be purposeful nor possible. Yet, police intelligence model brings certain changes in quality, i.e. it upgrades management functionality which should overcome the weaknesses within the traditional police management. This essay will have those upgrades and changes as the focus point. We will focus on the characteristics of police structures management within the police intelligence model.

2. POLICE INTELLIGENCE MODEL

Certain new concepts of police work are being applied with success in more developed countries of Western Europe in the last two decades or more. General aim of this program orientation is to overcome traditional way of police management and police work and missions as well as to increase the efficiency and create firmer relations between citizens and police. Parallel with the beginning of multi-party political system in former Yugoslavia, reform process started in security and police system (Djukic, 2017). First of all, public policy was decentralized, and the state and public security fields got differentiated. It led to the need to develop autonomous intelligence model of collecting and using data (Lestanin et al, 2018:242). It was an example of strong international interventionism. Covered by various projects funded by the international community, certain program activities with the aim to modernize the police have been started. A significant part of the change process was conditioned by the EU integration process (Djukic, 2017). The two most important concepts were the Community Policing and the Intelligence-Led Policing.

The police intelligence model had its first application in the UK, in the beginning of 1990s. During that period, security studies brought an idea of regional

security complex that got realistic due to the development of the European Union. EU faced new security issues and that led to expansion of cooperation between police from European countries as well as coordinating strategic and operational procedures in the police structures of European countries. It was necessary to establish a unique model of police structure management. Following that, every candidate country or full member of EU had to fulfill related conditions. That is how the police system of each country would be fully integrated within the European security network. These conditions are systemized in the Chapter 24 – Questions of justice, freedom and security.

Completion of the negotiation chapter 24 should enable free movement of people and their security being guaranteed. This represents a widely established surrounding which captures a great number of questions on: managing exterior borders of EU, cooperation in criminal issues, preventing the organized crime, preventing human trafficking, preventing drug trafficking, preventing terrorism, visa policy, migrations, asylums, police cooperation and customs cooperation. In order for police agencies to efficiently answer to all those questions, it is necessary to own forehand information about the criminal surrounding. According to the claims of Western European theoreticians, this increased dedication of modern police agencies in the system of intelligence activities, i.e. applying proactive strategies and focusing on criminal surrounding, persons and groups and their criminal activities (Simonovic, 2012:25). That would mean it led to modern police systems be dedicated to their innovative proactive intelligence work. Estimation was that entire police system needed to be involved in these activities, so the police intelligence model was developed.

We cannot find any universal or generally accepted definition on police intelligence model, neither in scientific nor in police literature. On the contrary, what we find is a bunch of different and sometimes even opposed concepts. Jerry H. Ratcliffe (2016:67), the most quoted professor when this topic is concerned, defines police intelligence model (police work based on intelligence data) as a business model for police work where intelligence information is the combination of criminal analysis and intelligence management. On the basis of that, analysts prepare elements for making key decisions. Kelling & Braton claim that police work is founded on intelligence acknowledgments, i.e. effective collecting and analysis of intelligence information with potential to be the most important innovation in the conducting of law in the 21st century (OSCE Manual, 2017:22). In the Manual published by the Ministry of Inner Affairs of the Republic of Serbia, the police intelligence model has been defined in both wider and narrower sense. Police intelligence model represents a group of interconnected principles, procedures, standards and methods which enable constant improvement of effectiveness and efficiency of operative police work led by specifically modelled, chosen and structured intelligence information on which key strategic (long-term) and operative (short-term) decisions are based. In a narrower sense, police intelligence model represents a system of management of intelligence and planned operative police affairs. Following that, intelligence information represents the

basis for defining priorities, strategic and operational goals in preventing and suppressing crime and other security threats. It is also helping in making key decisions on operative affairs and actions by rational recruit of available staff and allocating material and technical means (Kostadinovic & Klisaric, 2016:3).

It can be said that police intelligence model is a model of work and management philosophy of making decisions in organization of police affairs based on relevant, true, precise, complete, forehand and useful information on crime. Usage of this philosophy enables better understanding of security issues, strategic and operative decision making and distribution of resources in order to accomplish higher degree of efficiency and effectiveness in confronting the current and future security challenges (Ratcliffe, J.H., 2007:2).

Police intelligence model is practically performed through so called criminal-intelligence process, structured in twelve basic functions: strategic and operative planning, demand, planning intelligence affairs, collecting, processing, analysis, providing, decision making, planning operative police affairs, implementation, following, evaluation and quality management (Kostadinovic and Klisaric, 2016:8).

3. MANAGEMENT AND APPLICATION OF THE POLICE INTELLIGENCE MODEL IN POLICE STRUCTURES

We often encounter a problem in actually defining management activity of the organization, but also there is an issue of distinguishing the actual term with which the activity would be defined. Stevanovic defines managing and leading as organization functions with the same content but different level. So, for managing it can be said that it is organized activity appearing on higher levels of organization that is setting goals, confirming global assignments and determine policy, strategy and conditions for achieving goals and assignments. Leading is also organized managing activity and it specifies and implements policy, aims and assignments defined by management (Stevanovic, 2003:31).

Kostadinovic and Klisaric use “managing” and “leading” together and do not bother with distinguishing these terms. In the frame of police intelligence model, they see it as directing and coordinating of intelligence and operative police work, i.e. entire intelligence-led policing. Basic functions of these affairs are: setting priorities (strategic and operative aims in fighting crime); identification of needs and providing demands for intelligence information; decision making on performing operative police work, strategic and operative goals and assignments; evaluation and constant improvement of quality of all entities of police intelligence model; development of police work methodology (Kostadinovic & Klisaric, 2016:13). Therefore, they see management through processes happening under police intelligence model and managing the model itself is focused on all the afore-mentioned activities.

When focusing on managing and leading within police agency where police intelligence model was already implemented, we took the example of Serbian

police; we could see that within the agency strategic and operative groups for managing and leading were being formed and engaged. Strategic group for leading and managing is responsible for developing Strategic estimation of public security and Strategic police plan, i.e. identification of the most difficult security problems, priority check, defining work and resource measures, and manner of tracking planned activities and their implementation, and the evaluation of the achieved results. Head of the Strategic group is the Director of Police. For managing and leading activities, they have formed operative groups for leading and managing on operative level. Operative groups are led by prominent leaders of regional organization units of the Ministry of Inner Affairs of Serbia (regional police precincts). There are people for contact that are coordinating activities and following the realization of planned activities. Special attention is given for the choice of priorities in developing strategic and operative plans, i.e. clear setting of goals and responsibility for the achievements of those goals (Djurdjevic & Racic, 2018:477).

As we can see in the Serbian example, it is necessary to form strategic and operative groups when implementing police intelligence model in police agency. Forming these groups clearly means the changes in managing of police organization and how the police organization operates. This can be an issue in complex police systems. Of course, implementation of police intelligence model is yet to be a challenge for the police system of Bosnia and Herzegovina, which is characteristic complex non-coordinated police system.

A necessary precondition for police intelligence functionality in police agencies is a systematically arranged organization structure of units that collect data from field work, develop and provide intelligence products to strategic and operative groups for leading and managing. A certain number of authors elicit foundation of organization unit on the central level of police agency as a key condition for setting and implementing police intelligence model. The main task of the unit is to coordinate intelligence-led policing.As Potparic and Dvorsek claim, implementation of this model in Slovenia was key for creation of the Center for Intelligence-Led Policing on the main level of organization of Slovenian police (Potparic & Dvorsek, 2011:263). Ratcliffe and Guidetti also point out that founding Central Criminal Bureau was key condition for efficient intelligence-led policing in UK (Ratcliffe & Guidetti, 2008:119). Having in mind the complex police structure in Bosnia and Herzegovina and respecting the regulations of the Bosnian Constitution, the only logical solution would be the foundation of organization units on the entity level (Ministry of Inner Affairs in both Republika Srpska and Federation of Bosnia and Herzegovina) and district level (Brcko District police). Only these police agencies have local organization units that based on work of their police stations and precincts get to Intelligence-led police information that are key for police intelligence model. One of the indicators of potential problems in implementation of police intelligence model in the police system of Bosnia and Herzegovina is the research “Influence of police structure in Bosnia and Herzegovina on the public security”. The research was based on questionnaire for

740 respondents from eight different police agencies in Bosnia and Herzegovina. The result of the research can be seen in one question: “Is police system in Bosnia and Herzegovina organized rationally and functionally?”. More than 70% of respondents responded negatively (Setka, 2016:257).

Police intelligence model should be the core of the approach of entire police organization. Analytic and intelligence function should be integrated in the model and directed towards the most difficult security issues, i.e. multiple offenders, criminal groups, criminal hotspots and targets that were objects of criminal acts more than once. As we can see, the success of this model is most often related to the organization units for data collecting and data analysis (Djurdjevic & Racic, 2018:479). Police agencies (organizations) that want to implement this model of managing police structure need to change their functionality by integrating analytic and intelligence function in the model and directing towards the most difficult security issues. Having in mind the complex police structure and current state of intelligence-led policing in Bosnia and Herzegovina, we believe that police agencies are facing grand demand of integration and directing the afore mentioned functions to the already known problems. Also, issues of functionality of Bosnian police structures and the organization of police system in the country definitely have negative influence on the integration. The integration of these functions should however contribute to changes in functionality of certain police agencies, but also the functionality of the system as a whole.

Since one of the main preconditions for the successful functionality of the police intelligence model is reaching out to quality information from the field, it is necessary to mention the concept of police work in community. It was applied a few years ago in the Bosnian police agencies. Following the essence of the concept and the key foundations of police intelligence model, it can be concluded that the community police work can be set as a fundament for the development of the police intelligence model. Police intelligence model is actually based on managing and leading on strategic level, based on information derived from Intelligence-led policing. Such information police get from their field work. The main idea of this concept is to contribute the development of better cooperation between police and citizens and creating bigger level of citizens’ trust in police. The results of police community work make conditions for successful intelligence-led policing in field work. Therefore, police intelligence model and the concept of community work are complementary, interrelated and, in a way, police intelligence model depends on the results of police work in community.

Following the police system in Bosnia and Herzegovina, we can ascertain that there is a significant number of potential problems that can appear during introduction of the police intelligence model. First, there is the non-coordination of the police system in the country, which is a product of the inadequacy of police structures’ organization. Also, very problematic is the fact that the organization of the police system deviated from the territorial organization and the regulations of the Constitution of Bosnia and Herzegovina. That is a precedent for European countries. The very practice of not respecting the regulations of the country’s

constitution as well as the aspiration of a certain part of Bosnian political elite for centralization of police affairs could be the biggest problem in implementation of this police management model. This claim comes from the experience as in the past period there were attempts to realize these tendencies through the concept of police work in community. Introducing this model could be an even better moment for attempts to fulfill these aspirations. However, such pretensions will be foiled in the very beginning as long as the police agencies build necessary capacities for their functionality and adjust management and organization structure to the police intelligence model. So this model can be successfully implemented in the Bosnian police agencies if autonomy of each agency is respected as that is of high importance for the citizens. Only that way can capacities for more efficient actions of police agencies can be enlarged. Also, police intelligence model could enhance the level of inter-police cooperation in Bosnia and Herzegovina, as long as political interests and party aims are kept away from the cooperation (Jovicic & Setka, 2018:264-266).

4. CONCLUSION

Having in mind what we define and understand as police intelligence model, we can conclude it is a police structure management of collecting and analyzing relevant data from intelligence work directed to preventing crime. Data collection and analysis should result in strategic decisions directed to preventing crime, i.e. this information should influence the rule of law in both strategic and tactical level of preventing crime.

In order to achieve successful application of police intelligence model in a specific police agency, it is necessary to develop necessary analytic capacities and create necessary organization preconditions. By necessary preconditions we refer to founding organizational units in the police agency that will focus on analytics. Those units would analyze collected field data in highest quality and forward them to the strategic level of police agency.

Management of police agency through the police intelligence model can bring the improvement of functionality regarding more efficient crime prevention but also more efficient and more rational expenditure of human and material resources of police agencies. Applying this model also means there is a change of approach in police work, which should be more proactive.

Necessary preconditions for successful implementation of police intelligence model are structural changes in police agencies (organizations) in order to remove obstacles for the implementation of this model and to promote the Intelligence-led policing and information exchange within the police agency. A very important assumption of implementing this model is to promote police work based on Intelligence-led policing, i.e. accepting and promoting such philosophy in order to prevent crime. Other than that, it is necessary to work on affirming the model for managing the intelligence-led system within the police agencies. It is

also important to form operative and analytic regional centers of police agencies that should function as a connector of local and central police level.

However, having in mind all of these theoretical positions, police organization management should also be seen from the perspective of certain police systems, regarding police intelligence model. For us, it is most interesting to see it through the prism of the police system in Bosnia and Herzegovina. The first problem that may appear during introduction of police intelligence model in the police system of Bosnia and Herzegovina is the tendency of parts of political elite to reorganize and unitarize the police system in the country. This problem we can overcome by introducing police intelligence model into each police agency separately. We consider that successful implementation of police intelligence model respects the autonomy of entity police structures and that the entity police system should be the pillar of implementation of police intelligence model in the police system of Bosnia and Herzegovina.

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UDK:

VIDEO SURVEILLANCE OF PUBLIC PLACES AND PRIVACY PROTECTION[29]

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Abstract

Video surveillance is a technology system of surveillance by cameras which can be set up in public places and used by public authorities in order to maintain the public safety, especially for crime prevention and crime prosecution. The system usually consists of video cameras which are connected in a closed-circuit television (CCTV). This system comprises cameras that view a public area and transmit video images to one or more video monitors, accompanied by recording devices, such as video recorder or computer. More advanced systems can include automated facial recognition technologies. Video surveillance of public areas touches upon several individual rights, such as right to private life, right to free movement and protection of personal data. In this article we will address the issue of the protection of privacy, bearing in mind the opinion of the European Court of Human Rights who has held that there is a zone of interaction of a person with others, even in a public context, which may fall within the scope of private life. Also, the issue of legal bases for video surveillance and admissibility of evidence in criminal proceedings will be presented. These issues will be analysed through consideration of European standards and Strasbourg practices in this area and relevant national law.

Key words: *video surveillance; public place; privacy protection.*

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1. INTRODUCTION

The development of technology and constantly increase of the security threats in contemporary society, are prerequisite and very acceptable justification for increasing the application of modern technological achievements in the implementation of control over the daily life of citizens. Digital technology, GPS devices, surveillance cameras, thermal cameras, drones and other similar devices are part of the everyday life of a modern human. Setting up a large number of cameras with high resolution and zoom capabilities in public places and connecting them to a unified and highly developed software system (CCTV) which is operated by competent authorities (usually by police officers), and which allow detection, monitoring of movement and automatic identification of persons, and all aimed to protect a security, i.e. to prevent the commission of criminal offenses and to provide an evidence for the prosecution of offenders. At the beginning of 2019, the director of the police of the Ministry of Internal Affairs of the Republic of Serbia, as a guest in the studio of the media public service of the Republic of Serbia, with the conclusion that 107 high-resolution cameras had already been in operation in Belgrade, announced an increase in the number of cameras per 1000 to the end 2020. year. "Certainly, the presence of cameras or police can persuade citizens to obey the law, but it can have other effects as well. The surveillance studies literature has documented the use of government CCTV assemblages to direct public behaviour toward commerce and away from other activities ranging from crime to protest. In Britain, where the science of surveillance-based control is at its most advanced, CCTV operates in connection with court-ordered injunctions, known as Anti-Social Behaviour Orders, to move groups of teens out of the commercial cores of cities using surveillance and the power of the state to ensure that commerce continues efficiently" (Coleman, 2013: 213).

Very often citizens unreservedly accept the installation of video surveillance systems in order to improve their own security, completely unconscious of the possibilities for misuse and manipulation of the data collected on this way. Therefore, among the citizens, it is usually possible to hear the argument "I have nothing to hide," or "if you do nothing wrong, then what you have to hide" (Solve, 2007: 747). This gives a priority to the protection of the right to security at the expense of protecting the right to privacy, or minimizing the importance of protecting the right to privacy. This attitude is most often the result of not knowing the ways of functioning and possibilities of the technical monitoring devices and the consequences that result from the processing of the data collected on this way. Therefore, the fact of the growing use of technical means of surveillance must be seen in the light of the protection of the right to privacy. First of all, we must have in mind the protection of the right to private life, the right to freedom of movement and the protection of collected personal data.

On the pages that follow, we will try to point out the most important international standards and normative framework in the field of privacy protection in cases of video surveillance in public places. Also, we will analyse the most

important views of the European Court of Human Rights in this area and the relevant laws in the Republic of Serbia that regulate the issue of protection of privacy and video surveillance in public places.

1.1.International standards for protection of privacy in the cases of video surveillance in public places

The right to protection of privacy is one of the most important, fundamental rights of citizens, with paid close attention in almost all the most important international documents in the field of protection of basic rights and freedoms. One of these documents is the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), which in Article 8 prescribes the right to respect a private and family life, home and correspondence. This provision obliges the public authorities to refrain from interfering in the private sphere of the individual, unless it is in accordance with the law and necessary in a democratic society in the interests of national or public security, the economic well-being of the country, in order to prevent disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others. Therefore, the right to respect a private and family life is not an absolute right, as there are legitimate restrictions in its use.

By a literal interpretation of the right to respect private and family life, it can be concluded that it relates only to the private sphere of an individual, and that its application cannot be extended to public space. By entering and staying in the public space, an individual must be aware that he is exposed to opportunities to be spotted, recognized and that his conduct can be analyse from any person in the public space. Therefore, individuals can expect a lower level of privacy in public places, and the question of justifying the protection of the right to privacy in public places can be raised. However, the practice of the European Court of Human Rights (ECHR) resolved this dilemma and took the view that the individual cannot be deprived of the right to privacy in the public space, and it was established that the zone of interaction of one person with others, even in the public context, falls under private sphere (PG and JH v. United Kingdom). The ECHR stated: “There are a number of elements relevant to a consideration of whether a person’s private life is concerned by measures effected outside a person’s home or private premises. Since there are occasions when people knowingly or intentionally involve themselves in activities which are or may be recorded or reported in a public manner, a person’s reasonable expectations as to privacy may be a significant, although not necessarily conclusive, factor. A person who walks down the street will, inevitably, be visible to any member of the public who is also present. Monitoring by technological means of the same public scene (for example, a security guard viewing through closed-circuit television) is of a similar character. Private-life considerations may arise, however, once any systematic or permanent record comes into existence of such material from the public domain” (P.G. and J.H. v. United Kingdom).

The issue of privacy protection can also be posed in the context of the use of data that was collected through video surveillance in public places. The ECHR practice provides useful information on cases in which photographs, which were created by controlling in public places, can be used. The ECHR concluded that photographs made during the demonstration in a public place can be considered legitimate until they are not used for person identification. Specifically in the case P.G. and J.H. v. United Kingdom: “This interference will not be considered as intrusive as long as the data collected remain in an administrative file and are not put in a data system process in order to identify the persons“.

A special attitude on the use of video surveillance data obtained in public places was also expressed by the ECHR in the Peck v. United Kingdom. In this case, the ECHR analysed the publication of photographs obtained by video surveillance and concluded: “The publication or general disclosure, for instance for broadcasting purposes, of data obtained by CCTV cameras, constitutes an intrusion into privacy, even if the behaviour to which public attention was drawn was performed in public“. In this case “the Council’s CCTV operator saw a man walking down the High Street carrying a knife. The police were alerted and officers took the knife from the man, gave him medical help and took him to the police station where he was detained under the Mental Health Act. After being treated by a doctor he was released without charge. Subsequently, as part of the Council’s policy to publicise the effectiveness of the CCTV system, the local authority authorised the release of photos taken by the CCTV cameras showing the applicant (but not him cutting his wrists) and the police response. These pictures were published in two local papers and on regional and national television programmes. The applicant’s face was not masked in all these publications/broadcasts and people who knew him were able to identify the applicant from the pictures. The Court noted that the applicant did not complain that the collection of data through the CCTV cameras monitoring of his movements and the creation of a permanent record of itself amounted to an interference with his private life. He admitted that function of the CCTV system, together with the consequent involvement of the police, may have saved his life. Rather, he argued that it was the disclosure of that record of his movements to the public in a manner in which he could never have foreseen which gave rise to such an interference “(Mowbray, 2007: 506-507). In this case, the Court concluded that the disclosure of data was in accordance with the law, because it was established, predicted and in the line with the legitimate aim of preserving public security, preventing disorder and criminal offenses and protecting the rights of others. However, the Court found that the public disclosure of information was not necessary in a democratic society and that when we deciding on the public release of photographs we must necessary express a special attention. (Mowbray, 2007: 507-508).

We can conclude that "the right to privacy protects a human being in all occasions and relates to his / her dignity in all places. The mere observation of a person's appearance and conduct under normal circumstances will cause serious

concern if it serves a purpose that can be detrimental to privacy, honour and dignity of that person "(European Commission for Democracy through Law, 2007: 8).

Video surveillance in public places may also call into question the use of the right to freedom of movement for the persons that are legally present on the territory of a particular country. The protection of this right is provided by the European Convention on Human Rights, in Article 2 of the Fourth Protocol. In fact, this article guarantees not only the right to freedom of movement, but also the freedom to choose a place of residence and the free abandonment of any country, including its own. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of order public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. These rights may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society. The Venice Commission determines the right to freedom of movement not only as a right to free movement in the physical space, but also as a right to move without constant monitoring (European Commission for Democracy Through Law, 2007: 9). The significance of the right to freedom of movement in the context of video surveillance in public places is also indicated in Working Document on the Processing of Personal Data by means of Video Surveillance. According to this document data subjects have the right to exercise their freedom of movement without undergoing excessive psychological conditioning as regards their movement and conduct as well as without being the subject of detailed monitoring such as to track their conduct on account of the disproportionate application of video surveillance by several entities in a number of public and/or publicly accessible premises.

Since video surveillance in public places also endangers the right to protection of personal data, it is necessary to emphasize the importance of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention). Although this document does not contain provisions on video surveillance in public places, its significance is reflected in the explicit prescribing of automatic data processing methods. To this end, the Convention provides that personal data that are processed must be: obtained and processed fairly and lawfully; stored for specified and legitimate purposes and not used in a way incompatible with those purposes; adequate, relevant and not excessive in relation to the purposes for which they are stored; accurate and, where necessary, kept up to date and preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored (Art. 5). Particularly important is the provision of the Convention, which provides categories of personal data that can be processed automatically only in the cases when domestic legislation provides an appropriate guarantees. This are personal data relating to racial origin, political affiliation, religious conviction or some other kind of conviction, as well as personal data relating to health or sex life and personal data from the criminal record. At this place, we will analyse another

document that is also very important for this topic. It's about "The European Charter for a Democratic Use of Video Surveillance, which was created as a result of a project of the European Forum for Urban Security which identified seven key principles to be adhered to when using video surveillance. These principles are as follows:

- The principle of legality - the design and implementation of video surveillance can only be done and paid for pursuant to existing laws and regulations.
- The principle of necessity - the installation of video surveillance systems must be justified.
- The principle of proportionality - the design and deployment of a video surveillance system must be appropriate and proportionate to the vulnerability of the protected premises or persons. Proportionality is chiefly related to the objectives to be achieved and the means for achieving them.
- Principle of transparency - each legal entity must have a clear and consistent policy concerning the operation of its system.
- The principle of responsibility - the right to supervise public places is reserved for carefully selected properties. Proprietors are responsible for the systems installed on their behalf.
- Principle of independent control - the term 'control' means a clearly established system of norms and standards. Control can be performed by an independent expert or a special body, including citizen participation.
- The principle of citizen participation means everything must be done to encourage citizen involvement in every stage of the development of video surveillance systems (Žarković, Ivanović, Žarković, 2016: 217).

1.2.Protection of privacy in cases of video surveillance in public places according to Serbian positive legislation

In the positive legislation of the Republic of Serbia, the issue of protection of the right to privacy in the context of video surveillance in public places is not regulated by a special regulation. On the other hand, and the protection of the right to privacy is not foreseen in the way that the European Convention on Human Rights does. Namely, the Constitution of the Republic of Serbia does not know the right to privacy, but separately provides protection of the confidentiality of letters and other means of communication, protection of personal data and the inviolability of the apartment (Articles 40-42). The confidentiality of letters and other means of communication is inviolable, and deviations are permitted only for a specific time and on the basis of a court decision, if this is necessary for the conducting of criminal investigation or for the protection of the security of the Republic of Serbia, in the manner provided by law. The Constitution guarantees protection of personal data and provides that the collection, possession, processing and use of personal data are governed by law. It is forbidden and punishable to use personal data outside the purpose for which they were collected, in accordance with

the law, except for the purposes of conducting criminal proceedings or for the protection of the security of the Republic of Serbia, in the manner prescribed by law. Besides that, the Constitution guarantees the right of the person to be informed of the collected personal data, in accordance with the law, and the right to judicial protection for the misuse of these data.

The Law on Personal Data Protection regulates the right to protection of natural persons in the relation to the processing of personal data and the free flow of such data, the principles of processing, the rights of the persons to whom the data relate, the obligations of the handlers and processors of personal data, the code of conduct, the transfer of collected personal data in other states and international organizations, the surveillance over law enforcement, a legal remedies, misdemeanor liability and penalties in case of violation of the rights of natural persons in relation to processing of personal data, as well as special cases of processing. It is regulated by the law the right to protection of natural persons in connection with the processing of personal data by the competent authorities, in the purpose of prevention, investigation and detection of criminal offenses, the prosecution of perpetrators of criminal offenses or the execution of criminal sanctions, and also including the prevention and protection against threats to public and national security, and the free flow of such data (Article 1).

The law establishes the principles of personal data processing. Personal data: must be processed lawfully, fairly and transparently in relation to the persons to whom the data relate (legal processing is processing performed in accordance with the Law on Personal Data Protection, or other law that regulate processing); must be collected for purposes that are specifically specified, explicit, justified, and lawful, and cannot continue to be processed in a manner inconsistent with these purposes; must be appropriate, relevant and limited to what is necessary in relation to the purpose of processing ("minimization of data"); must be accurate and, if necessary, updated (taking into account the purpose of the processing, all reasonable measures must be taken to ensure that incorrect personal information is deleted or rectified without delay); shall be kept in a form that allows the identification of the person only within the time limit necessary for the purpose of the processing ("archive limitation") and shall be processed in a manner which ensures adequate protection of personal data, including protection against unauthorized or illegal processing, as well as accidental loss, destruction or damage by the application of appropriate technical, organizational and personnel measures (Article 5, paragraph 1). Since this law, but neither other one does not regulate the issue of protection of the right to privacy in the context of video surveillance in general, and even in public places, in regulating this issue, the defined international standards should be adhered to. Also, it is necessary to take into account that video surveillance in public places does not include private premises.

Currently, the Republic of Serbia lacks special legal provisions on the regulation of video surveillance in public places. At this point, we will mention several legal provisions that provide this possibility. First of all, this issue is regulated by the Law on Police, which stipulates (in Article 52) filming in public

places as one of the police measures and actions. The police are authorized to monitor and record the public place, in order to carry out police tasks, use the equipment for video acoustic recording and photographing in accordance with the regulations on records and data processing in the field of internal affairs. Also, the police can record or photograph a public event if a threat to the lives and health of people on public event is expected. Police can perform audio and video recording of police officers when they are applying the police powers, detecting and clarifying delicts and criminal offenses, and controlling and analyzing the conduction of police affairs. In order to achieve these objectives, a police officer may use transport and other means with or without external police marks, with recording devices, as well as devices for recording and recognizing license plates.

Before they proceed with the implementation of these activities, the police are obliged to publicly announce that they will monitor and record in public places, except when a covert recording is carried out in accordance with the Criminal Procedure Code (the manner of recording and announcing the intention to record in a public place are prescribed by the Minister). The data collected in this way must be kept in the prescribed records. Particularly regulated is the use of data obtained by filming in public places, which cannot be used in the procedure, since it is foreseen that they must be destroyed within a year. By applying the rule *a contrario* we can conclude that the data obtained by recording could be used as evidence in the misdemeanor and criminal proceedings.

Given that the Criminal Procedure Code or the Misdemeanors Act does not contain special provisions on this type of evidence, in the criminal proceedings to the collected data, provisions on proving by the document could be applied. Although the Law on Misdemeanors does not provide a proving or proving by a document, the Law on Road Traffic Safety provides that the authority in charge of police affairs and the authority in charge of traffic affairs has the authority to record traffic, within their jurisdiction, for the purpose of documenting traffic violations, monitoring the behavior of participants and traffic flows. Unlike the existing legal solutions, the Criminal Procedure Code of 2006 (a very small number of provisions began to apply immediately, while in the case of a complete text the application was repeatedly postponed - and in 2009 it finally abandoned) had foreseen " insights into photos, listening to sound recordings and insights into sound and video " as a stand-alone measure. In addition to this provision, it was envisaged that, as evidence in the criminal procedure, photographs or sound or audio and video recordings made without the tacit or explicit consent of the suspect or defendant who are on them, or whose voice has been recorded, can be used, if a photographs or sounds, that is, sound and video recordings were created as a kind of general security measures taken on public spaces - streets, squares, parking lots, yards of schools and institutions and other similar public spaces, that is, in public buildings and premises - , establishments, hospitals, schools, airports, bus and railway stations, sports stadiums and halls and other such public spaces and associated open areas, as well as shops, shops, banks, exchange offices, business premises and other similar facilities in which recording is performed regularly for

security reasons. he same as in the case of photographs or sound, that is, sound and videos that were created as a kind of security measures taken by the owner of the apartment and other premises, or by another person at the order of the owner of the apartment and other premises, which also applies and the courtyard and other similar open spaces (Article 145, paragraphs 6 and 7).

Another important law that is recently adopted is the Law on Records and Data Processing in the Field of Internal Affairs. With this law it is regulates the processing of personal data in the field of internal affairs, the purpose of processing, the rights and the protection of the rights of the persons whose data are processed, the types and contents of records, the time periods in which the data are processed, the exchange of data, the protection, protection and control of data protection, and other issues of importance for the processing of data in the field of internal affairs. Data processing in the Ministry of the Interior (MOI) is done by the electronically form in the framework of information and communication systems, in the form of audio-video and photographs and in paper form in the form of registers, files, diaries and other forms. Anyone can request from the MOI to be informed whether the data are being processed and for what purpose processing actions are being performed. The provisions of the law regulating the protection of personal data shall apply to the submission of applications and the procedure on the request. The use of these rights may be restricted if it is necessary for the protection of national or public security, the defense of the country, the prevention, detection, investigation and prosecution of perpetrators of crimes, if by this data it would be made available the information that is determined by the law, other regulations or acts based on the law to be kept as an official secret, and due to which publishing could have a serious consequences for the interests that are protected by law, as well as for the protection of the rights and freedoms of others, while for this there were reasons, and about this the Ministry of the Interior informs the applicant. When compiling a report and processing personal data for which collecting is authorized the Ministry of the Interior, in accordance with the law, the Ministry of the Interior shall protect the identity information of the person from whom it was notified, if by revealing the identity, a person is exposed to a serious danger to life, health, physical integrity or endangering freedom and property of a person (Article 6).

The law contains a special provision dedicated to video acoustic recording systems (Article 13). This provision stipulates that the Ministry of the Interior, in order to perform tasks from its scope, collects and processes video and audio records using video acoustic and photo recording, identification and face recognition systems, automatic reading of documents and identification of license plates. The MOI uses the collected data for the purpose of monitoring public meetings, increasing the safety of traffic, people and property, border controls, which includes checking at border crossing points and surveillance of the state border outside the border crossings, as well as for the purpose of identifying, identifying and finding perpetrators of crimes and missing persons based on biometric data of a person, providing evidence for the submission of misdemeanor

and criminal offenses report, carrying out internal control tasks, monitoring the legality and improvement of the work of the MOI, initiating and conducting disciplinary procedures. The MOI can use the means for recording images and recording audio and video records of other state bodies, autonomous provinces, local self-government units, organizations and legal entities.

In particular, recording of records in the field of video acoustic recording is regulated (Article 47). The MOI keeps records in which they processes data collected using video acoustic recording and photographing equipment, such as: photographs and audio and video records of persons, vehicles, events, space, personal and biometric information about persons, vehicle registration marks, date and time of events, location information, unique personal identification number, event ID numbers, vehicle owner information, vehicle data, and data on offenses committed. Any exclusion, viewing, copying and duplication of video and audio records shall be recorded in a separate record, whose content is regulated by law. All data collected using video acoustic recording equipment is stored for a minimum of 30 days, or for a maximum of five years, ill by the examination of the collected data, we can identifies persons, events and phenomena that require the taking of measures and actions within the competence of the MOI. The data collected for the conducting the criminal processing, misdemeanor and disciplinary proceedings are kept for five years from the end of the proceedings.

2. Conclusion

Video surveillance in public places has become an integral part of our lives. Its use is most often justified by the need to protect the security, prevent crime and effectively prosecute their perpetrators. Without prejudice to this particular purpose of surveillance of citizens, it is important to point out the indisputable fact that the application of this measure significantly limits one of the basic rights - the right to privacy in the broadest sense of the word. In particular, the following rights are threatened: the right to private life, the right to freedom of movement, and the right to the protection of personal data.

Therefore, it is important to precisely regulate this issue at the international and national level, taking into account already established international standards. First, video surveillance should only be applied when there are serious security risks or for the prevention and control of the commission of criminal offenses, while respecting the requirements of Article 8 of the European Convention on Human Rights. Second, it is necessary to ensure the protection of personal data collected and processed by public authorities based on video surveillance in public places. Thirdly, citizens must be informed that public places are covered by video surveillance. Fourthly, it is necessary to establish a separate independent body in order to monitor the lawful and proper implementation of video surveillance in public places and collecting and processing of personal data.

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UDK:

COMPARATIVE ANALYSIS OF RESULTS OF THE PROSECUTOR'S OFFICE FOR ORGANIZED CRIME IN THE REPUBLIC OF SERBIA AND THE DIRECTORATE FOR INVESTIGATING ORGANIZED CRIME AND TERRORISM IN ROMANIA

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Abstract

In the countries of Central and Eastern Europe which have undergone the process of transition by incorporating the authoritative regimes into the democratic forms of government and by transitioning from state-based economy to free market economy, organized crime has reached an alarming level. On the other hand, the very expansion of the European Union and the opening of the borders for free flow of people and goods within it, apart from the numerous positive contributions, have at the same time accelerated the growth of crime, particularly of organized crime. As a consequence of all this, in present time organized crime has become a global phenomenon and a complex problem that affects all countries of the world, including the Republic of Serbia and Romania. The main pre-conditions for fighting organized crime are the adoption of a suitable legal framework as well as strengthening the capacities of the competent state bodies. Aware of the fact that it is necessary for the state bodies to be more "clever", capable, qualified, and better equipped than the criminals in order to provide an adequate response to this form of crime in which the *modus operandi* of the exponents is brought almost to perfection, Serbia and Romania have formed special state bodies, with special training, organized and equipped to prevent, uncover, prove, and even to trial for the criminal acts of organized crime. This paper presents state bodies specialized for combating organized crime in the Republic of Serbia and Romania, implying their foundation, organization, authorities, and data regarding the results achieved in the field of combating organized crime of these two countries, their analysis and validation.

Keywords: *organized crime, Special prosecutor's offices, Republic of Serbia, Romania.*

1. ORGANIZED CRIME IN SERBIA AND ROMANIA

In the recent years on the European continent (and wider), the expansion of organized crime and a significant increase of the number of organized crime groups is more than evident. Political instability, corruption, and bad economic development create favorable conditions for the expansion of such criminal organizations. In the countries of the Central and Eastern Europe which have undergone the process of transition by incorporating the authoritative regimes into the democratic forms of government and by transitioning from state-based economy to free market economy, organized crime has reached an alarming level. On the other hand, the very expansion of the European Union and the opening of borders for free flow of people and goods within it, apart from the numerous positive contributions, has at the same time, accelerated the growth of crime, particularly of organized crime. In this way, the political changes that occurred at the end of the previous century and that have, in great measure, attributed to the liberalization of connections between the natural persons and legal entities on the European continent, have also enabled easier linking of criminals and their illegal operations in these areas. Organized crime groups have, under such conditions, paved their way into the majority of the most profitable activities and areas. As a consequence of all this, in the present time organized crime has become a global phenomenon and a complex problem that affects all countries in the world.

Organized crime in the Republic of Serbia and Romania appeared relatively late, during the 90s of the previous century, by transition to the market economy, from authoritative regime into a democratic one. The factors that have contributed to the development of this criminal phenomenon in these transiting countries were poverty, high unemployment, transformation of property types, corruption, non-application, or selective application of the law, wars in the territory of ex-Yugoslavia and economic sanctions imposed on Serbia by the international community, as well as joining of Romania to the European Union and “opening” of its borders.

Even though, at first, there were rather reserved or even “uninterested” and “blind” to the existence and the development of organized crime in their territories, at a certain point these two countries became aware of the fact that this kind of crime requires an urgent and decisive response. Serbia and Romania have gradually changed and improved their legal corpus in this direction and have strengthened the capacities of their competent state bodies.

So, both Serbia and Romania have signed almost all international conventions, numerous declarations and legal acts affirming the need for a decisive combat against organized crime and which ensure and recommend appropriate measures and actions to fight this plague.

In Serbia, the most pronounced effort of the country to combat organized crime was noticed only in mid-2002, and at the forefront was Zoran Djindjić – the Prime Minister at the time, who was murdered on March 12, 2003 by members of organized crime precisely because of this his determination.

Even though occurring slower than the late Prime Minister envisioned and decided upon, Serbia did in fact continue to build a more efficient system to repress or at least to control organized crime after his death. This was achieved by reforming criminal legislature and founding new state bodies with special authority.

A long expected establishment of the legal foundations for combating organized crime in Serbia has finally been conducted in June 2002, by adopting the Law on Organization and Competences of the State Organs in Combating Organized Crime[30].

This law represents the beginnings of organized and systematic fight against organized crime in the Republic of Serbia. It is used to regulate education, organization, competency and authority of the state bodies and special organizational units of state bodies, in order to uncover, prosecute and trial for criminal acts stipulated by this law. By adopting this law and other delegated legislation, urgent technical conditions have been secured for the functioning of the court, special authority has been given to bodies for uncovering and prosecuting organized crime, and a specific system has been created for personal safety, wages, and other rights based on the employee labor in all special bodies. Therefore, we can say that the Law on Organization and Competencies of the State Organs in Combating Organized Crime in Serbia is the beginning of the combat against this form of crime, while the assassination on the Prime Minister Zoran Djindjić gave this combat far more gravity.

Considering that the criminal legislature follows and reflects social reality, Romanian legislator did not have many reasons to dedicate more attention to organized crime in the period before the fall of the communist regime in 1989. During the period of totalitarianism, marked by a smaller flow of people and goods, centralized governing of the country and general supervision over society by a party, organized crime did not have the possibility to manifest in a more significant way.

However, if it is understandable that during the period of communism organized crime has been spoken of very little, such "silence of the state" cannot be justified in the transitional period that Romania entered after the year 1989, and which was a "fertile ground" for the development of classic organized crime groups. We are of the opinion that the reaction of Romanian government to the creation and the development of this ruinous social phenomenon were rather tardy. Namely, even though on December 14, year 2000, Romania signed the Palermo convention and is two additional protocols, it ratified the convention two years later by the Law no. 565/2002[31], and the legal framework to combat this evil was created

[30] *Zakon o organizaciji i nadležnosti državnih organa u suzbijanju organizovanog kriminala*, published in the Official Gazette of the Republic of Serbia no. 42/2002 (with later amendments published in the "Official Gazette of the Republic of Serbia", no. 27/2003, 39/2003, 67/2003, 29/2004, 58/2004, 45/2005, 61/2005, 72/2009, 72/2011, 101/2011 and 32/2013).

[31] Published in the "Official Gazette of Romania" no. 813, as of November 8, 2002.

only in the year 2003 by adopting the Law no. 39/2003[32] regarding the prevention and suppression of organized crime.

It can be stated that, globally speaking, that nowadays, both the Republic of Serbia and Romania have fulfilled their obligations stemming from international treaties and conventions to incorporate those proscribed measures against organized crime into their national legislations. Romania, as an EU member state, has a direct obligation to implement legal instruments developed on the level of the EU into its national legislation, and the Republic of Serbia has such obligation as a country striving at becoming a full member of this organization.

Both Serbia and Romania have *introduced the definition of the term organized crime group into their national legislations*. However, while Serbia practically "copied" this definition from the Palermo convention (the only difference being that in relation to the general purpose of criminal activity, Palermo convention predicts that criminal acts are conducted for the purpose of acquiring financial or other *material* gain, while in Serbian national legislature it is proscribed that such gain can be financial or (any) *other* gain, i.e. it is not specifically proscribed that it must be of material nature)[33], in the New Criminal Code[34], the Romanian legislator gave up on directly copying the purpose of criminal association – *to conduct major criminal acts and acquiring financial or other gain*.

Furthermore, even though in two distinct ways, both Serbia and Romania have *criminalized all the forms of activity in the criminal organization*. So, the Criminal Code of Serbia criminalizes the criminal act of *association in order to perform criminal acts*, while Romania proscribed in its Criminal Code the criminal act of *constituting organized crime group*. With a broader analysis of the special section of the Criminal Codes of these countries, it can be concluded that both Romania and Serbia have succeeded to include the dimension of organized crime phenomenon through these special incriminations.

In order to enable a more efficient suppression of major criminal acts and to facilitate obtaining the data necessary for bringing charges and a later conviction of their perpetrators, both Criminal Procedure Codes[35] contain investigation means and methods that include the use of new technologies and modern scientific discoveries.

Regardless of the fact that by introducing special investigation method into the criminal justice systems and by establishing specialized bodies that would, in accordance with the special procedural rules, apply these methods, which would in

[32] Published in the "Official Gazette of Romania", Part I, no. 50 as of January 29, 2003.

[33] Art. 2 para. 1 item 33 Criminal Procedure Code, "RS Official Gazette", no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014; and Art. 112 para. 35 of Criminal Code, "RS Official Gazette", no. 85/2005, 88/2005 - amen., 107/2005 - amen., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016.

[34] Law no. 286/2009 Published in the "Official Gazette of Romania" no. 510, as of 24.07.2009.

[35] Criminal Procedure Code, published in "Official Gazette of the Republic of Serbia", no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014, and New Criminal Procedure Code of Romania, Law no. 135/2010 Published in the „Official Gazette of Romania" no. 486 as of June 15, 2010.

turn create a possibility to discover and prove activities of organized crime much more efficiently, practice has shown that this does not present a sufficiently powerful weapon in the combat between the legal state and this form of crime. Aware of this fact, in the year 2008 the measure of "*extended confiscation*" has been introduced into the Serbian legal system through the *Law on Seizure and Confiscation of the Proceeds from a Crime*[36], and in 2012, with the *Law no. 63/2012 for the amendments to the Criminal Code, and the Law no. 286/2009 regarding the Criminal Code*[37], this measure has been introduced also in Romania.

Aware of the fact that it is necessary for the state bodies to be more "clever", capable, qualified, and better equipped than the criminals in order for them to provide an adequate response to this form of crime, in which the *modus operandi* of the exponents is brought almost to perfection, Serbia and Romania have *formed special state bodies*, with special training, organized and equipped to prevent, uncover, prove, and even to trial for the criminal acts of organized crime.

For this purpose, the Law on Organization and Competencies of the State Organs in Combating Organized Crime in Serbia constitutes the Prosecutor's Office for Organized Crime, which were given special authorities to act in all cases related to criminal acts of organized crime, corruption and other especially severe criminal acts, specifically listed in this Law. The office of this Prosecution is in Belgrade, and it acts on the entire territory of the Republic of Serbia. In order to perform police activities related to these criminal acts, Service for Combating Organized Crime was formed within the MIA. The specificity of Serbian legal system compared to the Romanian is the specialization of courts for procedures in cases regarding criminal acts of organized crime, corruption, and other especially severe criminal acts. Namely, Serbia has formed a Special division in Higher Court in Belgrade for first degree procedure, as well as a Special division in the Court of Appeal in Belgrade for second degree procedure in cases for these criminal acts.

On the other hand, within the Prosecutor's Office by the Supreme Court of Cassation of Romania, the Directorate for Investigating Organized Crime and Terrorism (*DIOCT*) has been formed as its specialized structural section for combating organized crime and terrorism, and is also the most significant body aimed at suppressing major crime in Romania.

DIOCT was founded in 2004, and had acted based on the Law no. 508/2004 with its later amendments[38]until November 22, 2016 when Urgent Government

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[36] *Zakon o oduzimanju imovine proistekle iz krivičnog dela,* published in the "Official Gazette of the Republic of Serbia", no 97/08. Four years after its adoption, on April 8, 2013, a new law with the same title was adopted - *Zakon o oduzimanju imovine proistekle iz krivičnog dela*, published in the "Official Gazette of the Republic of Serbia", no 32/2013, with amendments following in the year 2016, published in the "Official Gazette of the Republic of Serbia", no 94/2016.

[37] *Legea nr. 63/2012 pentru modificarea şi completarea Codului penal şi a Legii nr. 286/2009 privind Codul penal*, published in the "Official Gazette of Romania", no. 258, as of April 19, 2012.

[38] Urgent Government provision no. 120/2004, Urgent Government provision no. 7/2005, Law no. 247/2005, Urgent Government provision no. 190/2005, Urgent Government provision no. 27/2006, Law no. 356/2006, Urgent Government provision no. 60/2006, Urgent Government provision no. 131/2006, Decision of the Constitutional Court. 365/2009, Urgent Government provision no.

Provision no. 78/2016 regarding the organization and work of the Directorate for Investigating Organized Crime and Terrorism came into force, as well as the amendments of certain normative acts [39](in further text: Provision), based on which the Ordinance regarding organization and functioning of the Directorate for Investigating Organized Crime and Terrorism no. 4682/C/2016 (in the following text: Ordinance) was passed by the minister of justice on December 21, 2016.

The Directorate exerts its authority on the territory of the entire country through specialized prosecutors for combating organized crime and terrorism, who are distributed in the central structure in Bucharest and in territorial services and offices in other cities in Romania.

2. RESULTS OF THE PROSECUTOR'S OFFICE FOR ORGANIZED CRIME IN SERBIA AND THE DIRECTORATE FOR INVESTIGATING ORGANIZED CRIME AND TERRORISM IN ROMANIA

As previously mentioned, the main fighter for the prevention and suppression of organized crime in Serbia is the Prosecution for Organized Crime, and in Romania the Directorate for Investigating Organized Crime and Terrorism. These bodies were given the competency to criminally prosecute in criminal offenses of organized crime.

Provisions of Article 2 and 3 of the Law on organization and competencies of government bodies in suppressing organized crime, terrorism, and corruption[40] provide an itemized list of the criminal offenses the prosecution of which is in the competency of the Prosecutor's Office for Organized Crime in the Republic of Serbia, while the Ordinance regarding organization and functioning of the Directorate for Investigating Organized Crime and Terrorism no. 4682/C/2016 lists the criminal offenses the prosecution of which is in the competency of the Directorate for Investigating Organized Crime and Terrorism of Romania.

Due to the limited space they will not be listed here, but instead the authors shall discuss only the definitions of the term *organized crime group* in Serbian and Romanian legislature, considering that the aforementioned acts direct precisely to

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54/2010, Law no. 202/2010, Government Decision no. 54/2011, Law no. 187/2012, Law no. 255/2013, Urgent Government provision no. 3/2014, Government Decision no. 486/2015, Government Decision no. 541/2015.

[39] *Ordonanţa de urgenţă a Guvernului nr. 78/2016 pentru organizarea şi funcţionarea Direcţiei de Investigare a Infracţiunilor de Criminalitate Organizată şi Terorism, precum şi pentru modificarea şi completarea unor acte normative*, published in the „Official Gazette of Romania" no. 938 as of November 22, 2016.

[40] *Zakon o organizaciji i nadležnosti državnih organa u suzbijanju organizovanog kriminala, terorizma i korupcije*, published in "Official Gazette of the Republic of Serbia", no. 94/2016 and 86/2018, - st. law.

this term while determining the competency of the prosecutor's office ("The prosecutors from this service take over the criminal prosecution in cases related to criminal offenses if they have been committed by an organized criminal group, which are…,[41]", "Criminal offenses in the jurisdiction of government bodies competent for suppressing organized crime and terrorism are: criminal offenses of organized crime…[42]").

In Serbian legislature, the term *organized crime* means „committing criminal offenses by an organized criminal group or persons belonging to that group"[43], while *organized crime group* is "a group of three or more persons, existing for a certain time and acting jointly for the purpose for committing one or more criminal offenses, which can carry a sentence of four years imprisonment or a more severe sentence, for the purpose of directly or indirectly acquiring financial or other gains"[44].

The term *organized crime* is not defined in any positive law in Romania, however the term *organized crime group*, as "a group of three or more persons, existing for a certain time and acting jointly for the purpose of committing one or more criminal offenses" is defined in Article 367 of the Criminal Code.

As it can be noticed, Romanian legislator has chosen to not include in the definition the element of gravity of the criminal offenses that the group can commit (criminal offenses which can carry a sentence of four years imprisonment or a more severe sentence, for the purpose of directly or indirectly acquiring financial or other gains). We are of the opinion doing so defines the term too broadly, and in that way abandons the "classic" context of organized crime that has already been established in European countries. We believe that this removes the *ratio legis* from the special procedural norms as their purpose is to include only those forms of crime that are especially dangerous and for which the procedure of detection and providing evidence is especially difficult. However, on the other hand, this solution is not necessarily inadequate. Meaning, if the country is ready to work on suppression of organized crime and engage a large number of persons that would react even to the smallest "spark" of organized crime, the results in practice can be very good. Therefore, taking into consideration the manner in which the Directorate for

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[41] Art. 31, para. 1, item a, Art. 33, para. 1, item a, Art. 35, para. 1, item a, Art. 36, para. 1, item a, Art. 39, para. 1, item a, etc., of the Ordinance no. 4682/C/2016.

[42] Art. 2 para. 2 of the Law on Organization and Competencies of the State Organs in Combatting Organized Crime in Serbia.

[43] Art. 2, para. 1, item 34 of the Criminal Procedure Code, "Official Gazette of the Republic of Serbia", no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014.

[44] Art. 2, para. 1, item 33 of the Criminal Procedure Code, "Official Gazette of the Republic of Serbia", no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014 and Art.. 112 para. 35 of the Criminal Code "RS Official Gazette", no. 85/2005, 88/2005 - amen., 107/2005 - amen., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016.

Investigating Organized Crime and Terrorism is organized, it seems to us that this is precisely the direction Romania is headed.

In the continuation of this paper we shall present the results achieved in practice by these two institutions. We will limit ourselves to year 2016 only, and show some data acquired in the response of the Prosecutor's Office for Organized Crime[45] that was given to us based on a request filed to this Prosecutor's Office in accordance with The Law on Free Access to Information of Public Importance[46], and the data contained in the report of the work of the Directorate for Investigating Organized Crime and Terrorism in 2016, as of February 16, 2017, published on the web page of the Directorate[47].

The Republic of Serbia spreads over 88 361 km^2, and according to the Statistical Office of the Republic of Serbia it has 7 040 272 inhabitants[48]. The total number of deputy prosecutors in the Prosecutor's Office for Organized crime was 20 in 2016, while the total number of employees, alongside the Prosecutor and deputy prosecutors, was 67. In the Prosecutor's Office for Organized crime, a total of 186 new cases were formed in 2016. During the reported period, direct criminal charges have been reported against 324 persons, as follows:

For the criminal offense of *alliance for the purpose of committing criminal offenses* from Article 346 of CC criminal charges have been brought for only one person. Apart from that criminal offense, during 2016 POOC received criminal charges against 7 persons for the criminal offense of *aggravated murder* from Article 114 of CC, for the criminal offense of *mediation in prostitution* from Article 184 of CC criminal charges were filed against 3 persons, for the criminal offense of *aggravated/compound larceny* from Art. 204 of CC against 2 persons, while for the criminal offense of *robbery* from Art. 206 of CC criminal charges were brought against 1 person. Criminal charges for the criminal offense of *fraud* from Article 208 of CC were filed against 23 persons, while for the criminal offense *insurance fraud* from Art. 208a of CC were filed against 16 persons.

Furthermore, criminal charges were also filed for the criminal offense of *unlawful production*, *keeping and circulation of narcotics* from Article 246 of CC against 54 persons, for criminal offense of *illegal possession of firearms and explosives* from Article 348 of CC against 11 persons, and for criminal offense of *illegal crossing of state border and human trafficking* from Article 350 of CC against 18 persons.

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[45] Response of the Prosecutor's Office for Organized Crime no. PI. 34/17 as of 10.07.2017.

[46] *Zakon o slobodnom pristupu informacijama od javnog značaja*, published in the "Official Gazette of the Republic of Serbia", no. 120/2004, 54/2007, 104/2009 and 36/2010.

[47] http://www.diicot.ro/images/documents/rapoarte_activitate/raport.2016.pdf.

[48] http://www.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=162

Criminal charges for the criminal offense of *forging a document* from Article 355 of CC were filed against 4 persons, and for the criminal offense of *counterfeiting money* from Article 223 of CC against 5 persons. For the criminal offense *of tax evasion* from Article 229 of CC, charges were filed against 2 persons, for *smuggling* from Article 230 of CC against 9 persons, while criminal offense of *money laundering* from Article 231 of CC against 6 persons. For the criminal offense of *misfeasance in business* from Article 234 of CC 20 persons were charged with a criminal offense, while criminal charges were filed for 123 persons for the criminal offense of *abuse of office* from Article 359 of CC.

In 2016, this Prosecutor's Office also received charges for the criminal offense of *violation of law by a judge, public prosecutor or his deputy* from Article 360 of CC against 4 persons. For the criminal offense of *embezzlement* from Article 364 of CC charges were filed against 25 persons, and for the criminal offense of *unlawful mediation* from Article 366 against 3 persons. For the criminal offense of *soliciting and accepting bribes* from Article 367 criminal charges were filed against 6 persons, while *for bribery* from Article 368 of CC 2 persons were reported. Finally, criminal charges were filed to this Prosecutor's Office against 2 persons for the criminal offense *of terrorism* from Article 125 of CC.

At the end of the reported period, criminal charges filed against 89 persons remained unsolved from year 2016 and previous years. The order of conducting an investigation was brought against 172 persons. Following a completed investigation, 176 persons were charged, and at the end of the reported period investigations against 259 persons remained unsolved. Cases against 195 persons resulted in a conviction, with 188 persons were sentenced to imprisonment, and 7 persons who received probation. For 64 persons the case resulted in acquittal, and one person received a verdict of abandonment. Appeals were filed against first degree verdicts for 230 persons, 54 of which were granted. Appeals regarding the sentencing were filed for 121 persons, 29 of which were granted. In the year recorded, this prosecution made 88 plea bargaining agreements in 88 case files. In 2016, the Prosecutor's Office for Organized Crime *received* 95 requests for providing international legal aid, while this Prosecution *made* 33 requests for providing international legal aid.

Romania spreads over 238 397 km^2, and according to the estimates of the National Institute of Statistics, it had 22 241 718 inhabitants as of January 1, 2016[49]. The Directorate for Investigating Organized Crime and Terrorism employed 237 persons in total in 2016, which are: 244 prosecutors; 20 specialists; 158 officials – assistive specialized personnel; 3 IT experts; 50 associates; 17

[49] http://www.insse.ro/cms/sites/default/files/field/publicatii/populatia_romaniei_pe_localitati_la_1ianuarie2016_0.pdf.

economists and administrative workers; 1 legal counsel; and 44 inspectors for the prevention of fraud. During the year 2016, the Directorate had operative 25 657 cases, 12 334 of which were new items listed in this year. Out of this number it was easy to calculate that the average number of cases per prosecutor was 105.15.Out of the total number of active items during 2016, 13 158 cases were solved, 8 149 of which resulted in a meritorious decision, while in 5019 cases the requests were denied or merged with other cases. In all cases lead by the Directorate during this referential year, 15 279 persons were questioned.

In 2016, there were 1 632 cases dealing with criminal offense from Article 367 of the Criminal Code – establishing an organized crime group, 795 of which were new cases in the observed period. 490 of such cases were completed. Out of the 141 cases in total dealing with the criminal offenses of terrorism and criminal offenses against national security (93 new cases were accepted in 2016), during the investigative period, 36 were solved, out of which one case ended with charges being brought against two defendants, whom were sentenced to remain in custody.

In 2016, the prosecutors of the Directorate participated in 30 103 criminal court cases in total, 18 140 of which resulted in a sentence. Due to legal remedies, the prosecutors of the Directorate analyzed 12 323 first degree sentences, after which 952 appeals were filed, 495 of which were granted, while one appeal was withdrawn. The percent of adopted legal remedies is 54.57%.In terms of the number of the accused persons, in 2016 there was a total of 3 866 defendants, including 1 370 persons remaining in custody. In the total number of 1 292 cases ending with a legal verdict, court instances legally sentenced 3 205 persons, and 69 defendants in 34 cases were acquitted by a legal court verdict. Division for cooperation and international judicial assistance had a total of 1 080 new cases, 927 of which were requests to provide legal aid (378 of which were received and 549 requests made).

Finally, we believe that it is important to mention that the Law on the Budget for 2016, the Directive had approved budget funds for 2016 in the total amount of 112 930 thousand lei (around 25 million euros).

3. CONCLUSION

By comparatively analyzing the statistical data of the results of the Prosecutor's Office for Organized Crime in the Republic of Serbia, and the Directorate for Investigating Organized Crime and Terrorism in Romania, it can be concluded that, even though Romania is (only) about three times larger than Serbia according to the surface area and the number of inhabitants, DIOCT has about ten times more cases per year compared to the "special prosecutor" in Serbia. Aware of the fact that social circumstances, citizen awareness, habits, culture, etc. do not

differ greatly between these two countries, we have attempted to find the reasons for such a big difference in the number of cases. This question can be partially explained by the fact that the term organized crime group, and indirectly of organized crime, is more broadly understood in Romania than in Serbia. In this sense, the number of case files that the DIOCT has processed is (perhaps) not "realistic", meaning (perhaps) it does not reflect the real condition in the terms of organized crime in Romania according to the established standards and the doctrine in Serbian and European legislation. On the other hand, as much as the number of 15.334 received case files by DIOCT for the year 2016, in a country of 22.241.718 inhabitants may seem high, so the number of 186 case files formed in the Prosecutor's Office for Organized Crime in Serbia for that same year seems very low, considering it has 7.040.272 inhabitants. We are of the opinion that if the DIOCT has understood organized crime too broadly, the same phenomenon is seen far too narrowly by the prosecutors from the Prosecutor's Office for Organized Crime in the Republic of Serbia. We are of the impression that both of these institutions evaluate the normative content of organized crime group concept too arbitrarily, which could perhaps be the only explanation of such a difference between the numbers of case files.

However, we are convinced that the reasons for such stances should not be sought in the prosecutor's offices, but that the answer to this question lies in the political will of the government.

Taking into consideration that DIOCT is operating with 244 prosecutors; 20 specialists; 158 officials – assistive specialized personnel; 3 IT experts; 50 associates; 17 economists and administrative workers; 1 legal counsel; and 44 inspectors for the prevention of fraud, and that this Direction was approved with budget funds in the total of 25 million euros for the year 2016, the resolution of Romania to seriously take on organized crime is evident, down to its last "spark".

On the other hand, in Serbia, the situation is diametrically opposite. In the Prosecutor's Office for Organized Crime of this country, there is a total of 20 public prosecutor deputies performing this function, and the total number of employees in this prosecution, together with the prosecutor and their deputies is 67. It is clear that such a low number of prosecutors cannot engage in much more than 186 case files of organized crime that would be resolved in a quality manner. Furthermore, it is important to mention that a total of 2 million euros is approved for the operation of this prosecution a year. We are of the opinion that, to successfully combat organized crime in this country, more substantial amounts of money should be allocated, as well as that urgent improvement of human capacities in the Prosecutor's Office for Organized Crime is necessary, and also in the Special Department of the Higher Court in Belgrade.

In this context, as a final thought, we point out the impression that regardless the fact that it is possible for the Republic of Serbia to have more clear, precise, all-encompassing, or simply stated – better laws than Romania in the field

of organized crime[50], by the results that Romania achieves in practice, we are of the opinion that Romania is more resolute and resourceful in combating this socially devastating phenomenon.

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[50] *See*: Darian Rakitovan, *Criminalitatea organizată în legislaţia penală a Republicii Serbia şi a României*, Universul juridic, Bucureşti, 2018.

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UDK:

IDEAS FOR TEACHING SECURITY-RELATED PHRASAL VERBS IN ENGLISH

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Abstract

Learning phrasal verbs is considered one of the most complex tasks for students of English, which is primarily due to the plurality of their meanings, as well as their semantic unpredictability. This complexity poses a challenge to English language instructors who should constantly develop new techniques for teaching phrasal verbs in an interactive and communicative manner, enhancing students' motivation and interest in learning this type of lexis.

The author offers several practical ideas for successfully designing materials specifically aimed at teaching and practicing phrasal verbs in the field of security and law enforcement. The activities elaborated on in the paper are primarily intended for students of English in the field of security, with the goal to enhance their lexical skills in this field.

Keywords: *phrasal verb, English, security, teaching, classroom activities*

1. INTRODUCTION

Phrasal verbs fall within the category of multi-word verbs. English phrasal verbs consist of a verb plus a particle that "functions as a single semantic unit, whose meaning is not always predictable from the meanings of the verb and the particle" (Brown & Miller, 2013:342). The particle in combination with the verb is usually an adverb particle, but it can also be a preposition or an adverb particle plus a preposition.

From a syntactic point of view, according to Nauton, as cited by Thornbury (2002: 123), phrasal verbs in English fall into the following four categories:

Type 1: *Intransitive phrasal verbs*

This type of phrasal verbs does not take an object, i.e. they behave like "ordinary" phrasal verbs. Within the context of law enforcement, we will give the example of the phrasal verb ***kick in***, meaning *"start to work or have an effect"* (Oxford Phrasal Verbs Dictionary for Learners of English, 2001:158). It can be used when referring to the use of drugs or other psychotropic substances, like in the sentence *The effects from heroin kick in almost immediately*. As we can see from

this sentence, intransitive phrasal verbs stand alone in a sentence, i.e. they are not followed by an object.

Type 2: *Transitive inseparable phrasal verbs*

This group encompasses phrasal verbs that are typically followed by an object. The constituent elements of the phrasal verbs (the verb and the particle) are not separated, which means that the object cannot be placed between them. To illustrate this within the context of security, we chose the phrasal verb ***break into*** with one of its meanings - "enter a building, open a car, etc. illegally and by force" (ibid:23). This means that we can only say, for instance, *The burglar broke into Tim's house last night*, where the object *Tim's house* is placed immediately after the transitive phrasal verb ***break into*** in its past simple form. No other combination, i.e. word order is syntactically correct.

Type 3: *Transitive separable phrasal verbs*

Phrasal verbs belonging to this group are also followed by an object, but they differ from Type 1 phrasal verbs in that the object can be placed either after the phrasal verb, or inserted between the verb and the particle, keeping its meaning. There are numerous security-related phrasal verbs that can be put into this category, but here we will single out the phrasal verb ***beat up*** which means *"hit or kick sb*[51] *repeatedly"* (ibid:14). We can use this phrasal verb to say, for instance, *Abusive parents beat up their children* or *Abusive parents beat their children up* conveying the same meaning with different word order.

Type 4: Three-part phrasal verbs (usually transitive inseparable)

Logically, these phrasal verbs are composed of three parts, usually a verb + a particle + a preposition, and are common in English. They typically take an object that is placed after the phrasal verb as a whole. An example of a three-part phrasal verb within the context of security is ***do away with somebody/yourself*** which means *"kill sb/yourself"* (ibid:79), mainly used informally, in sentences like *Bill did away with his lover's husband*, where the object *his lover's husband* is placed immediately after the phrasal verb, and not between its constituent elements.

In the examples above we focused on the syntactic features of the phrasal verbs. However, in the introductory paragraph we also mentioned their semantic specificities, which is a very important aspect that has to be taken into consideration when discussing the nature of English phrasal verbs in general.

In some cases the literal meaning of the verb can help in inferring the meaning of the phrasal verb as a whole. Thus, for instance, one can easily draw an analogy between the phrasal verb ***hold somebody/something back*** and one of its meanings, namely, "*prevent sb/sth*[52] *from advancing; control or restrain sb/sth*" (Hornby, A.S., 1989:593) with one of the meanings conveyed by the verb ***hold***, namely "*keep (sb) and not allow him to leave*" (ibid). On the other hand, the meaning of ***hold somebody/something up*** ("*rob a person, a bank, a shop/store, etc. using a gun*" (ibid:146)) cannot immediately be inferred from any of the literal

[51] sb = somebody

[52] sth = something

meanings of ***hold***. Due to this unpredictability regarding their meaning, we can agree with Rudzka-Ostyn (2003:1) that they "do not enjoy a good reputation in foreign language learning", so teachers must put tremendous efforts to raise their learners' motivation and interest in phrasal words acquisition in the English classroom.

Semantically speaking, another challenging aspect for learners of English phrasal verbs is the plurality of their meanings which may be totally unrelated to each other. Thus, for example, the phrasal verb ***break into*** apart from referring to entering a building, vehicle etc. by using force, according to Oxford Phrasal Verbs Dictionary for Learners of English (2002:23), may also refer to the following: 2)*"suddenly begin to do sth such as laugh, cheer, run etc."*, 3)*"use a banknote (=a piece of paper money) of high value to buy sth costing less",* 4) *"interrupt sb's thoughts"*, 5) *"start to get involved in an activity that it is difficult to become involved in and to be successful at it"*, or 6) *"open and use sth that you have been saving for an emergency or a special occasion"*. As this example shows, ***break into*** can be used for denoting six different meanings which are unrelated to each other. This practically adds to the burden of the learners who must adopt various techniques that will help them acquire all the different meanings of ***break into***. These techniques include memorizing the various meanings, inferring them from written and oral contextual use of ***break in*** in sentences, paragraphs, longer texts etc.

2. HOW CAN PHRASAL VERBS BE TAUGHT?

Taking into consideration the syntactic and semantic peculiarities of phrasal verbs explained above, a logical conclusion can be drawn that teaching and practicing phrasal verbs in the classroom is not a simple task for English language teachers. Some teachers prefer focusing on the form and base their instruction on formal explanation of rules followed by drills and practice, which is a characteristic of traditional teaching methods. Other teachers rely on contextual use of phrasal verbs, which is a feature of modern teaching methods, especially communicative language teaching, and insist on interactive communication of meaning between the students.

It is our view that phrasal verbs, just like other lexical items are best acquired when students are exposed to their practical use in a given context, with active participation by the learners inductively inferring their meaning and appropriate use. In this communicative language teaching approach formal instruction is reduced to a minimum, and the teacher acts as a facilitator in the process of the acquisition of new knowledge. Richards & Schmidt (2002:90) define communicative language teaching as an approach which "emphasizes that the goal of language learning is communicative competence" and "seeks to make meaningful communication and language use a focus of all classroom activities". They also identify the following principles of communicative language teaching:

1. Learners use a language through using it to communicate

2. Authentic and meaningful communication should be the goal of classroom activities
3. Fluency and accuracy are both important goals in language learning
4. Communication involves the integration of different language skills
5. Learning is a process of creative construction and involves trial and error (ibid).

3 CLASSROOM ACTIVITIES FOR TEACHING SECURITY-RELATED PHRASAL VERBS

In this section, we will present several ideas for teaching phrasal verbs communicatively, with emphasis on phrasal verbs related to security. The activities suggested below are fluency-oriented, and should be used in the "productive" part of the lesson, following the "receptive" one.

The teacher may start the lesson by introducing the topic of phrasal verbs in some of the following ways:

- Playing a video taken from a detective TV series which shows a conversation between criminals or investigators that contain phrasal verbs.

(The conversation may contain both general phrasal verbs and security-related phrasal verbs so that students can see that their use is widely spread and not limited to their field of study as well, which may help them eliminate their tension related to the acquisition of phrasal verbs.)

- Showing the students excerpts from a comic on the topic of crime, law-enforcement, legal procedure etc. in which the protagonists use phrasal verbs.

(This type of text should raise their motivation for learning phrasal verbs, considering the fact that comics are commonly read by young and adolescent learners and they address topics that are interesting for the target readers. Their interest in comics will definitely raise their interest in learning the new vocabulary and understanding the text.)

- Making up a story about an alleged traffic accident that she/he has witnessed and using phrasal verbs related to driving and traffic safety.

(This activity is useful since the students can "witness" the use of phrasal verbs in people's daily activities. They can see the benefits of knowing the meanings and uses of this category of vocabulary and the teachers' story may also encourage them to use their creativity and try to come up with a similar, invented story in the part of the lesson devoted to meaningful practice.)

As we could see, the aim of these introductory activities is to provide the students with examples of authentic and/or contextual use of phrasal verbs that will help them infer the form and the meaning of phrasal verbs. If necessary, the teacher can also give minimal formal explanation of the rules governing their form and meaning that can even be accompanied with some traditional exercises, but only if this is necessary and the students have problems acquiring this new lexical knowledge.

In the paragraphs that follow, we will focus on fluency activities for practicing the use of phrasal verbs that denote certain concepts related to security, which should come after the introductory part where the students were given the basis for inductively inferring the syntactic and semantic characteristics of the selected phrasal verbs.

3.1. Jigsaw

Jigsaw activities are classified as information-gap activities which are commonly used in communicative language teaching. Richards (2006:19) describes a typical jigsaw activity in the following way: "Typically, the class is divided into groups and each group has part of the information needed to complete an activity. The class must fit the pieces together to complete the whole. In so doing, they must use their language resources to communicate meaningfully and so take part in meaningful communication practice."

Given the explanation above, jigsaw activities can also be used for teaching phrasal verbs communicatively, which includes phrasal verbs in the field of security that we are dealing with.

Bearing this in mind, based on the model activity that Richards suggests in his work cited above, for the purpose of this paper, we designed the following activity:

The students are divided in four groups. They are given sentences that are taken from four different dialogues between Person A and Person B. Some of the sentences contain phrasal verbs that lexicalize notions related to security. They have the task to mix with the students from the other groups and by asking questions to try to find the sentences that belong to each of the four dialogues and arrange them in appropriate order, thus "recreating" the four original dialogues.

Excerpts from the dialogues are given below:

Excerpt from Dialogue 1:

A: Why did they press charges against the company executive manager?
B: Well, I think he tried to ***cover up***[53] *the scandal with child labour exploitation.*
A: I see. I hope they will ***lock*** *him* ***up***[54]*. That's what he really deserves…*

Excerpt from Dialogue 2:

A: Why did they ***tighten up***[55] *security control at the airports?*
B: New measures were introduced after an incident with the two terrorists that happened two months ago. They hijacked the plane and ***blazed away***[56] *at the passengers.*

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[53] Definition of **cover (sth) up** in the given context: "make efforts to conceal a mistake, sth illegal, etc." (Hornby, A.S., 1989:274)
[54] Definition of ***lock sb up*** in the given context: "put sb in prison, a mental institution etc." (ibid:732)
[55] Definition of ***tighten sth up*** in the given context: "(cause sth to) become stricter" (ibid:1342)
[56] Definition of ***blaze away*** in the given context: "fire continuously with guns" (ibid:113)

*A: Oh, I hope they didn't **take out**[57] all of them!...*

Excerpt from Dialogue 3:

A: How come Susan ended up behind bars?
*B: The investigators finally managed to **track down**[58] her offshore company that she used for money laundering activities.*
*A: I'm sure it was all her boyfriend's fault! He must have **tipped off**[59] the police!...*

Excerpt from Dialogue 4:

A: How did the police officers manage to locate and arrest the suicide bombers?
*B: It wasn't difficult at all. They **staked out**[60] the* abandoned *building where they planned and prepared their attacks for nearly a month.*
*A: I'm really glad our police is determined to **crack down**[61] on terrorist groups…*

This activity helps the students develop their reading and speaking skills, and engages them in meaningful communication. They practice the use of the given phrasal verbs in authentic context, which makes their acquisition easier, in a motivating and interactive environment.

3.2 Role Play

Role play is also a useful way of learning and practicing new vocabulary in a communicative manner. Within the context of teaching language, role play or role playing refers to "drama-like classroom activities in which students take the roles of different participants in a situation and act out what might typically happen in that situation" (Richards & Schmidt, 2002:460).

The fields of security and law enforcement are particularly suitable for role plays, since they abound in situations and contexts that involve participation of several persons in various types of speech acts. In order to show how role plays can be used for teaching security-related English phrasal verbs, we designed an exercise where the students are asked to act out a dialogue between a police officer and a robbery suspect. However, in completing their task, the students have to use the list with the phrasal verbs they are given. There is a different set of phrasal verbs for the police officer and the suspect, and the students have to be very skillful in making up and acting out a dialogue that contains the given phrasal verbs and is

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[57] Definition of ***take sb/sth out*** in the given context: (informal) "kill sb or destroy sth; put sb/sth out of action" (ibid:1310)

[58] Definition of ***track down*** in the given context: "find sb/sth by searching" (ibid:1358)

[59] Definition of ***tip sb off*** in the given context: (informal) "give sb an advance warning or hint" (ibid:1346)

[60] Definition of ***stake sth out*** in the given context: (informal esp US) (of the police) "watch (a place) continuously and secretly" (ibid:1247)

[61] Definition of ***crack down (on sb/sth)*** in the given context: "impose more severe treatment or restrictions on sb/sth" (ibid:276)

related to the topic. The suspect is at the police station and he is answering the police officer's questions related to the theft.

Some of the phrasal verbs from their lists are presented below:

1. Phrasal verbs for the robbery suspect: ***turn sb in***[62], ***egg sb on***[63], ***be/get mixed up in sth***[64], ***do away with sb***[65], ***run off with sth***[66], ***take sb in***[67] *etc.*
2. Phrasal verbs for the police officer: ***step sth up***[68], ***run across sth***[69], ***hold back***[70], ***pull sb in***[71], ***fess up***[72], *etc.*

The following is an excerpt of one of the possible scenarios that the students may act out using the given phrasal verbs:

Police Officer*: Please, sit down. My name is detective Robinson. You know why you're* ***pulled in****, don't you?*
Suspect*: Yes, Sir. It's because of the robbery. But you got the wrong man. I'm not guilty. I'm sure I was* ***turned in*** *by John, that bastard who pretended to be my friend. He was furious because he didn't get his share… But it wasn't my fault. We* ***were*** *both* ***taken in*** *by Bill, our boss! I hope that one day he will get what he deserves and someone will* ***do away with*** *him.*
Police Officer*: You're wrong. We* ***stepped up*** *the investigation when we* ***ran across*** *the stolen rings in a jewelry shop in a suburb near Manchester. The owner* ***fessed up****. He told us that he had acquired those rings illegally from your partner Bill. He also mentioned your name…*
Suspect*: I didn't want to do it… I* ***got mixed up in*** *the robbery because I had to pay off her d… oh, my debt. Yes, I owed them 20,000 dollars.*
Police Officer*: Why don't you tell us the truth?* ***Holding back*** *information will not help you at all. What are you hiding? Who are you trying to protect?*
Suspect*: I can't help you. I wish I knew where he is. He* ***ran off with*** *the gold… They* ***egged me on****! I swear it was their idea!...*

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[62] Definition of ***turn sb in*** in the given context: (informal) "hand sb over to the police to be arrested" (ibid:1378)
[63] Definition of ***egg sb on (to do sth)*** in the given context: "urge or strongly encourage sb to do something" (ibid:387)
[64] Definition of **be/get mixed up in sth** in the given context: (informal) "be/become involved in or connected with sth" (ibid:795)
[65] Definition of ***do away with oneself/sb*** in the given context: (informal) "kill oneself/sb" (ibid:355)
[66] Definition of ***run off with sth*** in the given context: "steal sth and carry it away" (ibid:1108)
[67] Definition of ***take sb in*** in the given context: "deceive, delude or fool sb" (ibid:1310)
[68] Definition of ***step sth up*** in the given context: "increase sth; improve sth" (ibid:1258)
[69] Definition of ***run across sb/sth*** in the given context: "meet sb or find sth by chance" (ibid:1108)
[70] Definition of ***hold sth back*** in the given context: "not release or grant sth; withhold something" (ibid:593)
[71] Definition of ***pull sb in*** in the given context: (informal) "bring sb to a police station for questioning; detain sb" (ibid:1011)
[72] Definition of ***fess up (to sth/to sb) (about sth)*** in the given context: (informal, especially AmE) "admit that you have done sth wrong" (Oxford Phrasal Verbs Dictionary for Learners of English, 2002:97)

This type of activity is also a good opportunity for students to practice contextual use of language, which highly contributes to raising their motivation and interest. It helps them realize that the vocabulary they learn is not an abstract phenomenon, but on the contrary, it can be used in everyday situations related to their field of study – in this case security and law enforcement. It also fosters their creativity and logical thinking skills, since in making up the dialogues they have to think of ways to integrate the given vocabulary and making meaningful sentences at the same time, which can be a challenging and demanding task for them.

3.3. Game

Games are frequently used as fluency activities in practicing newly acquired vocabulary. Within the context of language teaching, Richards and Schmidt (2002:219) define a game as "an organized activity that usually has the following properties: a) a particular task or objective, b) a set of rules, c) competition between players, and d) communication between players by spoken or written language". Games are an entertaining classroom activity since they enable the students to practice new vocabulary in a relaxing atmosphere, competing against other students, thus adding to the challenge. Our experience shows that students enjoy participating in games involving competition, so we consider them a suitable activity when practicing security-related vocabulary including phrasal verbs.

In this section we will present a guessing game in which the students participate divided in two groups competing against each other. The teacher prepares a set of pictures/drawings that depict various phrasal verbs in the field of security. A representative from each group chooses one picture/drawing that only he/she can see and has the task to describe the action in the picture/drawing so that the other participants in his/her "team" could guess the phrasal verb hidden behind the description. They are allowed to use up to three sentences. In order to make the task even more challenging, the teacher may ask the students to not use some words that are typically used when defining the given phrasal verbs as their essential semantic components. After they finish, the other students from the group should try to guess the phrasal verb. If they guess correctly on the first try, they earn 3 points, if they guess from the second try, they earn 2 points etc. If they don't guess after three attempts, they do not earn any points. The winner is the group with the higher score.

The following is a simulation of a possible description of selected phrasal verbs:

Phrasal verb 1: ***break out of sth***[73] *(It should be described without using the verb "escape")*
Student's description of the picture/drawing: There is a prisoner in a prisoner's uniform, in a forest. He looks happy. He is thinking about his prison cell with the door wide open.
Phrasal verb 2: ***flag sth down***[74] *(It should be described without using the word "stop")*
Student's description of the picture/drawing:
There are traffic wardens on a highway. A vehicle is approaching them. The traffic wardens are signaling to the driver to slow down and halt the vehicle.
Phrasal verb 3: ***do somebody over***[75] *(It should be described without using the verb "beat")*
Student's description of the picture/drawing:
There is a group of hooligans at a stadium. They are punching the referee. He is all covered in blood.
Phrasal verb 4: ***let somebody off***[76] *(It should be described without using the verb "punish")*
There is a courtroom full of people. Some of them are angry, shouting at the judge. The person with the handcuffs (obviously the accused one) looks happy, as his lawyer and family are hugging him.

This activity is very useful for enhancing students' speaking skills, and the skill of giving descriptions with a limited number of sentences and restrictions regarding the use of words that convey an important semantic feature of the phrasal verbs in question. This is a very good opportunity for them to practice the use of synonyms, thus activating their lexical knowledge in the field.

4. CONCLUSION

From the arguments presented in the paper it can be concluded that phrasal verbs constitute a complex category of words within the English lexical corpus. Their syntactic and semantic specificities make them hard for acquisition for learners of English as a foreign language. However, they have to be included in the English language syllabus, not only in general English courses, but also in specialized English courses. This applies to English in the field of security and law enforcement as well.

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[73] Definition of ***break out (of sth)*** in the given context: "escape from a place by using force" (Hornby, A.S, 1989:136)
[74] Definition of ***flag sth down*** in the given context: "signal to (a moving vehicle) to stop, usu by waving one's arm" (ibid:463)
[75] Definition of ***do sb over*** in the given context: (informal) "attack and beat sb severely" (ibid:355)
[76] Definition of ***let sb off (with sth)*** in the given context: "not punish sb (severely)" (ibid:715)

The activities suggested in the paper show that they can be successfully integrated, i.e. taught by the teachers and practiced by the students in a communicative manner, based on the principles of communicative language teaching. They can serve as a model for materials writers and teachers focused on topics from specific fields, which can help them develop their own didactic materials relevant for their students. It does require effort and work, but the final product can be of great benefit for them as language instructors and for the students who are actively involved in the learning process.

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THE INFLUENCE OF CORRUPTION ON THE SOCIO-POLITICAL SYSTEM: CRIMINOLOGICAL AND CRIMINAL-LEGAL ASPECTS

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Abstract

This research paper will elaborate the problem of corruption from a criminal and criminal-legal aspect. Corruption is a form of activity undertaken by a person who performs a particular function or has a certain position and status, as well as power, with the intention of gaining an illegal benefit for himself or for another. Corruption is a widespread socially negative phenomenon, which is a major problem for every society, and especially for developing countries. In this paper, corruption will be presented first in a historical context, employing the historical method, and then it will be briefly shown in the transition countries, including the Republic of Macedonia, using the comparative method. The focus of this paper will be the legal regulation of corruption in Macedonian criminal legislation. Using the content analysis method, we will conduct a brief analysis of the legal solutions in this area. The results of this paper will provide recommendations and opinions for more effective and efficient dealing with corruption. Corruption is a challenge for every society, but it is not enough just to talk about corruption. It is necessary to undertake specific measures and activities for its detection, prevention and sanctioning.

Keywords: *corruption, conflict of interest, a crime, sanctions.*

INTRODUCTION

Corruption is often understood as an abuse of the position of trust in the administration, the judiciary, the police, business and politics, and even in non-economic organizations or associations (e.g. clubs, associations, foundations) to obtain material or non-material benefits for themselves or for third parties for which there is a real requirement. (Simon, A. and Simon, K. 2006, 5.)

Corruption draws its roots from antiquity onwards. Corruption as a socially negative phenomenon was even defined in Roman law (*Lex Julija Reputandae*). Crime corruption is defined as giving, receiving or claiming benefits with the intention of influencing an officer in connection with his work. Aristotle,

Machiavelli and Montesquieu concluded that corruption is a sign of the breakdown of the moral values of society. That is why corruption is considered as an immoral and harmful phenomenon in society, because the holders of social functions must pursue common, and not their own, private interests. With the development of modern state, corruption cannot be understood only as morally harmful, but also as the reason for the inefficiency of the state. The most important forms of corruption are bribing, nepotism, the abuse of the position (function) for private purposes. The proclaimed values - especially achieving success at all costs - act as an incentive for spreading corrupt practices. The term corruption in this sense means corruption, blackmail, depravity, bribery, exploitation of officials, moral corruption. (Mojanoski, T. C., Malish-Sazdovska, M., Nikolovski, M. and Krstevska, K. 2014, 25-26.)

In accordance with **the Law on Prevention of Corruption and Conflict of Interest**, corruption refers to abuse of office, public authorization, official duty or position for gaining benefit, directly or through an intermediary, for oneself or for others.

This law also covers the notion of passive and active corruption. Namely, **passive corruption** means the deliberate action of an official who, directly or through an intermediary, seeks or receives the benefit of any kind, for himself or for a third person, or accepts a promise of such a benefit in order to act or to refrain from acting in accordance with his obligations or to exercise his powers contrary to his official duties.

The term **active corruption** means the deliberate action of any person who, directly or through an intermediary, promises or benefits from any kind of official, for himself or for a third person, in order to act or refrain from acting in accordance with his obligations or to exercise his powers contrary to his official duties.

A **conflict of interest** means a situation in which an official has a private interest that affects or may influence the impartial exercise of his public authority or official duties.

1. CORRUPTION IN THE COUNTRIES IN TRANSITION

Corruption is a serious challenge for the developing countries. Corruption is rooted in poorly functioning institutions, as well as in policies that undermine free trade and competition.

The transition from socialism is a unique historical process. Never before have countries attempted such a radical and simultaneous transformation of both their political and economic institutions. Underpinning these transformations has been a complex set of reforms that entail building the basic institutions of state, creating the foundations of a market economy and transferring wealth from the state to the private sector on a large scale. (World Bank. Chapter 3: The Origins of Corruption in Transition Countries, 25.)

Institutional legacies and other initial conditions have a strong influence on the "first moves" of the transition process, such as choices about the structure of

political institutions and the pace and comprehensiveness of economic reform. These choices set in motion unique transition paths that favor particular economic and social groups and shape incentives for further reforms. Countries where the transition path led to a concentration of economic power in a setting of weak basic institutions became especially vulnerable to state capture and administrative corruption. (Ibid.)

While initial conditions explain an important part of the variation in the pattern of corruption in the region, initial conditions tell only part of the story – much of the variation remains unexplained. This feature suggests that other factors, such as the rise of effective leaders who are able to implement and sustain policies that are inimical to corruption, are also critical to the development of the transition path. Through an understanding of the role of initial conditions and especially institutional legacies is crucial for developing effective strategies to combat corruption, this does not imply that some countries were predestined to generate high levels of corruption in the transition. Political will and policy choice have a key role to play in determining the susceptibility of a country to corruption. (Ibid, 25-26.)

Early in the transition, many observers believed that mass privatization offered governments a simple and transparent mechanism for transferring the bulk of state assets to the general population. Despite the simplicity of the method, enterprise managers were often able to manipulate the market value of their firms or exploit weaknesses in institutional arrangements for shareholder protection in order to be able to retain control. These methods included illegally threatening workers who sold shares to outsiders and issuing new shares in order to dilute the power of outsiders. (Desai and Goldberg 2000.)

Privatization through a case-by-case method, while complex and time-consuming, has allowed some countries to structure the sale of the assets to avoid some of the problems associated with state capture, though this method has also been open to abuse. Large privatizations are vulnerable to corruption whatever the method employed, as the experience of advanced countries frequently demonstrates. Recognizing this temptation, some governments, such as Romania, have delegated responsibility for organizing privatization to internationally recognized investment firms. (World Bank. Chapter 3: The Origins of Corruption in Transition Countries, 33.).

Preventing corruption is a challenge for every modern state. This especially comes to light in politically unstable systems. The analysis of the indicators of instability also points to the occurrence of disrespect for the opposition, a sharp clash of party blocks in society, disrupted ethnic relations, various forms of political friction and turbulence. In such conditions, economic growth is declining. This situation results in deposition of public officials and weakening of the political, legal and economic control mechanisms of the state and society as a whole (Mojanoski, T. C., Malish-Sazdovska, M., Nikolovski, M. and Krstevska, K. 2014, 27.).

2. CORRUPTION IN THE REPUBLIC OF MACEDONIA

Corruption remains an issue for countries all over the world. Socio-economic development, the institutional and political setting, and the prevailing social and cultural norms are all elements that can shape it in very different manners, but corruption is still a scourge from which no country is truly exempt and it is often reported to be an area of vulnerability for countries all over the world, including the Republic of Macedonia.

In the Republic of Macedonia, the main feature on the global plan is the high level of corruption and insufficient efficiency for its prevention, both in terms of prevention and repression. Corruption has penetrated into all pores of social life and has kept on for a long time. Corruption causes serious harmful consequences and therefore there are strong reactions by citizens. (Manevski 2005, 29.)

Corruption can occur at different levels. A distinction is usually drawn between grand and administrative (petty) corruption, with the former referring to corrupt practices affecting legislative process and policymakers, and the latter referring to dealings between civil servants and the public. In either case, it has a devastating impact on the rule of law, hinders equal access to public services, affects public trust in state institutions and is a hurdle to economic and social development, especially in young democracies.

Corruption is ranked as the fifth top problem in the country after unemployment, poverty, low incomes and high prices. For years, numerous polls showed that corruption was considered as one of the top three problems in the society of the country. There are differences between perceptions and experience (victimization). While customs officers, judges, ministers, and tax officers are perceived as the most corrupt, on the other hand, professions such as doctors, local authorities, police officers, and university professors are those who are actually most corrupt. (USAID Corruption Assessment Report)

Transparency International 2017 Corruption Perception Index ranks the Republic of Macedonia on the 107th place out of 180 countries. (Corruption Perceptions Index 2017)

The business environment in Macedonia is negatively affected by corruption. Several sources indicate that corruption is considered an obstacle for doing business, and businessmen have reported that bribery is demanded sometimes during public procurement and contracting.

Corruption and inefficient bureaucracy are challenges companies may face when doing business in Macedonia. There is a high risk of corruption in most of the country's sectors. Private businesses frequently complain about burdensome administrative processes that create operational delays and opportunities for corruption. Public procurement, the customs administration, and the building and construction sectors are some of the areas where corruption and bribery are most prevalent. The primary legal framework regulating corruption and bribery in Macedonia is contained in the Law on Prevention of Corruption and the Criminal Code, which make individuals and companies criminally liable for corrupt

practices. Facilitation payments are prohibited, and gifts may be considered illegal depending on their value or intent. Insufficient implementation of legislation and ineffective law enforcement impede the fight against corruption and public officials continue to act with impunity. (Macedonia Corruption Report.)

There is a high risk of corruption when dealing with Macedonia's judiciary due to extensive political interference and corruption. Companies perceive bribes and irregular payments to be often exchanged in return for favorable judicial decisions (The Global Competitiveness Report 2015-2016.). Nearly half of citizens consider the judicial system to be corrupt (Global Corruption Barometer 2017.). Investors complain of political interference in court cases and cite slow and inefficient legal proceedings as constraints to business. (Investment Climate Statements for 2018.)

There is a high risk of corruption in the Republic of Macedonia's public services sector. The state apparatus in the Republic of Macedonia suffers from widespread corruption, political patronage, conflicts of interest and a lack of technical skills.

Macedonia's regulatory environment remains complex and lacks transparency. Frequent changes in legislation and regulations, as well as inconsistent interpretations of rules, create an unpredictable business environment, conducive to corruption and the use of inspections for political purposes. (Investment Climate Statements for 2018.)

But what about the fight against corruption? In what way should it be done and which methods and means can yield the best results?

The fight against corruption should be shared evenly among state institutions. This means undertaking measures to reduce the channelling / transmission of the majority of cases that have elements of corruption in the Public Prosecutor's Office. One of the mechanisms is to increase the capacity of all state administration bodies to control and prevent corruption in their ranks through administrative tools, rather than "transferring" the responsibility and obligations of the police and the public prosecution (excluding crimes). Criminal prosecution is the most expensive way of dealing with corruption, which means that the state administration bodies should act as "guards" and deal with the largest possible number of cases within the scope of their competencies. All responsible institutions should improve the communication and sharing of information with the public regarding their work in the area of fight against corruption in order to increase trust in the institutions, their transparency and the fight against corruption. (Nuredinoska, E., Sazdevski, M. and Gjuzelov, B. 2014, 63.)

3. CRIMINOLOGICAL AND CRIMINAL-LEGAL ASPECTS OF CORRUPTION

Taking into account the external forms of corruption, we distinguish **situational corruption** and **systemic corruption**.

A characteristic of situational corruption is that it is made spontaneously in a situation, but it is not planned or prepared. Use occasion. Corruption is limited to only two or several people and this should not be repeated. (Simon, A. and Simon, K. 2006, 6.)

Example: During a regular road traffic control, a uniformed police officer signals the driver to stop the vehicle. The driver stops the vehicle, and the police officer seeks to inspect the driver's license and the motor vehicle registration. The driver is aware that he does not carry the driver's license, after which he tells the police officer that he has a driver's license, but that he has forgotten it at home, after which he offers a certain amount of money to the police officer, to avoid being issued a traffic offense.

In systemic corruption, it is characteristic that corrupt activities are long-term; they are planned and prepared in advance. Crimes are usually based on built relationships between providers and recipients. Often the donor performs tests on smaller-scale recipients. If the recipient is vulnerable, it is the right time to act corruptly. Then the frequency and amount of assets increase over time, and this creates an illegal relationship. Such a type of procedure mainly takes place in the economic sphere of the lender. (Ibid.)

Example: A manager of a transport company in the internal and international road transport field regularly renews the documentation in the relevant Ministry in order to obtain a transport license. In doing so, he often meets the officials to whom he submits the necessary documents. When submitting the necessary documentation, the manager gives gifts of lesser value to the officers, and after the completion of the whole procedure, he decides to thank the officials by giving them gifts of a slightly higher value. He expects to receive a certain counter-service in the future.

An intensified form of systemic corruption is the "so-called" network of corruption, a kind of organized crime. Crimes are carried out over several years or decades; they are committed regionally, nationally and sometimes even internationally. This type of corruption is often driven by or within companies. Moreover, in addition to classic corruption, other crimes are also committed, such as restriction of competition through an agreement in terms of a public tender, breach of business secrets, making false records in public records, embezzlement and misuse of trust. (Ibid.)

Example: The owner of a construction company meets a public office holder in an elite restaurant. The public office holder is a responsible minister. His Ministry has announced a public tender for the construction of a building for the needs of the Ministry. At the meetings, among other things, the construction company of the said owner is planned to be awarded the tender. The criteria that need to be met by the construction company are already agreed in advance. The construction company receives the tender for the construction of a building.

According to some authors, corruption represents: "binding tissue of all forms of organized crime". (Sulejmanov 2003, 578.)

3.1. Analysis of the legal regulation (the Criminal Code and the Law on Prevention of Corruption and Conflict of Interest)

The Criminal Code of the Republic of Macedonia foresees the following incriminations: Bribery at elections and voting (Article 162), Unauthorized acceptance of gifts (Article 253), Unauthorized giving of gifts (Article 253-a), Disclosing and unauthorized acquisition of a business secret (Article 281), Abuse of official position and authorization (Article 353), Taking bribe (Article 357), Giving bribe (Article 358), Giving a reward for unlawful influence (Article 358-a), Accepting a reward for unlawful influence (Article 359), Unlawful obtaining and covering property (Article 359-a) and Disclosing an official secret (Article 360).

According to Article 162 (*Bribery at elections and voting*), (1) Whosoever offers, gives or promises a present or some other benefit to a person with a voting right, with the intention to attract this person to perform, not to perform or how to perform the voting right, shall be sentenced to imprisonment of at least five years. (2) The sentence referred to in paragraph (1) shall be as well imposed on a person with a voting right who requests for himself a present or some other benefit, or who receives a present or some other benefit, in order to perform, not to perform or to perform the voting right in a certain manner. (3) If the benefit is of minor value, the offender shall be fined or sentenced to imprisonment of up to one year. (4) If the crime referred to in this Article is committed by a legal entity, it shall be fined.

According to Article 253 (*Unauthorized acceptance of gifts*), (1) Whosoever, in the course of carrying out economic, financial, trade, service or other economy-related activity, directly or indirectly requests or accepts a gift or other direct or indirect personal benefit or a benefit for another party, or a promise or an offer for such benefit, in order to neglect the interest of the legal entity or natural person in the conclusion or extension of an agreement or in the undertaking of another activity, or in order to achieve unjustified benefit or cause a damage of a greater value to the legal entity or natural person or to a third party, shall be sentenced to imprisonment of one to five years. (2) The sentence referred to in paragraph (1) of this Article shall be imposed on whosoever requests or accepts an unauthorized gift or other personal benefit or a benefit for a third party, or a promise for offer of such benefit in order not to conclude or extend the agreement or not to undertake another activity for the benefit of the legal entity or natural persons whose interests he represents. (3) If the offender agrees to accept an unauthorized gift or other benefit after the conclusion of the agreement or the undertaking or not undertaking of another activity, he shall be fined or sentenced to imprisonment of up to three years. (4) An organizer or a participant in a sports competition who directly or indirectly requests or accepts a gift or any other direct or indirect personal benefit or a benefit for another party, or a promise or an offer for such a benefit, in order to neglect the interests of the legal entity or the natural person that organizes the competition, in order to achieve a result which does not depend on the sports game and the rules of the sports competition, shall be sentenced to imprisonment of one to five years. (5) Whosoever serves as a middleman in giving and accepting the gift

shall be punished with the punishment referred to in paragraph (4) of this Article. (6) If the crime referred to in this Article is committed by a legal entity, it shall be fined. (7) The received gift or the other benefit shall be seized.

According to Article Article 253-a (*Unauthorized giving of gifts*), (1) Whosoever directly or indirectly promises, or offers or gives to another a gift or another benefit or promises or offers such benefit, in order the latter to neglect the interests of the legal entity or natural person when concluding or extending an agreement in the course of carrying out economic, financial, trade, service or other economy-related activity, or when undertaking another activity, or to achieve unjustified benefit or cause damage of a greater value to the legal entity or natural person or to a third party, shall be sentenced to imprisonment of one to five years. (2) The sentence referred to in paragraph (1) of this Article shall be imposed on whosoever offers or gives a gift or another benefit or promises to offer such benefit to another in order to achieve unauthorized personal benefit or benefit for another in the course of carrying out economic, financial, trade, service or other economy-related service, or in order to cause damage of a greater value by not concluding or not extending the agreement or by not undertaking another activity he has been obliged to undertake for the benefit of the legal entity or natural person whose interests he represents. (3) If the offender of the crime referred to in paragraphs (1) and (2) of this Article has reported the crime before it is detected or has been found out that it has been detected, may be acquitted from the sentence. (4) Whosoever, directly or indirectly, promises, offers or gives a gift or another benefit or gives a promise or an offer for such a benefit to an organizer or a participant in a sports competition, with the intent to neglect the interests of the legal entity or the natural person that organizes the competition, in order to achieve a result which does not depend on the sports game and the rules of the sports competition, shall be sentenced to imprisonment of one to five years. (5) Whosoever serves as a middleman in giving and accepting the gift shall be punished with the punishment referred to in paragraph (4) of this Article. (6) If the crime referred to in this Article is committed by a legal entity, it shall be fined. (7) The given gift or other benefit shall be seized.

According to Article 281 (*Disclosing and unauthorized acquisition of a business secret*), (1) Whosoever announces, hands over or in any other manner makes available to an unsolicited person the data declared by law to be a business secret, as well as whosoever acquires such data for the purpose of handing them over to an unsolicited person, shall be sentenced to imprisonment of one to five years. (2) Whosoever announces, hands in or in any other manner makes available to an unsolicited person the data declared by regulation or a decision of a competent management body as a business secret, and if the disclosing of these data has caused or might cause more severe harmful consequences, as well as whosoever acquires such data with the intent to hand them in to an unsolicited person, shall be sentenced to imprisonment of three months to three years. (3) If the data referred to in paragraphs 1 and 2 are of special importance or the disclosing, or

the acquisition of the data was done for the purpose of exporting them abroad, he shall be sentenced to imprisonment of one to ten years.

According to Article 353 (*Abuse of official position and authorization*), (1) An official person who, by using his official position or authorization, by exceeding the limits of his official authorization, or by not performing his official duty, acquires for himself or for another some kind of benefit or causes damage to another, shall be sentenced to imprisonment of six months to three years. (2) If the offender of the crime referred to in paragraph 1 acquires a greater property benefit, or causes greater property damage, or violates the rights of another more severely, he shall be sentenced to imprisonment of six months to five years. (3) If the offender of the crime referred to in paragraph 1 acquires a significant property benefit or causes a significant damage, he shall be sentenced to imprisonment of at least three years. (4) The responsible person in the foreign legal entity which has a representative office or performs an activity in the Republic of Macedonia or a person that performs activities of public interest, shall be sentenced with the punishments referred to in paragraphs 1, 2 and 3, insofar as the crime is committed while performing his specific authorization or duty. (5) If the crime stipulated in paragraph (1) and (4) is performed during the execution of public purchases or causing damage to the finances of the Budget of the Republic of Macedonia, public funds or other state owned funds, the offender shall be sentenced to imprisonment of at least five years.

According to Article 357 (*Taking bribe*), (1) An official person who directly or indirectly requests or receives a gift or another benefit or is promised to receive a gift or another personal benefit or a benefit for another, in order to perform an official activity which should not be performed, or does not perform an official activity which should be performed, shall be sentenced to imprisonment of four to ten years. (2) An official person who directly or indirectly requests or receives a gift or another benefit or is promised to receive a gift or another personal benefit or a benefit for another, in order to perform an official activity which must be performed, or does not perform an official activity which must be performed, shall be sentenced to imprisonment of one to five years. (3) An official person who, after the commission or non-commission of the official activity referred to in paragraphs (1) and (2) of this Article requests, receives or agrees to receive a gift or some other benefit shall be sentenced to imprisonment of three months to three years. (4) If greater property benefit is obtained with the crime, the offender shall be sentenced to imprisonment of at least four years. (5) If significant property benefit is obtained with the crime, the offender shall be sentenced to imprisonment of at least five years. (6) The sentence referred to in paragraphs (1), (2), (3), (4) and (5) of this Article shall be as well imposed on the responsible person performing activities of public interest, as well as on a foreign official person. (7) The received present or acquired property benefit shall be seized.

According to Article 358 (*Giving bribe*), (1) Whosoever, directly or indirectly, gives, promises or offers a gift or another personal benefit to an official person, or a benefit for another, in order for the official person to perform an

official activity, which otherwise should not be performed, or not to perform an official activity which must be performed, or whosoever mediates in such relation, shall be sentenced to imprisonment of one to five years. (2) Whosoever, directly or indirectly, gives, promises or offers the official person a gift or other personal benefit or a benefit for another, in order for the official to perform an official activity which otherwise must be performed, or not to perform an official activity which should not be performed, or whosoever mediates in such relation, shall be sentenced to imprisonment of one to three years. (3) For the crime referred to in paragraphs (1) and (2) of this Article the court may acquit the sentence of the offender that has given or promised bribe, upon a request of an official person, and has reported it before it is found out that the crime has been detected. (4) The provisions referred to in paragraphs 1, 2 and 3 shall also be applied when bribe is given or promised to a responsible person, a responsible person in a legal entity, a person performing an activity of public interest and a foreign official person, in regard to the crime referred to in Article 357. (5) If the crime stipulated in paragraph 1 is committed by a legal entity, it shall be fined. (6) The given present or property benefit shall be seized.

According to Article 358-a (*Giving a reward for unlawful influence*), (1) Whosoever directly or indirectly gives a reward, gift or another benefit or promises or offers such benefit, personally or for a third party, in order to use its real or supposed influence, official or social position or image to request, intervene, motivate or in any other manner influence the performance of a specific official activity which must be performed, or not to perform an official activity that should not be performed, shall be sentenced to imprisonment of one to three years. (2) Whosoever directly or indirectly gives to another a reward, gift or another benefit, the promise or offer for such benefit, so that by using its real or supposed influence, official or social position or image, or requests, intervenes, motivates or in any other manner influences the performance of an official activity that otherwise should not be performed or does not perform an official duty that otherwise must be performed, shall be sentenced to imprisonment of one to five years. (3) If the crime referred to in paragraph (2) of this Article is committed in regard to the initiation and conduct of a criminal procedure against a certain person, the offender shall be sentenced to imprisonment of three to five years. (4) Whosoever directly or indirectly gives to another a reward, gift or another benefit or promises or offers such benefit, personal or for a third party, in order to use its real or supposed influence, official or social position or image, or requests, intervenes, motivates or in another manner influences the responsible person, the responsible person in a foreign legal entity performing activity in the Republic of Macedonia, or a person performing activities of public interest, to perform or not to perform an activity contrary to his duty, shall be fined or sentenced to imprisonment of up to three years. (5) If the crime referred to in paragraphs (1), (2), (3) and (4) of this Article is committed upon a request of a person that shall illegally mediate, and the offender has reported it before it has been detected or before it is found out that it is

detected, the offender may be acquitted from the sentence. (6) The reward, gift or another benefit shall be seized.

According to Article 359 (*Accepting a reward for unlawful influence*), (1) Whosoever directly or indirectly receives a reward, gift or some other benefit or promises or offers such personal benefit or a benefit for a third party by abusing the real or supposed influence, official or social position and image, or requests, intervenes, motivates or in any other manner influences the performance of an official activity that must be performed or is not performed and should not be performed, shall be sentenced to imprisonment of one to three years. (2) The sentence referred to in paragraph (1) of this Article shall be imposed on whosoever by abusing its real or supposed influence, official or social position and image will request, intervene, motivate or in any other manner influence the performance of an official activity that otherwise should not be performed or not to perform an official duty that must be performed. (3) If the crime referred to in paragraph 2 is committed in regard to the initiation or conduct of a criminal procedure against a certain person, the offender shall be sentenced to imprisonment of one to five years. (4) Whosoever by abusing the real or supposed influence, official or other position, and image requests, intervenes motivates or in any other manner influences the responsible person, the responsible person in a foreign legal entity performing an activity in the Republic of Macedonia or a person performing activities of public interest for a reward, gift or other benefit, or a promise for such benefit, performs or does not perform an activity contrary to his duty shall be fined or sentenced to imprisonment of up to one year. (5) If the consequence from the crime referred to in paragraph 4 is unlawful acquisition or loss of rights, or acquisition of a greater property benefit or causing greater damage to another, to a domestic or a foreign legal entity, the offender shall be sentenced to imprisonment of one to five years. (6) If the crime referred to in this Article is committed by a legal entity it shall be fined. (7) If a reward or some other benefit is received for the mediation referred to in paragraphs 2 and 3, the offender shall be sentenced to imprisonment of one to ten years. (8) If the crime referred to in this Article is committed by a legal entity, it shall be fined.

According to Article 359-a (*Unlawful obtaining and covering property*), (1) An official person or a responsible person in a public enterprise, public institution or other legal entity having at its disposal state capital, who against the legal obligation to report the material condition or its change provides false or incomplete data regarding its property or the property of the members of his family, which in significant amount exceeds his legal revenues, shall be sentenced to imprisonment of six months to five years and shall be fined. (2) The sentence referred to in paragraph (1) of this Article shall be imposed to an official person or a responsible person in a public enterprise, public institution or other legal entity having at his disposal state capital which provides false data or covers his true sources, when in a legally regulated procedure it is confirmed that during the performance of his function or duty, he or a member of his family has obtained property that in significant amount exceeds its legal revenues. (3) If the crime

referred to in paragraphs (1) and (2) of this Article has been committed against a property which to a greater extent exceeds its legal revenues, the offender shall be sentenced to imprisonment of one to eight years and shall be fined. (4) For the crimes referred to in paragraphs (2) and (3) of this Article, the offender shall not be sentenced if during the procedure he gives in court acceptable explanation regarding the origin of the property. (5) The property exceeding the legally obtained revenues by the offender, wherefore he has provided false or incomplete data or has not provided any data or covers its true sources of origin shall be confiscated, and if such confiscation is not possible, another property corresponding to its value shall be confiscated from the offender. (6) The property referred to in paragraph (5) of this Article shall be as well confiscated from the members of the offender's family for whom it has been obtained or to whom it has been transferred, should it be obvious that they have not given counter-compensation corresponding to its value, as well as from third parties unless they prove to have given counter-compensation corresponding to the value of the object or the property.

According to Article 360 (*Disclosing an official secret*), (1) Whosoever announces, hands over, or in some other manner makes available data to the public or to an unauthorized person, which are considered to be an official secret, or who acquires such data with the intent to disclose them or hand them over to the public or to an unauthorized person, shall be sentenced to imprisonment of three months to five years. (2) If the crime referred to in paragraph 1 is committed out of self-interest or for using data abroad, the offender shall be sentenced to imprisonment of at least one year. (3) If the crime referred to in paragraph 1 is committed out of negligence, the offender shall be fined or sentenced to imprisonment of up to three years. (4) An official secret is considered to be data or documents which by law, by some other regulation or by decision of a competent body adopted on the basis of the law, have been declared an official secret, and whose disclosure has had or could have had harmful consequences for the service.

Regarding the emerging forms of corruption in the Republic of Macedonia: "It is generally the conviction that it is present in very difficult forms, and that there is no area that is not contaminated: from exercising the functions of state administration, public orders, financing of political parties, issuing of different contingents, permits, etc. to economic corruption in the privatization of social capital and business relations between legal entities and the state. In addition, outside the area of collective consciousness (whose integral element is the widely accepted "rules of the game" type: in order to succeed you must be close to the party, that is, the people in power), the degree of corruption of political, state, and economy structures points to a series of indicators that must be subject to serious observation. Thus, the cases: "TAT", savings houses, embargo and oil, cigarettes, public procurements, antiques and horses, medicines etc. that remained, at least for the time being, without a real ending, for every country that is considered democratic and legal are actually pure criminal cases that get court adjournment." (Kambovski 1998, 8-9.)

The rise in crime is one of the most important criteria for social disorder, which manifests itself in a crisis of the legal system and morality. The climate of lawlessness that creates the impression that everything is allowed is in turn giving rise to corruption and division into favoured and second-class citizens. This undermines the principle of fairness on the basis of which is the requirement that people who are in a similar situation should be treated in the same way. (Ignjatović 1992, 2.)

Speaking about the causes of corruption, Kambovski said, inter alia, that "a collective factor is also a significant factor, that is, the instability of the system of moral and other values. The practice of enormous and unlawful wealth, a sharp social differentiation that is increasingly due to the use of certain convenience or position, especially in the privatization of capital, rather than of capabilities and labor, creates a general climate of assurance that everything is allowed and that even crime pays off. Especially if legislation cannot monitor and sanction such occurrences, and state authorities do not show any particular engagement in the consistent application of laws." (Kambovski 1998, 6)

The consequences of corruption are manifested in the economic, social and political sphere. In the economic sphere, corruption prevents the country's economic growth for a longer period. Socially, it is reflected in the impoverishment of the population, and at the political level it leads to an increase in the power and elitism of the ruling class. A policy that no longer has a democratic tradition is susceptible to the tendency of ultimate utilitarianism: the goal - conquering power or remaining in power - justifies all possible means of achieving power. A state built on a party monopoly, which implies a monopoly on capital, cannot easily resist such inertia. (Ibid.)

The consequences of corruption in international documents in this area are usually highlighted: prevention of economic development, discouragement of domestic and foreign investment, deterioration of the motivation for work, undermining of the rule of law, good regulation, equity and social justice, violation of the fundamental rights and freedoms by creating uncertainty in their accomplishment, reducing the confidence of citizens in the impartiality of public administration and a threat to the stability of the democratic institutions. (Sulejmanov 2003, 593)

In an effort to find funds for the efficient suppression of corruption, lately there are tendencies in almost all countries in the world to increase international cooperation in this area, create special anticorruption legislation, and provide special organization and specialization of detection services, prosecution and adjudication of corruption cases. (Ibid., 595.)

At its session held on 17 January, 2019, the Assembly of the Republic of Macedonia adopted **the Law on Prevention of Corruption and Conflict of Interest**.

The main goal of this Law is to strengthen the efficiency and independence of the State Commission for Prevention of Corruption and reinforce the legal and institutional anti-corruption framework. The aim of the adoption of this Law is the

achievement of more efficient prevention and fight against corruption. (Draft Law on Prevention of Corruption and Conflict of Interests, 2018.)

It is a modern legal solution, in accordance with international conventions and agreements. Namely, it was necessary to harmonize the domestic legal solution with the United Nations Convention against Corruption (Ratified by the Law on Ratification of the United Nations Convention against Corruption, "Official Gazette of the Republic of Macedonia" No. 37/2007), with the European Commission Progress Reports for 2016 and 2018, as well as with the recommendations of the Group of Countries against Corruption (GRECO).

This Law regulates the measures and activities for prevention of corruption in the exercise of power, public authorizations, official duty and policy, measures and activities for prevention of conflicts of interest, measures and activities for prevention of corruption in the performance of activities of public interest of legal entities connected with the exercise of public authorizations. (Article 1 of the Law on Prevention of Corruption and Conflict of Interest, 2019).

The Law on Prevention of Corruption and Conflict of Interest anticipates the prevention of corruption in the following areas:

- Prevention of corruption in politics;
- Prevention of corruption in the exercise of public authorizations;
- Prevention of corruption in the performance of activities of public interest and other activities of legal entities;
- Prevention of conflicts of interest.

Modern trends in the field of suppression of corruption are directed towards taking preventive measures that will focus on reducing the opportunities and creating unfavourable conditions for committing corruption crimes. Preventive anti-corruption measures are aimed at preventing, detecting the causes and conditions of corruption and removing them, while repressive activities remain as corrective measures and are aimed at sanctioning illegal operations and removing the harmful consequences. (Anticorruption Program 2012, 2)

Key control agencies need to be modernized and reformed to reduce the risk of corruption among citizens. The data suggests that the focus should be turned to the judiciary and its actions and capacity to prevent corruption should be strengthened. At the same time, the judiciary's accountability should be increased to deliver the social expectations for prevention of corruption. (Nuredinoska, E., Sazdevski, M. and Gjuzelov, B. 2014, 32.)

It is necessary to strengthen the independence and pro-activity of the State Commission for the Prevention of Corruption and other national control bodies, in order to distance their work from any kind of political influence. For this purpose, greater financial independence of these institutions is necessary, and primarily of the SCPC. The SCPC and other state-level control bodies must be more supportive in the implementation of the obligations related to the financing of political parties arising from the legal framework for financing political parties and campaigns. It is obvious that the expectations for the results in the fight against corruption are overly directed towards the SCPC, especially given the competencies of other

institutions authorized to fight corruption. In that sense, there should be a better focus on the authority and activities of the SCPC and a better definition of its place in the overall anticorruption context and its co-operation with other anti-corruption institutions. Namely, there are other specialized anti-corruption administrative bodies, such as the Financial Police, the Financial Intelligence Directorate, the Public Revenue Office, etc., with higher budgets and larger human capacities, whose role does not come to light, although they have an equally important role in the overall anticorruption system. It is necessary that their role in the future is more pronounced. (Ibid, 63.)

CONCLUSION

Based on the analysis of the term corruption, in accordance with the positive legal regulations, we find that it is an abuse of office, public authority, official duty or position for gaining benefit, directly or through an intermediary, for oneself or for others. The Law on the Prevention of Corruption and Conflict of Interest distinguishes active and passive corruption, which were explained above in this paper.

Corruption in transition countries is a serious problem in the way of progress in terms of the democratization of states, the rule of law and the creation of a legal state (state of law). During the transition of states, especially those who were independent from the former socialist bloc, corruption was embedded in all pores of social and political life. Namely, there was systemic corruption in these countries. It brings about paralysis of the state administration system, suppression of the rule of law, corrupted politicians, corrupted justice system and creates a legal framework for the realization of personal and group interests of a small circle of people, to the detriment of social and public interest.

The Republic of Macedonia was no exception to all of this. As a result, in the past thirty years we have a state in which the rule of law does not apply to all its citizens, the institutions of the system are used for the personal needs of a small group of people in power, the rule of law is only a dream for many people, and corruption has penetrated into every pore of social life.

The existence of legal regulations for sanctioning the perpetrators of criminal acts in the field of corruption must not be only a theoretical and legal imperative, but a legal practice in the process of building a modern European state which is governed by law and the positive legal regulations are respected by all.

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UDK:

PHENOMENOLOGICAL FEATURES OF THE CRIME "DAMAGE AND UNAUTHORIZED ENTERING IN A COMPUTER SYSTEM" IN THE REPUBLIC OF MACEDONIA FOR THE PERIOD 2007 - 2017

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Abstract

Information technology and the internet are deeply embedded in every segment of information society. The rapid development of information technology and the massive use of information communication devices create new opportunities for creating new forms of computer criminality. The massive use of computer systems, information communication devices and the internet network, on the one hand, facilitates the functioning of the human being, but on the other hand, it increases the risks to information security.

Thisresearch work encompasses science researching on the manifest forms, dynamics, and prevalence ofthe criminal act "Damage and unauthorized entry into a computer system"in the Republic of Macedonia for a period of ten years, with particular reference to the criminal justice aspects, information security and information society in the Republic of Macedonia.

The aim of this research work is to contribute to the timely detection of the risks to information security imposed by this crime, to improve the effectiveness and efficiency in preventing this crime and its new forms by applying digital forensic analysis, providing electronic evidence in accordance with criminal procedural provisions and international cooperation in order to detect and prove the perpetrators of this crime.

Keywords: Computer crime, information security, research, risks, electronic evidence.

1. The notion of computer criminality

Computer crime is a global criminological phenomenon of global dimensions. Criminal activities for this type of criminality usually have international territorial links, that is, perpetrators are located in the jurisdiction of a state, and the consequences reach the computers and victims in many other countries around the world. A common feature of the other new forms of criminality is their multinational approach, but cybercrime has a strong coupling with electronic evidence, which makes it specific by its very nature.

Computer criminality covers a wide range of criminal acts by perpetrators using information and communication devices in its execution. For its criminal investigation, it is necessary to develop a chain of proof that will connect the pathof the perpetrator and the victim[77]. Usually, in computer crimes, the perpetrator and the victim are temporally and spatially unrelated, they can have a national and multinational character, and a causal relationship is made through a medium, most often the Internet as the largest global network. The rapid development of the internet network and its implementation for commercial use along with new technological advancements is one of the most significant and most revolutionary achievements for man. The computer, mobile phone, tablet or the TV ... have become devices without which one can not imagine a modern information society, as it has invaluable significance in all spheres of human functioning. Today, the information society has undergone major transformations as a result of the information revolution and the Internet; in fact, the introduction of the Internet has created exceptional opportunities for scientific research, modern education, entertainment, social networks, data science, e-commerce, e-business and increased profits of the users of these services. The introduction of information technology, worldwide connectivity, and communications significantly improve the quality of life. In fact, the Internet can be said to represent a "window" to the world[78]. The massive use of information technology and the Internet for commercial purposes makes life easier for people, but also with the massive use of information technology and the Internet, new emergent forms of criminal activities and security risks to information security have emerged, which are constantly expanding in proportion to the development of the IT sector.

New technological advancements in the IT sector have enabled, on the one hand, easier operation of man, saving time both human and material resources, communication from any distance on the globe has become relatively close and inexpensive, scientific research, access to information has been simplified and is closer albeit in reality perhaps so far away, online education, encyclopedias, social networks, online giants like google, yahoo, alliexpress, ebay, amazon ... became

[77] Stuart H. James, Jon J. Nordby,Forensic Science: An Introduction to Scientific and Investigative Techniques, Tabernakul, Skopje, 2009, page 553.

[78] Britz, Marjie, Computer forensics and cybercrime: an introduction/Marjie T. Britz, Ph.D., Clemson University—Third Edition, QA76.9.A25B77 2013, page.2.

available to all citizens who know how to use them. But, on the other hand, the Internet and information technology represent value-neutral concepts. While they can be useful for achieving social, economic, security, educational or other benefits, they can also be used for socially destructive and deviant behavior[79]. The new technological advancements in the IT sector and the Internet can be skillfully abused by the executors of computer crime, which by their application can enable the creation of new forms of socially harmful behavior, as well as facilitation of the execution of traditional forms of classical criminality[80]. Computer crime can have a national and multinational character, since the spread of communication networks, especially the Internet does not know national, physical or virtual spatial boundaries, andtherefore it is impossible for any country in the world to act alone in the fight against this criminal phenomenon. Cybercrime offenders with a serious misuse of information technology and the Internet realize their criminal vision and leave digital traces that need to be provided in a legal way in order to process these forms of computer criminality, which, in its turn, imposes the need for international cooperation, implementation of new information and forensic tools in criminal investigations and alterations and harmonization of the national legislation with the European, in order to achieve quality processing of new forms of computer crime.

In addition to all the advantages and disadvantages offered by information technology, the modern information society can not function without the computer systems that are present in all spheres, starting with each individual, in their home, work, public and state services that work with classified information, internet communications and social networks (Viber, telegram, skype, facebook, Instagram ...), banking, internet commerce ... In every segment of information society, it is necessary that the level of information security be appropriate, i.e.all security risks should be taken into account in the development of security assessment and risk analysis, in order to avoid the harmful consequences of cybercrime, which tend to grow in proportion to the rapid technological development in the IT sector.

Computer criminality more recently becomes synonymous with all kinds of criminal behavior committed through a computer system regardless of whether the computer system is used as a means of attack or it is the object of a criminal attack[81]. Computer crime can be defined as any crime committed through a computer or computer system; it represents any criminal activity involving a computer system, even peripheral, but this includes the abuse of a computer system or computers connected to the Internet, which results in direct and/or incidental losses. Criminal activity includes any criminal activities (unauthorized access,

[79]Nikoloska, S., Methodology of research on computer crime, Faculty of Security, Skopje, 2013, page 12.

[80]Tupancevski N., Kiprijanovska D., Fundamentals of the Macedonian information – criminal law, Skopje 2008, page 523.

[81]Nikoloska, S., Methodology of research on computer crime, Faculty of Security, Skopje, 2013, page 14.

dissemination, manipulation, destruction or damage to electronically stored data)[82]. According to the views of some authors, any crime involving digital evidence or electronic traces can be characterized as cybercrime, although it can still be a classic crime such as kidnapping, blackmail, extortion, illicit trafficking in drugs and weapons, etc. In such crimes, requests/redemption contracts are transmitted via telephone, SMS, Viber, skype, facebook or social networks, however, they do not constitute cybercrime, although computers (information - communication) are used. Computers can also be used by digital forensics to provide quality electronic evidence to prove the perpetrators who made use of such engines. In fact, the earliest computer crimes are characterized as non- technological, that is, theft of computer components and software piracy. The development of information technology contributes to the emergence of hacking, "DoS - (Denial of Service)", "DDoS - (Distributed Denial of Service)", Defacement, SQL Injection, Phishing, Botnets, various types of viruses, keyloggers and other technologically complicated software criminal activities. According to computer jargon, this kind of cybercrime is called hacking, that is, hacking activities, which include unlawful penetration or attempted unauthorized entry into a computer system at will, performed by specialized executives who are called hackers. The most common goals of the computer attacks are: computer server units connected in electronic (internet / intranet) networks, which store data for web pages, databases, servers for bank applications, post offices, hotels, hospitals, state institutions, as well as private computer units, tablets, mobile smartphones and other digital portable devices owned by individuals and legal entities.
Computer crime - as a general term used to denote any crime that is facilitated by computer use, this generalization involves criminal activity over the Internet and without internet access, including theft of electronic data, forgery, digital piracy or copyright, hacking, child pornography, unauthorized access, dissemination, manipulation, destruction or damaging of electronically stored data, misuse of personal data and classified electronic data.
According to the 2001 Computer Crime Convention, cybercrime is divided into the following forms:

- Committed against the secrecy, integrity, and availability of computer data and systems: unauthorized access, unauthorized interception, data entry, system incursion, device abuse;
- whose commission is connected with a computer: computer-related forgery, computer fraud;
- activities related to content data: activities related to child pornography;
- activitiesrelated to infringement of copyright and other related rights.[83]

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[82]Britz, Marjie, Computer forensics and cybercrime: an introduction/Marjie T. Britz, Ph.D., Clemson University—Third Edition, QA76.9.A25B77 2013, page 5.

[83]Prof. Dr. Pere Aslimoski, Assoc. Dr. Angelina Stanojoska, Criminology, Iris prin, Bitola, 2015, p. 190.

2. The notion of damage and unauthorized entry into a computer system

The criminal offense "Damage and unauthorized entry into a computer system" provided for in Article 251 of the CC of the Republic of Macedonia implies unauthorized entry into a computer system for the purpose of unauthorized deletion, alteration or damage, concealment or any other form of disabling or impedingthe use of a computer system, data or program. This crime can be committed only on a computer system as an attacked object, which is owned by a natural or legal person. The purpose of the perpetrators of this criminal act is to disable the use of the computer system in whole or in part, that is, computer data or programs, changing or deleting them in order to obtain a property illegally or cause damage to another. The most common forms of this crime are known as hacking, diffusion, DDoS attacks, phishing and other forms of unauthorized damage and penetration into a computer system. In the R. Macedonia, the damage and unauthorized entry into the computer system is most often manifested through unauthorized entry into the computer system of legal entities dealing with online services and online payments, making counterfeit payment cards with the intention to commit unauthorized entry into the bank's computer system through POS terminals of legal entities and collecting data from payment cards with the so-called skipper in order to use them for an unauthorized entry into the computer system. The more advanced forms of the criminal act "Damage and unauthorized penetration into a computer system" are different depending on which methodology the perpetrators of these crimes use. Most often, based on the modus operandi they use, they are as follows:

• First, by using malware (keylogger, phishing ...) or skimmer, they provide the user name and password, ie personal data and PIN code of payment cards, and the stream sells those data over the Internet or writes them on blank payment cards with intent to be used through POS terminals or online trading, for unauthorized entry into the computer system of the bank.

• By using malicious software, administrator user and password are first provided and by unauthorized logging in as the real system administrator, after modifying or deleting the desired content in order to cause any unlawful benefits, the Internet service provider logs off.

• Social engineering is often referred to as the art of manipulating people, performing activities or disclosing confidential information. Although it is similar to cheating on trust or simple fraud, the term usually refers to fraud or fraud for the purpose of collecting information, fraud, or accessing a computer system; in most cases, the attacker never comes face-to-face with the victims. "Social engineering", as an act of psychological manipulation, was popularized by hacker consultant Kevin Mitnik. The term was previously linked to the social sciences, but its use has spread among computer professionals...

For any unauthorized entry into the computer software, the law enforcement agent must previously provide a user name and password, or a PIN code when it comes to a payment card. I have analyzed the illegal provision of personal and

banking data in more detail in the case studies. The way this information can be provided is also illegal by unauthorized persons using a different methodology with malicious software (skimmer, computer viruses, worms, Trojan horses, spyware, advertisers spam programs, phishing, secretive and other harmful programs), then by successfully logging in as the owner of this data with an easy unauthorized access to the server where the specific application program is set up and finally by carrying out activities for its modification, deletion or damage for the purpose of gaining illegal profit or causingnon-pecuniary damage to the owner. Most of these data end up on the black internet market, where they can be sold to other potential perpetrators of the criminal offense "Damage and unauthorized entry into the computer system". These are primarily perpetrators with less knowledge of information technology, but with a criminal vision and ready to use the acquired data for criminal activities.

3. RESEARCH

3.1. Statistical method

The statistical method is one of the methods for scientific investigation of security phenomena. It is a quantitative method for investigating security phenomena which means that the specific features of the security phenomenon are investigated by exploring the characteristics of a large number of cases. With respect to this specific research, we will determine the characteristics of the crime "Damage and unauthorized entry into a computer system" with appropriate mathematical methods and techniques. The statistical method deals with the general principles of research that are based on statistical analyses of mass phenomena. One of the views on the notion of statistics or the statistical method is the application of certain statistical methods or techniques of displaying data, that is, statistics are reduced to statistical tables as a set of numerical data for the study of the security phenomenon. This view is based on the fact that such statistical reviews are the starting point for a qualitative analysis of the security phenomenon. The statistical research within this master thesis will be conducted through four basic phases:

- Data collection
- Data grouping and displaying
- Data analysis
- Statistical decision making

The purpose of each statistical research is to identify the security phenomena and to predict their further development in view of making rational decisions, checking different assumptionsand characteristics of the investigated phenomenon and building a quality security strategy for the investigated security phenomenon.

3.2. Statistical analysis of the crime "Damage and unauthorized entry into a computer system"

The Ministry of Interior comprises a Criminal Intelligence Analysis and Reporting Department (CIARD) within the Public Security Bureau, under whose jurisdiction is the Statistical Research and Documentation Unit which deals with statistical research and documentation of crime in the Republic of Macedonia. The State Statistical Office also performs statistical surveys on security phenomena, i.e., criminality in the Republic of Macedonia. These two institutions arethe official sources of data that can be used to statistically analyze the criminal offense "Damage and unauthorized entry into a computer system". The data, that is, information that is of public character was provided from the official web pages of these institutions for the period from 2007 to 2017. Data aggregation is tabular and descriptive for the years during the research period, and graphs are used for better graphic visualization. Subsequently, the data analysis was based on the specific features that were made available from the official sources. In fact, the statistical survey investigates the phenomenological characteristics of the crime "Damage and unauthorized entry into the computer system". Security research of criminality enables us to describe the security phenomenon through its size, dynamics, structure, appearance forms, space and timeframe, etc. The phenomenological characteristics of the criminal offense "Damage and unauthorized entry into a computer system" include identification of this crime, its dynamics, appearance forms, certain relations between the perpetrators and the victims, new forms and conditions that are proportional to the development of information society and information technology. The statistics for this crime is analyzed for the investigated period and the obtained results are synthesized. Statistical decision making is the final stage in which a conclusion is drawn based on the results obtained for the investigated period.

3.2.1 Review of the crime "Damage and unauthorized entry into a computer system" in the Republic of Macedonia

Table 1 gives an overview of the crime "Damage and unauthorized entry into a computer system" in the period from 2007 to 2017 and the number of reported perpetrators on the territory of the Republic of Macedonia.

Year	**Crimes and perpetrators**	**Damage and unauthorized entry into the computer system**
2007	Criminal acts	7
	Perpetrators	11
2008	Criminal acts	20
	Perpetrators	30
2009	Criminal acts	63
	Perpetrators	73
2010	Criminal acts	36
	Perpetrators	43
2011	Criminal acts	47
	Perpetrators	29

2012	Criminal acts	31
	Perpetrators	14
2013	Criminal acts	74
	Perpetrators	15
2014	Criminal acts	76
	Perpetrators	22
2015	Criminal acts	40
	Perpetrators	33
2016	Criminal acts	70
	Perpetrators	40
2017	Criminal acts	43
	Perpetrators	34

Table 1. Review of the crime "Damage and unauthorized entry into the computer system" for the period 2007-2017[84]

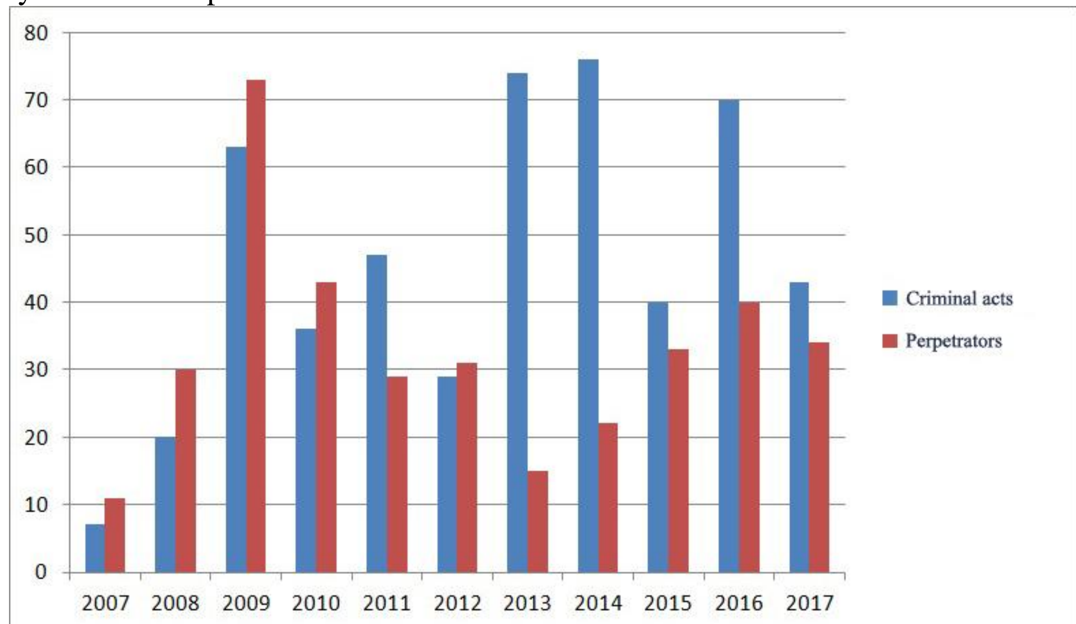

Table 1.1 Graphic presentation of the crime "Damage and unauthorized entry into a computer system" for the period 2007 - 2017[85]

For a better analysis, we will divide the investigated period into three periods, the first being from 2007 to 2009, the second from 2010 to 2012, and the third from 2013 to 2017. The highest number of crimes, totaling 76, was registered in 2014, and the smallest number of crimes, totaling 7, was registered in 2007. With the development of information technology and the massive use of personal computers

[84]More specific crimes in the field of economic crime in the period 2001-2010 (2019, January, 17). Retrieved fromhttps://mvr.gov.mk/analiza/kriminal/19

[85]Publication: Perpetrators of criminal offenses (2019, February, 25). Retrieved from http://www.stat.gov.mk/PublikaciiPoOblast.aspx?id=43&rbrObl=6

and the Internet in the Republic of Macedonia, the number of registered criminal acts according to Article 251 of the Criminal Code of the Republic of Macedonia is proportional. During the first period, the number of registered criminal offenses doubled and increased even more than the previous year, which was the result of the rapid expansion of criminal offenses in the field of computer crime. During this period, this crime was constantly on the rise and the perpetrators doubled each consecutive year, because it does not take highly specialized knowledge in the field of information technology to carry out such activities. In addition, the necessary skills and knowledge can be acquired on the Internet, and it was precisely in this period that the access to the Internet was enabledin the Republic of Macedonia by the cable operators. During this period, the Ministry of Interior detected the new emergent forms of this crime and based on the current statistical analyzes, a reorganization and a new systematization were performed, i.e., the Department for Cybercrime was expanded intoa Sector for Computer Crime and Digital Forensics. The second period is marked by a decline in the occurrence of this crime, and it is the result of the security strategy in the area of cybercrime developed on the basis of statistics from previous years. Unlike the previous period, when this crime had a tendency to increase and its frequency doubled every year, the high efficiency of the Ministry of Interior expert personnel in detecting and proving this crime andthe high number of convictions contributed to the decline of this crime in the second period. The number of perpetrators varied from year to year; however, there was a tendency for more perpetrators to commit the same crime jointly, i.e., accomplishment and complicity, and there were also perpetrators who commited this crime repeatedly on several occasions. In addition, the statistical data from the Statistical Office of the Republic of Macedonia covering the period 2007 - 2017 on the territory of the Republic of Macedonia, provided by the Ministry of Interior, indicated reports, charges and convictions of perpetrators of the criminal act "Damage and unauthorized entry into a computer system".

	Total	***Known Perpetrators***					***Total number of unknown perpetrators***
		Total number of known perpetrators	Women	Type of decision			
				Dismissed charges	Closed procedure	An indictment proposal submitted	
2007	8	7	0	2	0	5	1
2008	6	6	2	1	0	5	0
2009	28	2	2	0	0	22	6
2010	37	27	2	2	0	19	14

2011	45	40	6	9	0	31	5
2012	23	19	5	5	0	14	4
2013	41	18	3	6	1	11	23
2014	30	12	2	1	1	10	18
2015	50	21	3	7	0	14	29
2016	74	24	8	2	0	22	50
2017	74	20	6	6	0	14	54

Table 2. Review of reported adults for committing the criminal act "Damage and unauthorized entry into a computer system" in the period 2007 - 2017 on the territory of the Republic of Macedonia, based on the type of decision and sex[86]

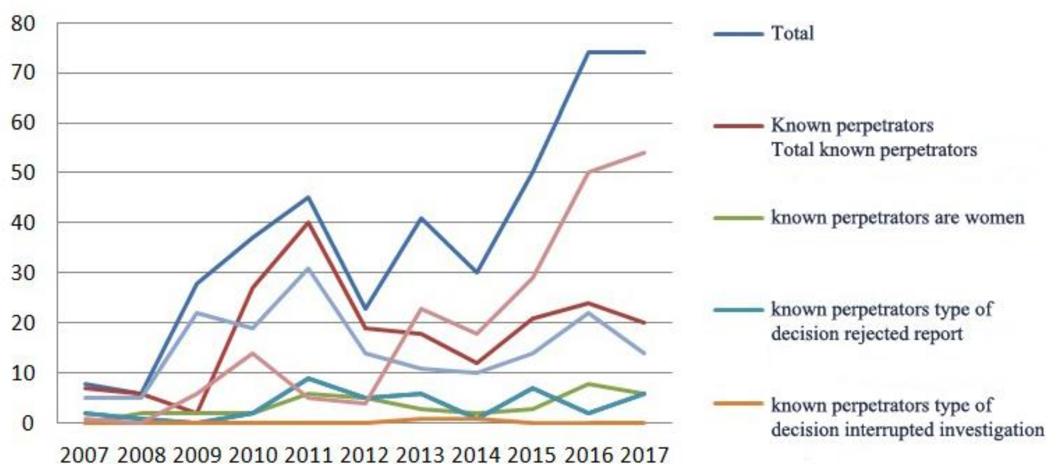

Table 2.1 Graph of registered adults for committing the criminal act "Damage and unauthorized entry into a computer system" in the period 2007 - 2017 on the territory of the Republic of Macedonia, based on the type of decision and sex[87]

From the analysis of the adult perpetrators reported to having committed this crime, it can be established that the number of known reported perpetrators in 2009 was the smallest and accounted for only 2 out of 28 reported perpetrators, which is the result of the lack of information security and criminal investigation

[86]Publication: Perpetrators of criminal offenses (2019, February, 25). Retrieved from http://www.stat.gov.mk/PublikaciiPoOblast.aspx?id=43&rbrObl=6
[87]Publication: Perpetrators of criminal offenses (2019, February, 25). Retrieved from http://www.stat.gov.mk/PublikaciiPoOblast.aspx?id=43&rbrObl=6

within the first part of the investigated period. By contrast, in the second and third sections, we have an increase in the number of known perpetrators. With regard to the dismissed criminal charges, i.e. the stopped investigations, the number is very small, which can be seen from the curve of dismissed criminal charges and stopped procedures in the graph where these values are very low.

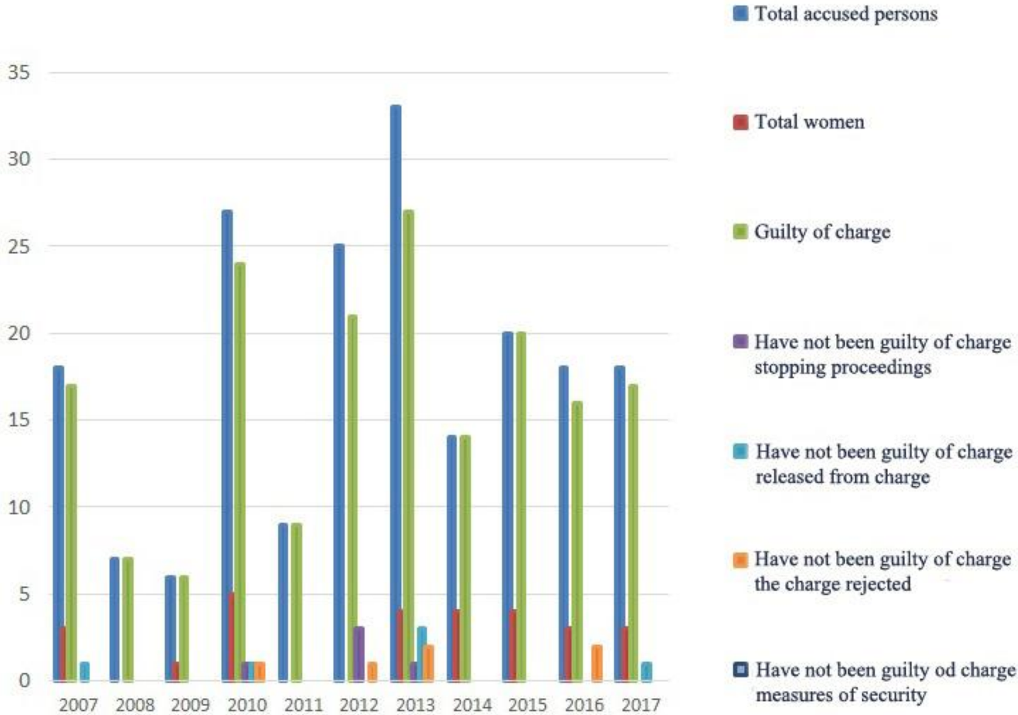

Table 2.2 Graphic overview of reported adults for committing the criminal act "Damage and unauthorized entry into a computer system" in the period 2007 - 2017 on the territory of the Republic of Macedonia, based on the type of decision and sex[88]

From the values given in Table 2.2, it can be established that the total number of accused persons and the number of convicted persons are approximately the same, indicating that the criminal investigation provided quality evidence in the legal procedure and the court passed a pertinent judgment as a consequence of an effective and efficientcriminal investigation. These values point to the fact that the filed criminal charges orthe indictment proposals were backed up with quality evidence, which is evident from Table 3. It can be inferred that more than 90% of the accusedwere found guilty, a small number of accused persons were acquitted, that is, the indictments were dismissed. This is evident from the graphic presentation of Table 3.1 and is another confirmation for the successful criminal

[88]Publication: Perpetrators of criminal offenses (2019, February, 25). Retrieved from http://www.stat.gov.mk/PublikaciiPoOblast.aspx?id=43&rbrObl=6

investigation with a high percentage of convictions that can be ascertained from Table 4. Regarding the type of criminal sanction, the ratio is approximately 50:50 in terms of penalties and alternative measures. The penalties are predominantly punishable by imprisonment and a smaller portion by fines, and with the alternative measures, the majority of penalties entail a prison sentence. Regarding the gender of the perpetrators, men prevail, but the number of women perpetrators tends to grow. Since this crime has been repeatedly prominent on several occasions, that is, it has an international character, which means that the perpetrators may be foreign citizens, in 2009 a new criminal sanction was introduced, the penalty of expulsion of foreign citizens.

Year	Total		Proclaimed guilty	They were not found guilty			
	Charged Persons	Women		Closed procedure	Freed from charge	The indictment was denied	Security measures
2007	18	3	17	0	1	0	0
2008	7	0	7	0	0	0	0
2009	6	1	6	0	0	0	0
2010	27	5	24	1	1	1	0
2011	9	0	9	0	0	0	0
2012	25	0	21	3	0	1	0
2013	33	4	27	1	3	2	0
2014	14	4	14	0	0	0	0
2015	20	4	20	0	0	0	0
2016	18	3	16	0	0	2	0
2017	18	3	17	0	1	0	0

Table 3. Review of accused adults for committing the criminal act "Damage and unauthorized entry into a computer system" in the period 2007 to- 2017 on the territory of the Republic of Macedonia, based on the type of decision and sex[89]

[89]Publication: Perpetrators of criminal offenses (2019, February, 25). Retrieved from http://www.stat.gov.mk/PublikaciiPoOblast.aspx?id=43&rbrObl=6

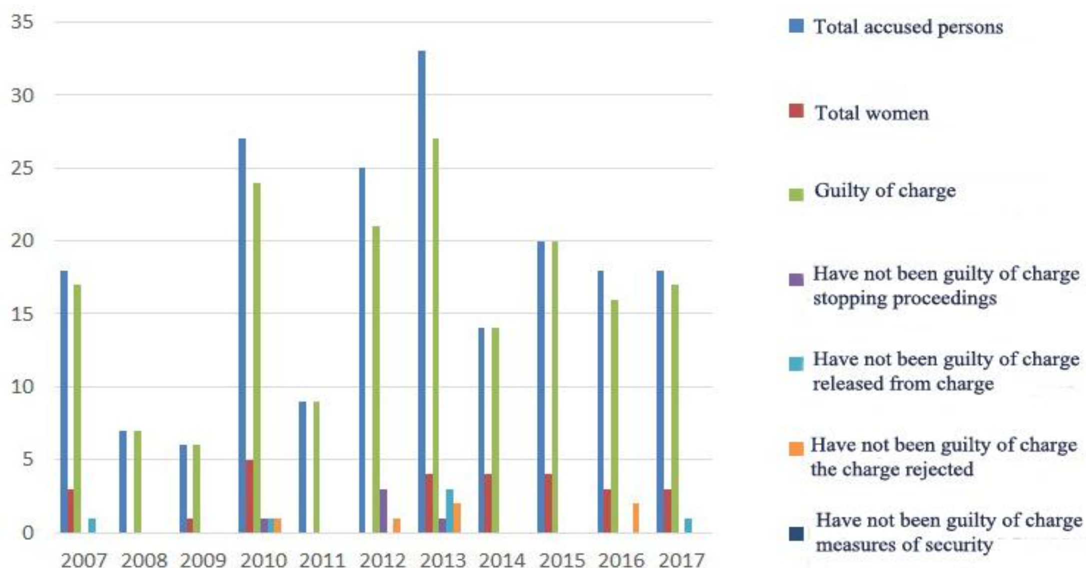

Table 3.1. Graphic overview of the adults accused for committing the criminal act "Damage and unauthorized entry into a computer system" in the period 2007 - 2017 on the territory of the Republic of Macedonia, based on the type of decision and sex[90]

	Total		Type of sanction							
	Convicted	Women	Penalties total	Penalties			Alternative measures total	Alternative measures		
				Prison	Money	Expulsion of foreign citizens		Conditional sentence		Court reprimand
								Prison	Money	
2007	0	0	0	0	0	0	0	0	0	0
2008	7	0	4	1	3	0	3	3	0	0
2009	6	1	3	1	0	2	3	0	0	0
2010	24	4	12	9	3	0	12	12	0	0
2011	9	0	4	2	2	0	5	5	0	0
2012	21	0	11	7	4	0	10	9	1	0
2013	27	3	8	7	1	0	19	18	0	1

[90]Publication: Perpetrators of criminal offenses (2019, February, 25). Retrieved from http://www.stat.gov.mk/PublikaciiPoOblast.aspx?id=43&rbrObl=6

2014	14	4	6	4	2	0	8	8	0	0
2015	20	4	11	7	4	0	9	9	0	0
2016	16	3	4	1	3	0	12	12	0	0
2017	17	2	4	3	1	0	13	13	0	0

Table 4. Convicted adults for committing the criminal act "Damage and unauthorized entry into a computer system" in the period 2007 - 2017 on the territory of the Republic of Macedonia based on the type of criminal sanction[91]

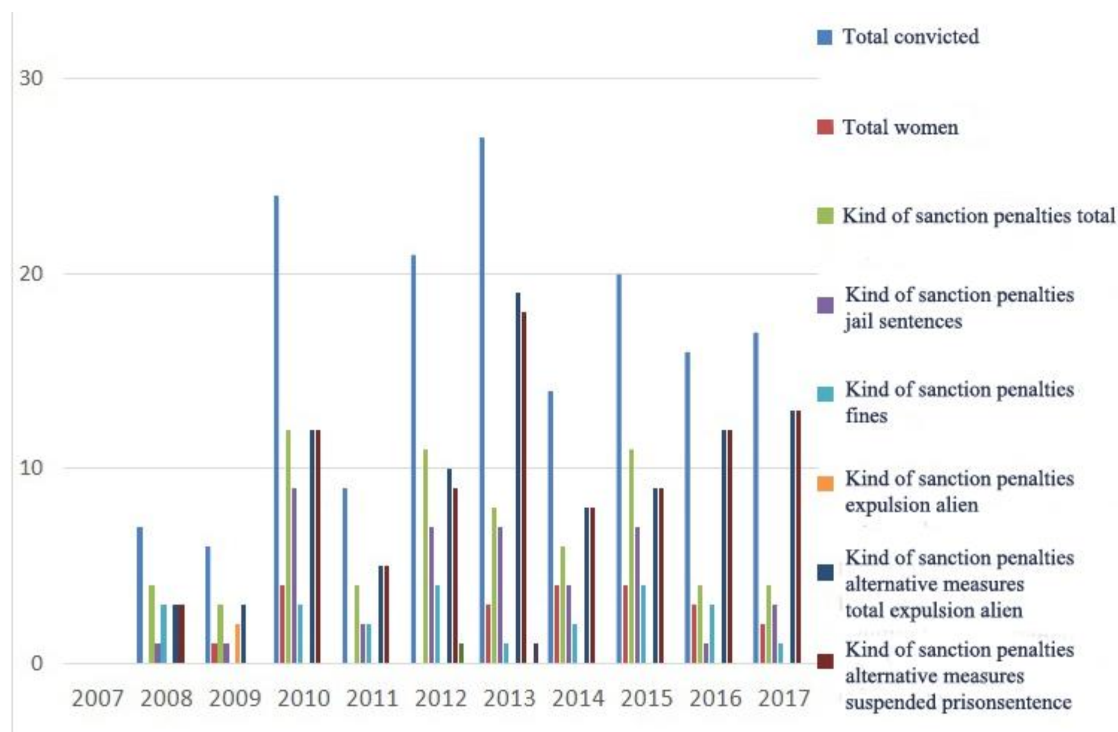

Table 4.1 Graphic presentation of convicted adults for committing the criminal act "Damage and unauthorized entry into a computer system" in the period 2007 - 2017 on the territory of the Republic of Macedonia based on the type of criminal sanction[92]

NOTE: The analysis of the numbers of convicted adults in the period 2007 - 2017 does not include the year of 2007 because the official website of the Statistical

[91]Publication: Perpetrators of criminal offenses (2019, February, 25). Retrieved from http://www.stat.gov.mk/PublikaciiPoOblast.aspx?id=43&rbrObl=6
[92]Publication: Perpetrators of criminal offenses (2019, February, 25). Retrieved from http://www.stat.gov.mk/PublikaciiPoOblast.aspx?id=43&rbrObl=6

Office did not provide information for this year for the crime "Damage and unauthorized entry into a computer system".

4. Conclusions:

- With the development of information technology and the massive use of personal computers and the use of the Internet in the Republic of Macedonia, the number of registered criminal offenses according to Article 251 of the Criminal Code of the Republic of Macedonia is proportional.
- In the period 2007 - 2009, the number of registered criminal offenses increased every year, which is a result of the rapid expansion of criminal offenses in the area of cybercrime.
- In the period 2010 - 2012, there has been a decline in this crime, which is a result of the security strategy in the area of cybercrime, the high efficiency of the MoIexperts in detecting and proving this crime, as well as the high number of convictions, contributed to the decline of this crime in the afore-stated period.
- In 2013 there was a slight increase in the number of committed crimes, whereas in 2014 a slight decline; in the following three years the number of committed crimes was on the rise, while the number of known perpetrators continuously decreased, which is an indicator of the emergence of more sophisticated forms of commission of this crime and more and more perpetrators are becoming unknown for the law enforcement.
- The number of perpetrators varied from year to year, but there is still a tendency for more perpetrators to commit the same criminal act, i.e., a tendency for accomplishment and complicity, and there were also perpetrators whorepeatedly committed the same crime on several occasions.
- The total number of accused persons and the number of convicted persons were approximately the same, indicating that the criminal investigations provided quality evidence in the legal procedure and the court found more than 90% of the accused guilty and rendered pertinent judgments as a consequence of the effective and efficient criminal investigations of this type of crime.
- With respect to the type of criminal sanction, the ratio is approximately 50:50 in terms of penalties and alternative measures. The penalties are predominantly punishable by imprisonment and a smaller portion by fines, and with alternative measures, the majority of penalties entailed a prison sentence. Regarding the gender of the perpetrators, men prevail, but the number of women perpetrators tends to grow.

UDK:

ROMANIAN STRUGGLES AGAINST CORRUPTION
A Never-Ending Story?

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Abstract

After a flourishing period of time when Romanian State was successfully fighting against corruption and its multiple forms of manifestation, it appears that all the lights went out and we, Romanians, were facing a dark Era again. After the multiple achievements in the fight against corruption obtained with lots of efforts and implication of dedicated public servants and activists, open-minded politicians and hardly-working social organizations, the MCV (Mechanism for Verification and Control) instituted by EU was finally providing the best results ever. But, somehow, obscure groups of interests, in total contradiction with the declared anticorruption Romanian goals, have managed to destroy the work of so many difficult years. In the present article we aim to present the Romanian struggle in the fight against corruption in order to offer the other states a lesson of history, a lesson about morality, and a lesson about truth. We aim to present the MCV for Romania, the transformation of Romanian legal provisions in order to accomplish the standards imposed by the EU in the matter of fight against corruption and, of course, the later events that are to demonstrate that finally, the pure goals of a country are eventually going to get into the light.

Key words: *corruption, Mechanism of Verification and Control, European Union, Romanian National Anticorruption Directorate, conflict of interests.*

1. INTRODUCTION: PRESENTATION OF THE HISTORICAL ASPECTS REGARDING THE PHENOMENON OF CORRUPTION IN ROMANIA, AFTER THE REVOLUTION OF 1989

In the most pure object lesson approach, I shall begin my study by emphasizing that the term corruption comes from Latin: *coruptio, coruptionis (lat.)* meaning *"breach, alteration, depravation"* or, according to another opinion, from *"corumpo, corumpere" (lat.)* meaning *"to destroy, lose, ruin"*. As a social phenomenon, corruption stands out through a set of characteristics such as the following: it depends on the political regime, on the historical evolution of social, economic and cultural system, as well as on normative, moral and spiritual

condition of the society. It also implies a significant gap between social models, economic and cultural rights and legitimate expectations of social group members and has negative effects on the social relations between individuals and between individuals and public authorities. Corruption is, in the same time, the expression of legislative, economic and institutional alterations that affect society as a whole.

As shown in the doctrine, corruption is an outcome - a reflection of a country's legal, economic, cultural and political institutions. Corruption can be a response to either beneficial or harmful rules. For example, corruption appears in response to benevolent rules when individuals pay bribes to avoid penalties for harmful conduct or when monitoring of rules is incomplete—as in the case of theft. Conversely, corruption can also appear because bad policies or inefficient institutions are put in place to collect bribes from individuals seeking to get around them.[93]

Corruption has many forms of manifestation named by the sociological doctrine *dimensions*: statistical dimension (the registration systems allow us to be aware of the exact numeric dimension of the corruption phenomenon), normative dimension (the main requirements), sociological dimension (an analysis on the causes of corruption and the effects they produce in the various sectors of social life), psychological dimension (the structure of personality of the corrupt and corrupters groups; identifies motivations, motives and goals pursued by addressing such corrupt behaviour), economic dimension (evaluation of the costs and economic and financial effects of the corruption phenomenon produced into society), prospective dimension (data and information which help identify the evolutionary trends) and last, but not least, the national dimension (the corruption borrows the characteristics and peculiarities of each national state, characteristics which are determined by all other previous dimensions, reduced at national scale).

In Romania, the moment of Revolution of 1989 constituted the starting point for an apparently endless fight: civil society animated by moral and social values against the phenomenon of corruption and its multiple forms of manifestation. But with sustainable efforts and EU support, in 10 years Romania became a good example in the fight against corruption by making a real progress in this area.

Scholars revealed the fact that communist past has also an impact on the structures and dynamics of the civil society. The long suppression of civil liberties, the impossibility of creating social structures outside the party's control, as well as the lack of independent media, annihilated or severely reduced the capacity of civil

[9393] Jakob Svensson (2005). "Eight Questions about Corruption." *Journal of Economic Perspectives*, 19 (3): 19-42, p. 20. Retrieved from https://www.aeaweb.org/articles?id=10.1257/089533005774357860, accessed on 16.04.2019.

society to organize itself for promoting collective interests autonomously from the state[94].

The effects of the phenomenon of corruption on the national level during a long period of time were multiple: corruption had a negative impact on the collection of taxes while the high level of bureaucratic corruption discouraged new business, pushing entrepreneurs to the informal sector. On the other hand, in an environment where politicians abused their privileges, citizens were also reluctant to pay taxes, knowing that their money ended up in the hands of the corrupt. Corruption had and still has a negative impact on EU funds absorption, creating a vicious cycle: if the EU funds allocated for development are not accessed, corruption thrives. Also, corruption had and still has a negative impact on the credibility of public institutions and authorities, creating a state of social insecurity.

The public strategy against corruption was affected by several myths, with the consequence of the constant need to reshape it from time to time: myth that corruption can be decreased only through punitive measures (such as those undertaken by some state official agencies like National Anticorruption Directorate); the second myth refers to the fact that excessive regulation of political funding eliminates political corruption and, the last myth according to which public institutions will become ever more transparent and effective without publishing open data.[95]

The anticorruption penal policy in Romania (all means and methods of prevention and criminal repression used to combat corruption by the Romanian legislative, executive and judicial authorities) could be described as following two main directions:

a) *the anticorruption legislative penal policy* involving the development of three types of prescriptions:

• *prevention* - for discovery in a timely manner of the potential sources of crime;

• *intervention* - to offset, annihilating the delinquents and limit negative consequences of crime enlargement;

• *coercion or punitive* - the name coming from *poena* - which includes penalties to be applied as a result of committing a culpable corruption act.

b) *the anticorruption judicial penal policy* involving the effective response of the Romanian state in case of committing a corruption crime.

The efficiency of the Romanian State anticorruption penal policy could be measured almost mathematically by observing the fluctuations of the Public

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[94] Dan Dionisie, Francesco Cecchi (2008). ”Corruption and Anti-Corruption Agencies in Eastern Europe and the CIS: a Practitioners’ Experience”, Bratislava, United Nations development programme, p. 2. Retrieved from http://ancorage-net.transparencia.pt/wp-content/themes/twentyfourteen/assets/documentos/dionisie-checchi-corruption_in_ee.pdf, accessed on 15.04.2019.

[95] Alina Mungiu Pippidi (editor) (2016). ”Annual Report of Analysis and Prognosis – Romania 2016” [Raport anual de analiză și prognoză – România 2016]. Academic Society of Romania, p. 4. Retrieved from www.sar.org.ro, accessed on 15.04.2019.

Integrity Index and the Corruption Perceptions Index, two of the most accurate indicators of the corruption levels of a country.

To detail, Public Integrity Index (IPI) developed by the European Research Centre for Anti-Corruption and State-Building (ERCAS) and Hertie School of Governance points out that in 2012, Romania was ranked last. But in 2014 Ro was ranked the 27th out of 28 in the European Union in the matter of public integrity[96]. More recent data show that in 2015 Romania continued to progress, with the greatest improvement in the integrity score during last year (0.63 points), due to processes of administrative simplification and digitization of public services, ahead of countries such as Croatia, Bulgaria, Greece, Slovakia and came in 24th place in the EU[97]. In 2017 (last data available for public), Romania has scored an IPI of 7.66, ranking 30th of 109 countries.[98] In the following table we can find the scores related to each component mattering in calculating the IPI of the country[99]:

Components	**Component Score**	**World Rank**	**Regional Rank**	**Income Group Rank**
Judicial Independence	5.49	52/109	23/30	10/28
Administrative Burden	8.96	35/109	21/30	5/28
Trade Openness	10	1/109	1/30	1/28
Budget Transparency	8.71	20/109	10/30	6/28
E-Citizenship	6.05	48/109	30/30	10/28
Freedom of the Press	6.74	40/109	26/30	5/28

In the following, a component comparison data is to be presented in order to demonstrate the place occupied by Romania worldwide in the efficiency of fight against corruption:

[96] http://www.just.ro/wp-content/uploads/2016/08/RAPORT-PRIVIND-IMPLEMENTAREA-SNA-2012-2015.docx, accessed on 15.04.2019.
[97] http://dev.integrity-index.org/, accessed on 15.04.2019.
[98] https://integrity-index.org/country-profile/?id=ROM&yr=2017, accessed on 15.04.2019.
[99] Ibidem.

a) Judicial Independence - Rank 52/109

Country Score	5.49
World Average	5.64
Income Group Average	4.96
Regional Average	7.08

b) Trade Openness - Rank 1/109

Country Score	10.00
World Average	7.80
Income Group Average	7.72
Regional Average	9.73

c) E-Citizenship - Rank 48/109
Rank 35/109

Country Score	6.05
World Average	5.38
Income Group Average	5.43
Regional Average	8.03

d) Administrative Burden -

Country Score	8.96
World Average	8.33
Income Group Average	8.25
Regional Average	9.18

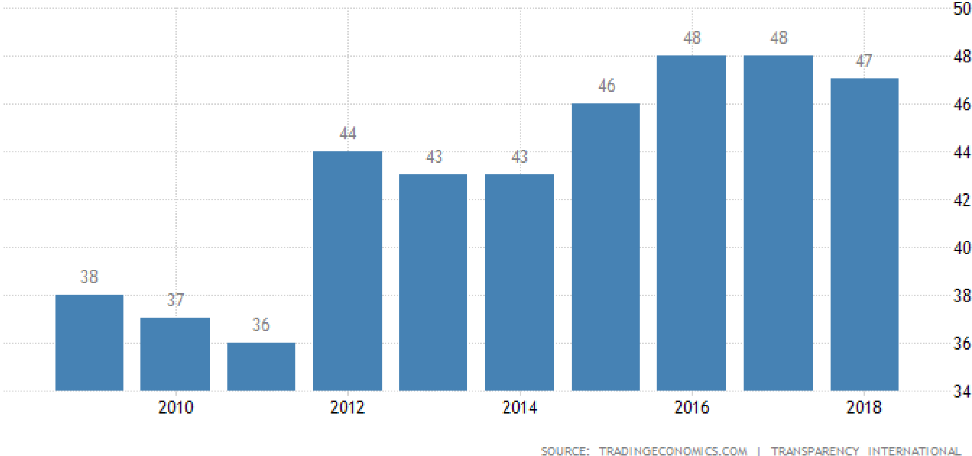
e) Budget Transparency - Rank 20/109
Rank 40/109

Country Score	8.71
World Average	6.87
Income Group Average	7.20
Regional Average	8.02

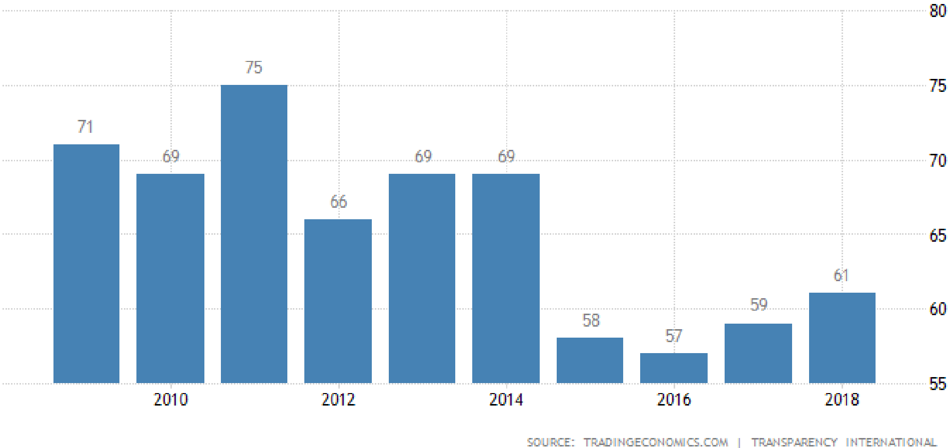
f) Freedom of the Press -

Country Score	6.74
World Average	5.80
Income Group Average	4.76
Regional Average	8.38

Romania scored 47 points out of 100 on the 2018 Corruption Perceptions Index reported by Transparency International. Corruption Index in Romania averaged 36.52 points from 1997 until 2018, reaching an all-time high of 48 Points in 2016 and a record low of 26 points in 2002 as presented in the following diagram.[100]



Romania is the 61 least corrupt nation out of 175 countries, according to the 2018 Corruption Perceptions Index reported by Transparency International. Corruption Rank in Romania averaged 68.50 from 1997 until 2018, reaching an all-time high of 87 in 2004 and a record low of 37 in 1997.[101]

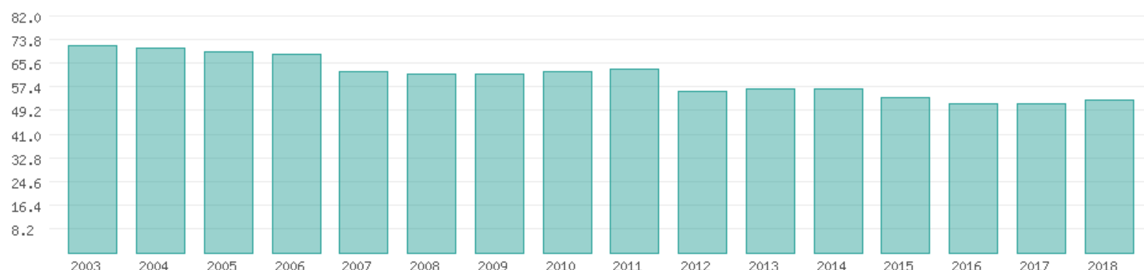


The Corruption Perceptions Index ranks countries and territories based on how corrupt their public sector is perceived to be. A country or territory's score indicates the perceived level of public sector corruption on a scale of 0 (highly

[100] https://tradingeconomics.com/romania/corruption-index, accessed on 15.04.2019.
[101] https://tradingeconomics.com/romania/corruption-rank, accessed on 18.04.2019.

corrupt) to 100 (very clean). Romania Corruption Index - actual data, historical chart and calendar of releases - was last updated on April of 2019.[102]

Also, the development of the corruption phenomenon in Romania between 2003 – 2018 is going to be presented in the following:[103]



The scale has a range from 0 to 100, in which corruption raises, the higher the number is. With this result Romania ranks 63rd. So, compared to other countries it is slightly below average. Compared to the previous year, in 2018 the level of corruption slightly raised. In the long term, it has nevertheless declined moderately in recent years. The ranking is led by Denmark with a value of 12. The sad last place is occupied by Somalia (90 points). [104]

The following table is showing the development of the corruption index in Romania between 2003 and 2018:

Year	**Romania**	**Europe**	**Worldwide**
2018	53	40.3	56.9
2017	52	40.2	56.9
2016	52	40.8	57.1
2015	54	40.5	57.5
2014	57	41.6	56.8
2013	57	42.2	57.4
2012	56	42.4	56.8
2011	64	44.1	59.7
2010	63	44.0	59.9

[102] https://tradingeconomics.com/romania/corruption-index, accessed on 18.04.2019.
[103] https://www.worlddata.info/europe/romania/corruption.php, accessed on 18.04.2019.
[104] All data are evaluated annually by Transparency International. For 2018 a total of 180 countries of all continents have been surveyed. The original "Corruption Perceptions Index" gives numbers from 0 to 100, where 100 is the worst index (contrariwise here). The official value for Romania is given as 47 points in 2018. Therefor it would be an Anti-Corruption Index instead of a Corruption Index. Retrieved from https://www.worlddata.info/europe/romania/corruption.php, accessed on 18.04.2019.

2009	62	42.8	59.7
2008	62	42.3	59.8
2007	63	41.6	60.1
2006	69	41.4	59.1
2005	70	41.2	59.1
2004	71	41.6	58.3
2003	72	42.0	57.6

The next table shows the corruption rank in Europe:[105]

Country	Last		Previous	Range
Denmark	1.00	Dec/18	2	4 : 1
Finland	3.00	Dec/18	3	6 : 1
Sweden	3.00	Dec/18	6	6 : 1
Switzerland	3.00	Dec/18	3	12 : 3
Norway	7.00	Dec/18	3	14 : 3
Netherlands	8.00	Dec/18	8	11 : 5
Luxembourg	9.00	Dec/18	8	19 : 7
Germany	11.00	Dec/18	12	20 : 10
United Kingdom	11.00	Dec/18	8	20 : 8
Austria	14.00	Dec/18	16	26 : 10
Iceland	14.00	Dec/18	13	14 : 1
Belgium	17.00	Dec/18	16	29 : 15
Estonia	18.00	Dec/18	21	33 : 18
Ireland	18.00	Dec/18	19	25 : 11

105 https://www.worlddata.info/corruption.php.

Country	Last		Previous	Range
France	21.00	Dec/18	23	26 : 18
Portugal	30.00	Dec/18	29	35 : 19
Poland	36.00	Dec/18	36	70 : 24
Slovenia	36.00	Dec/18	34	43 : 25
Cyprus	38.00	Dec/18	42	47 : 27
Czech Republic	38.00	Dec/18	42	57 : 25
Lithuania	38.00	Dec/18	38	58 : 32
Latvia	41.00	Dec/18	40	71 : 40
Spain	41.00	Dec/18	42	42 : 20
Malta	51.00	Dec/18	46	51 : 25
Italy	53.00	Dec/18	54	72 : 29
Slovakia	57.00	Dec/18	54	66 : 47
Croatia	60.00	Dec/18	57	74 : 47
Romania	61.00	Dec/18	59	87 : 37
Hungary	64.00	Dec/18	66	66 : 28
Greece	67.00	Dec/18	59	94 : 25
Montenegro	67.00	Dec/18	64	106 : 61
Belarus	70.00	Dec/18	68	151 : 36
Bulgaria	77.00	Dec/18	71	86 : 45
Turkey	78.00	Dec/18	81	81 : 29
Serbia	87.00	Dec/18	77	106 : 71
Bosnia and	89.00	Dec/18	91	99 : 70

Country	Last		Previous	Range
Herzegovina				
Kosovo	93.00	Dec/18	85	112 : 85
Macedonia	93.00	Dec/18	107	107 : 62
Albania	99.00	Dec/18	91	126 : 81
Moldova	117.00	Dec/18	122	123 : 63
Ukraine	120.00	Dec/18	130	152 : 69
Russia	138.00	Dec/18	135	154 : 47

Regarding the evolution of anticorruption penal policy in Romania, the mechanisms to fight corruption have been built on three main pillars[106]:

1.) the first pillar consists in external commitments assumed by Romania in the EU integration process. In this direction, the Mechanism for Cooperation and Verification (MCV) is a tool to control and guarantee that before accession, progress will not slow down or disappear after Romania becomes member of the EU[107].

2.) the second pillar consists in the internal pressure generated by public opinion and civil society which claimed for state reform and through which suggestions and requests have been raised in the fight against corruption. The EU has consistently supported these groups, making possible to start the real fight against corruption.

3.) the third pillar refers to political mechanisms. By the early 2000s there were no initiatives undertaken against corruption. Between 2000 and 2004 important laws were passed, but results were not visible enough. Only after 2004, efforts began to generate additional measurable results, which started to worry the political class.

Also significant and dramatic steps in shaping legislative and judicial penal policy of the Romanian government in its fight against corruption may be noticed[108]:

[106] Laura Stefan, Septimius Pârvu (2013). "Activity Report on Conflicts of Interests and Incompatibilities in Romania" [Raport de activitate privind Conflicte de interese și incompatibilități în România], Expert Forum (EFOR), Romania. The study is part of the reasearch *Conflicts of interest and incompatibilities in Eastern Europe. Romania, Moldova, Croatia*, published with the support of the Programme Rule of Law S-W Europe, Konrad-Adenauer Stiftung, United Kingdom and Northern Ireland Ambassy in Romania, Finland Ambassy in Romania and British Council, p. 8. Retrieved from www.expertforum.ro, accessed on 11.04.2019.

[107] See Section II of the present study.

[108] Laura Stefan, Septimius Pârvu, cited, pp.9-13

a) 1996-2000; after the Revolution of 1989, the first 3-4 years were marked by political, economic and social instability. Then, in 1996 began the creation of the legal and institutional frame. During that period, Romania's image in Europe and the world was of a vulnerable to corruption country. The first legislative efforts in the fight against corruption consisted in the adoption of Law no. 115/1996 on compulsory wealth declarations for public officers[109], magistrates and persons holding elective prerogatives, unfortunately a dysfunctional and perfectible regulation.
b) 2000-2007; this period may be characterized by effervescence in matters of fight against corruption, one of the most important moments being the setting up of a National Anticorruption Strategy (NAS). By this strategy, Romania has shown a clear vision of decision makers in terms of real dimension and means of fighting corruption. Also, during that period of time an important number of regulations related to corruption phenomenon were adopted: Law no. 78/2000 on preventing, discovering and sanctioning corruption[110], Emergency Ordinance no. 43/2002 on National Anticorruption Prosecutors Office[111], Law no. 27/2002 on ratifying the Criminal Convention on Corruption[112], Law no. 147/2002 on ratifying of the Civil Convention on corruption[113], Law no. 365/2004 on ratifying the UN Convention against Corruption[114], Law no. 43/2003 on financing the activity of political parties and electoral campaigns[115], Law no. 52/2003 on the decisional transparency in public administration[116], Law no. 7/2004 on the code of conduct for public officers[117], Law no. 144/2007 on the establishment, organization and functioning of the National Integrity Agency[118] *and many others.*
c) 2007-2012; during this period, significant improvements occurred, despite the fact that some state institutions were not functioning properly yet, not resonating with the general expectations in the fight against corruption. By decision no. 415/14.04.2010[119], Constitutional Court of Romania declared unconstitutional important articles of the Law 144/2007, which led to a significant blockage as severely affected the work of the National Agency for Integrity (NAI), and numerous critics from both the European institutions and international institutions. Also, many laws were amended which led to a decrease of the NAI's capacity to function properly. After 5 years MCV monitoring, the European Commission Report in 2012[120] stated that the NAI and the National Anticorruption Directorate –

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[109] Published in the Official Monitor of Romania, no. 263/28.10.1996.
[110] Published in the Official Monitor of Romania, no. 219/18.05.2000.
[111] Published in the Official Monitor of Romania, no. 244/11.04.2002.
[112] Published in the Official Monitor of Romania, no. 65/30.01.2000.
[113] Published in the Official Monitor of Romania, no. 260/18.04.2002.
[114] Published in the Official Monitor of Romania, no. 903/5.10.2004.
[115] Published in the Official Monitor of Romania, no. 54/30.01.2003.
[116] Published in the Official Monitor of Romania, no. 70/3.02.2003.
[117] Published in the Official Monitor of Romania, no. 525/2.08.2007.
[118] Republished in the Official Monitor of Romania, no. 535/3.08.2009.
[119] Published in the Official Monitor of Romania, no. 294/5.05.2010.
[120] ttps://www.ccr.ro/uploads/aviz_ro.pdf accessed on 12.04.2019.

NAD (Ex NAPO) were functional, despite the political instability.[121] The fight against corruption has become the currency with regard to the involvement of Romania in the EU – e.g.: Romania was refused to enter the Schengen area or its accessibility to EU funding.
d) 2012-2017; the fight against corruption has become efficient and Romania was recognized and appreciated in Europe. The chief prosecutor at that time of the NAD, Laura Codruţa Kovesi, was awarded with honours and medals as a recognition of her merits and outstanding efforts in fighting corruption: *Knight of Legion of Honour* awarded by the French Ambassador to Romania, the prize *"Courageous Women of Romania"* by the US Embassy, the award *"European of the Year 2016"* by Reader's Digest publication, *Title of Commander of the Order of the Polar Star* by the King of Sweden, and others[122].
e) 2017-present; after a period of major progress towards meeting the benchmarks set in the MCV and only a few key issues remained unresolved[123], in one year everything collapsed.[124]

What is the cause? In December 2016 the Social Democratic Party (PSD) led by Liviu Dragnea won the elections. But its leader was criminally convicted in April 2016 for ballot rigging, so he could not serve as prime minister. Instead he became the president of the Deputy Chamber of the Romanian Parliament. Huge protests took place due to poor and interested governing, making international press to question: Is Romania backsliding on democracy?[125] E.g. Washington Post quoted: *”The PSD has adopted increasingly populist and authoritarian language to justify its policies, claiming that prosecutors have exceeded their authority and anti-corruption efforts are politically motivated. It’s important to note that democratic backsliding in Romania is more defensive in character and less ideological than in Hungary or Poland. It reflects the desire of Romania’s elites to protect their own economic and political gains since the fall of communism. Many of these gains were made illegally through theft, graft and corruption — so the anti-corruption measures are a clear threat. The PSD has launched major attacks on the democratic and judicial system, targeting the court and its judges, decriminalizing acts of corruption, and changing legislation to impeach the president or to limit his powers, for instance.”*[126]

[121] Both presidents of the two chambers of Parliament were dismissed that time.
[122] www.juridice.ro/476787/laura-codruta-kovesi-a-fost-decorata-de-regele-suediei.html, accessed on 11.04.2019.
[123] European Commission, EC Report to the European Parliament and the Council on the progress made by Romania under the Cooperation and Verification Mechanism, Bruxelles, 25.1.2017, {SWD(2017) 25 final}, p. 15. Retrieved from https://ec.europa.eu/info/sites/info/files/com-2017-44_ro_1.pdf, accessed on 11.04.2019.
[124] https://ec.europa.eu/info/sites/info/files/progress-report-romania-2018-com-2018-com-2018-851_ro.pdf
[125] Daniel Brett (2018). ”There were huge protests in Romania — but what happens next?”, August 21, 2018, Washington Post. Retrieved from https://www.washingtonpost.com/news/monkey-cage/wp/2018/08/21/there-were-huge-protests-in-romania-but-what-happens-next/?noredirect=on&utm_term=.d1f78293e15a, accessed on 11.04.2019.

[126] Idem.

2. MECHANISM FOR COOPERATION AND VERIFICATION. REALITIES AND PERSPECTIVES

The Mechanism Cooperation and Verification (MCV) was established by Decision no. 2006/928/EC of the 13th of December 2006. EC established a mechanism in order to control and verify the progress achieved by Romania in areas like judicial reform and the fight against corruption with a view to the achievement of certain benchmarks specific to the reform of the judiciary and the fight against corruption. In 2007 was adopted the Government Decision no. 1346/31.10.2007 approving the action plan for the fulfilment of the conditionalities of the MCV. The four conditionalities (benchmarks) of MCV are:

1. Judicial reform. Consolidation of the transparency and efficiency of the act of justice, notably by enhancing the capacity and accountability of the Superior Council of Magistracy. Report and monitor the impact of the new civil and penal procedure codes.

2. National Agency for Integrity (NAI). Establishing, according to the commitments, of the National Agency of Integrity, with responsibilities in verifying assets, incompatibilities and potential conflicts of interest, which would issue mandatory decisions on the basis of which dissuasive sanctions can be applied.

3. High level corruption. Continuing the progress already made in impartially investigating high level corruption.

4. Corruption at local public administration level. Taking further measures to prevent and fight corruption, in particular within the local public administration.

Within the framework of European acts, the possibility of policy makers to impose penalties was mentioned in case of failure to comply conditionalities, such as not recognizing internal decisions at European level or reduce allocated funds (case of Bulgaria) but, however, the orientation of the European Commission focused mostly on providing support and expertise in the fight against corruption.

Within the MCV, the European Commission draws up evaluation reports in July of each year and interim reports in February.

In the light of the recent acts and initiatives in legislative and judicial areas by Liviu Dragnea, the ministry of Justice Tudorel Toader and PSD, the need to preserve MCV in the light of Romania's progress in the fight against corruption is imperative in our opinion.

The analysis of MCV reports on Romania shows that this tool has proved its efficiency in the fight against corruption. The progress of our country, even if it was slow and clumsy in the first period, proved to be durable and has won for several years an accelerating rate. Yet, last events are alarming, as the last Report had emphasized.

The last MCV report on Justice and Anti-Corruption, released in 2018 by the European Commission, was of unusual hardness and introduced additional recommendations to "remedy the situation." As compared to 2017, the EU executive requires 8 additional recommendations for Romania. The criticism of the

PSD-ALDE coalition's actions to block the anti-corruption fight and affect the independence of the judiciary is a ruthless one. The eight additional recommendations for Romania were[127]:

1. The laws of justice: immediate suspension of the implementation of the laws of justice and subsequent emergency ordinances; revise the laws of justice, taking full account of the recommendations made in the MCV and the recommendations made by the Venice Commission and the Council of Europe Group of States Against Corruption (GRECO).

2. Appointments / revocations within the judiciary: Immediate suspension of all ongoing appointment and revocation procedures targeting prosecutors in key functions; re-launching the appointment process of a DNA prosecutor with proven experience of criminal prosecution of corruption offenses, and a clear mandate for the DNA to continue carrying out professional, independent and impartial investigations into corruption cases; the immediate appointment by the Superior Council of Magistracy of an interim management team for the Judicial Inspection and the appointment of a new management of this institution within three months by contest; complying with the negative opinions of the Superior Council of Magistracy regarding the appointment or dismissal of some senior prosecutors until the entry into force of a new legislative framework, in line with Recommendation 1 of January 2017.

3. The Criminal Code and the Criminal Procedure Code: freezing the entry into force of proposed amendments to the Penal Code and the Code of Criminal Procedure; re-launching the process of reviewing the Penal Code and the Criminal Procedure Code, taking full account of the need to ensure that these codes are compatible with EU law and international anti-corruption instruments as well as the MCC recommendations; and with the advice of the Venice Commission.

3. THE NATIONAL ANTICORRUPTION STRATEGY (NAS)

Romania, as a European democratic state, promotes an integrated public policy in the field of institutional integrity, based on a proactive attitude aimed at reducing the cost of corruption, developing a competitive business environment, increasing public confidence in the judiciary and administration, and involving civil society in decision-making processes[128].

The national anticorruption strategy has, as political assumption, the importance of ensuring the stability of the legislative and institutional anticorruption framework and the allocation of adequate resources for an efficient functioning of the public institutions for the benefit of the citizen.

[127] European Commission, EC Report to the European Parliament and the Council on the progress made by Romania under the Cooperation and Verification Mechanism, Strasbourg, 13.11.2018, {SWD(2018) 551 final}, retrieved from https://ec.europa.eu/info/sites/info/files/progress-report-romania-2018-com-2018-com-2018-851_ro.pdf, accessed on 11.04.2019.

[128] Cited from NAS 2012-2015, retrieved from sna.just.ro/sna/sna20122015.aspx, accessed on 15.04.2019.

NAS is an essential element of the Romanian State's criminal policy; it is a medium-term strategic vision act providing the major coordinating action to promote the promotion of integrity and good governance at the level of all public institutions. NAS contains the principles, objectives and targets which are nationally relevant. Based on a series of fundamental valuesof the rule of law by establishing the premise of assuming by all public institutions and authorities of the following core values:

• **political will** - all three branches of government, namely the executive, judicial and legislative authorities understand the importance of a society free from corruption and will work to comply with the requirements under this strategy;

• **integrity** - representatives of institutions and public authorities are obliged to declare any personal interests that may come with the exercise of duties objectively. Moreover, they are obliged to take all necessary measures to avoid conflicts of interest and incompatibilities;

• **priority of the public interest** - representatives of public institutions and authorities have a duty to consider the public interest above any other interest in the performance of their duties. They must not use their public duties to obtain financial or non-financial improper benefits for themselves, their families or other persons;

• **transparency** - representatives of public institutions and authorities will ensure free access to information of public interest, transparency of decision making and consultation of civil society in this process.

Principles of action according to NAS:

1. ***The principle of rule of law*** *- the supremacy of the state law, all citizens are equal before it, requires the separation of state powers.*
2. ***The principle of accountability*** *- the state authorities are responsible for fulfilling their duties, and for the implementation and effectiveness of strategies agreed actions;*
3. ***The principle of evaluation and management of corruption risk*** *- an integral part of the management process developed by each organization;*
4. ***The principle of proportionality*** *in drafting and implementation of anti-corruption procedures;*
5. ***The principle of responsibility*** *at the highest level of commitment: "anti-bribery" policies will not be effective unless there is a clear message given by the administration at the highest level, that bribery is not tolerated;*
6. ***The principle of preventing corruption and integrity incidents*** *- the anticipated identification and timely elimination of the premises of corruption are an overriding priority.*
7. ***The principle of effectiveness in combating corruption*** *- based on continuous assessment of institutions, both in terms of fulfilling the objectives undertaken as complete to produce the benefits that society expects and in terms of organizational management;*

8. ***The principle of cooperation and coherence*** *- the institutions involved in preventing and combating corruption must cooperate closely, ensuring an unified conception of the objectives to be achieved and the measures to be taken;*
9. ***The principle of public - private partnership*** *- recognizes the importance of involving civil society and business environment in implementing specific measures in order to prevent corruption.*

NAS introduced for the first time at national level a self-evaluation mechanism for the implementation of anti-corruption legislation. Inventory of preventive measures has been regularly identified and evaluated. Also, the methodology for corruption risk assessment, successfully tested by NAD within the National Anticorruption Strategy 2008-2010, was disseminated at the level of public institutions. At the same time, based on the experience gathered by NAD, the strategy foresaw the transfer of this instrument to other public institutions.

NAS has gone through several strategic cycles:

- NAS *2001-2004*
- NAS *2005-2007*
- NAS *2008-2010*
- NAS *2012-2015*
- NAS *2016-2020*

The National Anticorruption Strategy 2016-2020 was adopted at the Government meeting on August 10, 2016 - Government Decision no.583/2016. The project was subjected to a complex public consultation process, which took place between 17 June and 29 July 2016. At the public debates and technical meetings organized by the Ministry of Justice some 90 public institutions, non-governmental organizations, business associations, state or private capital companies took part.

SNA 2016-2020 also provides a description of the improvement in Corruption Perceptions Index reported for Romania, as described in the first part of the present study.

4. LAURA CODRUTA KOVESI (LCK) – THE JOANNA D'ARC OF ANTICORRUPTION FIGHT IN ROMANIA

LCK is a very controversial figure of Romanian public opinion who was the chief prosecutor of Romania's NAD from 2013 until 2018. The artisan of her removal from the NAD leadership on 9th of July 2018 was the Minister of Justice, Tudorel Toader, a controversial figure himself. Prior to this, Kövesi was the General Prosecutor of Romania attached to the High Court of Cassation and Justice. Apparently LCK was more appreciated abroad than in her own country, due to her commitment in the fight against corrupt politicians and public servants. Upon appointment in 2006, Kövesi was the first woman and the youngest Prosecutor General in Romania's history.

Kövesi was praised by international press as a "quiet, unassuming chief prosecutor who is bringing in the scalps", leading "an anti-corruption drive quite unlike any other in Eastern Europe – or the world for that matter".[129] Due to her commitment and achievements as head of the NAD, public confidence in the institution has substantially increased, both within Romania and across the EU. In February 2016, Kövesi was re-nominated for chief prosecutor by the Ministry of Justice, based on the professional.

At the beginning of 2018 Justice Minister Tudirel Toader proposed[130] her dismissal as NAD chief prosecutor after presenting a report on her managerial activity accusing her of: excessive authoritarian behaviour, discretion of the Chief Prosecutor of the NAD, involvement in other prosecutors' inquiries, prioritization of the files according to the media impact, violating the decisions of the Constitutional Court of Romania and signing illegal agreements with the Secret Services. President Kaus Iohannis initially refused to revoke her, but the Constitutional Court of Romania forced him to, stating that he can only verify its legality, not the arguments that lead to the proposal[131].

In the same year 2018, the PSD (Social Democratic Party) influenced the Romanian Government to set the "Department for Investigating Judicial Offences", a special department with the purpose of investigating prosecutors. This act was criticized by the Venice Commission as an attempt to undermine the independence of the Romanian prosecutors and judges and public confidence in the judiciary.[132] But LCK made a bold move by running for European Prosecutor and the international press was on fire: ”Romanian anti-graft crusader won support from a key panel of European Union lawmakers to become the bloc’s first chief prosecutor, highlighting EU concerns about the erosion of democracy in the country”.[133] LCK’record, as she put dozens of corrupt politicians behind bars, gained the backing of the European Parliament’s committee on civil liberties, justice and home affairs for the EU appointment. The committee voted in Brussels

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[129] "Bringing in the scalps: the woman leading Romania's war on corruption", *Theguardian.com*. Retrieved from https://www.theguardian.com/world/2015/nov/04/woman-leading-war-on-corruption-romania, accessed on 15.04.2019.

[130] Alexandra Cruceru (2018). "Raportul lui Tudorel Toader prin care a cerut revocarea lui Kovesi. Care sunt cele 20 de capete de acuzare aduse șefei DNA / VIDEO", Stiripesurse.ro 23.02.2018 Retrieved from https://media.stiripesurse.ro/other/201802/media-151939141785284800.pdf, accessed on 15.04.2019.

[131] Constitutional Court of Romania, Decision no. 358/30.05.2018, published in the Official Monitor no. 473/7.06.2018. Retrieved from https://www.ccr.ro/files/products/Decizie_358_2018.pdf, accessed on 15.04.2019.

[132] "Venice Commission warns on justice reform effects in Romania". Romania Insider. 16 July 2018. Retrieved from https://www.romania-insider.com/venice-commission-warns-justice-reform/, accessed on 15.04.2019.

[133] Jonathan Stears (2019). ”Romania’s Anti-Corruption Crusader Scores Win in EU-Job Bid”, Bloomberg, 27.02.2019. Retrieved from https://www.bloomberg.com/news/articles/2019-02-27/romania-s-anti-corruption-crusader-scores-win-in-bid-for-eu-job, accessed on 15.04.2019.

for Kovesi over two rival candidates: Jean-Francois Bohnert of France and Andres Ritter of Germany.

The announcement of LSK running has scared PSD and its leader Liviu Dragnea, convicted himself in April 2016 for ballot rigging, thus, Romania's government, which currently holds the rotating presidency of the Council of the EU, has actively lobbied against Kövesi, who was the country's high-profile anti-corruption chief until her dismissal. Also, on 13th of February 2019, LCK was summoned by the Department for Investigating Judicial Offences as a suspect in a case in which the allegations are malfeasance in office, bribery and false testimony following a complaint by Sebastian Ghiță a politician prosecuted for corruption.[134] On 7th of March 2019, Kövesi was summoned and questioned by the prosecutors of the Department for Investigating Judicial Offences being also notified that she was a suspect in a second, different investigation, where she was accused of coordinating an organized group of prosecutors which prosecuted people illegally.[135]

Her indictment on corruption charges has led to a series of interdictions and restrictions of rights meaning she could not travel abroad and she could not publicly speaking about the specifics of the case. LCK shouted the indictment was a measure intended to silence her, to harass all in the judicial system that did their job.[136] Another interesting fact is that the date chosen for her interrogation was the date of European Parliament voting on her candidacy to become the first EU Public Prosecutor. Could this be a coincidence?[137]

But the struggle is far from being settled. The High Court of Cassation and Justice admitted on 3rd of April the complaint of the former NAD chief and decided to revoke the measure of judicial control against her by prosecutors of the Criminal Investigation Section.

[134] "Laura Codruța Kovesi, citată la Secția de investigare a infracțiunilor din Justiție", *EuropaFM*. 2019-02-13, retrieved from https://www.europafm.ro/laura-codruta-kovesi-citata-la-sectia-de-investigare-a-infractiunilor-din-justitie/, accessed on 15.04.2019.

[135] "Laura Codruța Kovesi, suspectă într-un al doilea dosar. Declarațiile făcute după cinci ore petrecute în biroul Secției speciale pentru magistrați", DIGI24 7.03.2019. Retrieved from https://www.digi24.ro/stiri/actualitate/justitie/laura-codruta-kovesi-suspecta-intr-un-al-doilea-dosar-declaratiile-facute-dupa-cinci-ore-de-audieri-1094100, accessed on 15.04.2019.

[136] Zoya Sheftalovich (2019). ”Romania indicts former anti-corruption chief Kövesi: reports”, Politico, 29.03.2019 Retrieved from https://www.politico.eu/article/laura-codruta-kovesi-rromania-indicts-former-anti-corruption-chief-reports/, accessed on 14.04.2019.

[137] Craig Turp (2019). ”Romania's moral compass”, Emergingeurope, 10.03.2019 Retrieved from https://emerging-europe.com/from-the-editor/romanias-moral-compass/, accessed on 15.04.2019.

5. STATISTICAL ANALYSIS OF JUDICIAL ACTIVITY IN CORRUPTION CASES

According to the Official Activity Report of the National Anticorruption Directorate[138], within the NAD, in 2018, the criminal investigation activity was carried out, on average, by 109 prosecutors who had to deal with 9.191 cases. In comparison in 2017, there were 11,234 cases to be settled. Of these, 3,133 cases were registered in 2018. A slight decrease may be observed, though.

In 2018, in 196 cases, the persons indicted were sent to trial, in comparison with 381 cases in 2017. 556 perpetrators were indicted (997 indicted in 2017), out of which 501 indicted by indictment and 55 by concluding a guilty plea. Of these, 65 were legal persons and 33 individuals are indicted in custody (91 legal persons in 2017 and 22 in custody in 2017). Regarding the professional position held by the indicted, 155 persons were sent to trial as holding management, control, public dignity or other important functions (329 in 2017).

As an example, were sent to trial: 7 officials, including 1 minister, 1 deputy prime minister, 1 deputy, 4 state secretaries, 1 senator, 22 mayors, 3 deputy mayors, 3 councillors, 6 county councillors, 1 local councillor, 1 county governor, 1 executive director and 2 directors in county councils, 2 executive directors, 3 magistrates (2 judges, 1 prosecutor), 7 lawyers, 19 policemen, 1 notary, 1 bailiff, but also persons holding other important positions in public institutions and administration.

The 196 indictments and guilty pleas led 1,136 offenses (compared to 1 588 offenses in 2017) sent to trial, the layout of which is mainly as follows: 470 - offenses under Law no. 78/2000 of which: 117 corruption offenses, 39 taking bribery, 36 giving bribery, 33 trafficking in influence, 9 buying of influence, 227 - offenses assimilated to corruption offenses 127 - abuse in office against public interests, 4 - making financial transactions incompatible with the function, 5 - using information that is not intended for public, 84 - blackmail, 3 - using influence or authority, 4 - granting subsidies in violation of the law, 126 - offenses against the financial interests of the European Communities, 158 - offenses stipulated in other special laws, of which: 96 - tax evasion, 60 - money laundering, 508 - offenses provided by the Criminal Code.

According to the same official report, the amount of the indemnity for the indictment is 412.7 million EUR, 85% more than in 2017 and the value of the precautionary measures ordered by the prosecutors to repair the damage caused by the offense is 400.1 million EUR, 139% compared to 2017.

[138] Official Activity Report of the National Anticorruption Directorate on 2018. Retrieved from http://www.pna.ro/obiect2.jsp?id=377, accessed on 15.04.2018.

6. CONCLUSIONS

The phenomenon of corruption is deeply anchored in the social, political and economic reality of a society, thus all struggles the society is facing are going to influence the phenomena occurring, including corruption. Romania is maybe the best example, the political instability and the hunger for power of the governing party determining a decrease of the anticorruption actions and tools efficiency. The corruption index in Romania has slightly increased from 52 in 2017 to 53 in 2018 as shown. The 2018 MCV Report of EU Commission also revealed important deviations from the original objective - the fight against corruption due to PSD-ALDE coalition's actions to block the anti-corruption fight and affect the independence of the judiciary. The future does not look bright. The next parliamentary elections will take place in 2020 but in 2 years but, if thighs continue to follow in this direction, the fight against corruption and the credibility of Romania in Europe will be permanently compromised. When the Government uses absconding practices as: putting pressure on police and judiciary to protect its friends and to penalize its opponents, giving high salaries to public servants relative to most of the population is as corrupt as any other briber, although some scholars do not find these practices as corruption tools.[139]

How was it possible for Romania to switch from the most motivated country in Europe in the fight against corruption to the position of an involuting country? Scholars have shown that the reason why some countries remain more corrupt than others, and we may add – return to their corrupt practices - is that the public acceptance of what is commonly understood as corruption varies significantly across cultures[140]. Maybe it is our case, too.

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