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*Vesna STOJKOVSKA – STEFANOVSKA, PhD**
Faculty of Security –Skopje
St. Kliment Ohridski University – Bitola
Associate Professor

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ATTITUDES AND VALUES OF YOUNG INMATES PLACED IN CORRECTIONAL FACILITY

Criminal attitudes and values are important factors that affect deviant and criminal behaviour. When such values, beliefs and opinions support criminal behaviour, they are criminal attitudes. In this context, criminal attitudes are considered to be one of the four factors (besides friends, family, and antisocial personality) that increase the risk of recidivism. Young offenders often have a negative attitude towards the law and use neutralization techniques to avoid the criminal responsibility, In relation to the question: how the criminal attitudes and values are acquired, learned or recognized, within the criminology literature we can met several ways: through the techniques of neutralisation or rationalization of deviant behaviour, through identification with other offenders; and by rejecting the conventional norms. This paper examines the criminal attitudes of the young inmates placed in correctional facility located in Ohrid, North Macedonia. The analysis is based on qualitative data collected by using in depth interview with young inmates to capture their attitudes and experiences in relation to their criminal attitudes. The collected data was divided into three categories and several subcategories: (1) neutralization techniques: rejecting responsibility, rationalizing certain behaviours and condemning others, (2) rejecting conventional norms: a critique of the system and the law and (3) identification with perpetrators and acceptance of the criminal views from the peers.

Key words: criminal attitudes, values, young inmates, correctional facility.

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* e-mail: vstefanovska77@gmail.com

1. Introduction

Criminal attitudes and values are important factors that affect deviant and criminal behaviour. According to Allport (1935), attitudes are defined as a stable set of cognitive conditions that predispose the person to respond to external stimuli and influence his/her behaviour. On the other hand, according to Eysenck (1988) attitudes create dispositions to respond in a specific way (positive or negative) to particular object, person, institution or event. Thus, attitudes are a system of permanent dispositions acquired to consciously and emotionally react to objective reality (Suleimanov, 2003: 891). They are developing as a result of the experience and interaction of the person with the environment (Gavel W. David, 2017, p. 9) and are formed in the process of socialization. Also, their formation depends on the needs of the person, of his/her group affiliation and the quality of his/her personal traits. They become part of the personality and have a great influence on behaviour.

When such values, beliefs and opinions support criminal behaviour, they are criminal attitudes (Simourd, 1997, p. 53 cited in Cargill, 2004, p. 7). In this context, criminal attitudes are considered to be one of the four factors (besides friends, family, and antisocial personality) that increase the risk of recidivism (Meng Chu, Daffern, Thomas D.M. Stuart, Ang & Long, 2014). Young offenders often have a negative attitude towards the law and use neutralization techniques to avoid the criminal responsibility (cited in Cargill, 2004). For example, one study examining the attitudes of perpetrators of crime (Mylonas & Reckless (1963)) found that they had specific attitudes related to loyalty, self-justification, belief in happiness, and excessive perceptions of society's shortcomings (Gavel W. David, 2017). According to learning process theories, individuals learn criminal behaviour by adopting attitudes that endorse breaking the law. This assumes that individuals who have delinquent friends are being more likely to become similar, because their friendship is one of the strongest predictors of acceptance delinquent behaviour (Boduszek, Hyland, Pedziszczak & Kielkewicz, 2012, p. 20).

In relation to the question: how the criminal attitudes and values are acquired, learned or recognized, within the criminology literature we can met several ways: through the techniques of neutralisation or rationalization of deviant behaviour, through identification with other offenders; and by rejecting the conventional norms (Banse, Oberlander, Koppehele - Gossei, Schmiot F. Alexander, 2013, p. 7).

1.1. Neutralization techniques

David Matza in his book *Delinquency and Drift (1964*) introduces the term drift in order to illustrate that young people drift between freedom and control,

between breaking and obeying the law. In other words, young people are in limbo between legality (how they should behave) and crime (how they should not act) (Taylor, Walton, & Young, 1973, p. 179). In fact, drift occurs when social control is weak, i.e. when external control is not exercised by the family, social services and school. At the same time, young people have an underdeveloped system of internal control or restraint, which implies positive moral and ethical values, awareness and conscience. In that sense, because of absence or weakened social control young people feel freer to commit crimes (Vold B. George, Bernard J. Thomas, Snipes B. Jeffrey, 1998, p. 205). They neutralize their deviant behaviour and reduce guilt and responsibility by means of certain justifications, i.e. neutralization techniques. When the sense of irresponsibility weakens the moral obligation to the law, young people are free to choose between various actions, some legal, and some illegal.

1.2. Identification with other offenders

Social learning theories want to explain how criminal values, ideas, techniques and expressions are transferred from one person to another. For example, the theory of differential association, developed by Sutherland (1939) focuses on the relationships between persons and how normative definitions are learned. The basis of this theory is the thesis that criminal behaviour is learned from those with whom the offender is directly related because the person is susceptible to influences of different social values. Hence, criminal behaviour arises as a result of relationships with certain groups and individuals who have already adopted a pattern of criminal behaviour. The more permanent and stronger those relationships and influences are, the chances of becoming an offender is greater (Banse, Oberlander, Koppehele – Gossei, Schmiot F. Alexander, 2013, p. 8).

1.3. Rejecting generally accepted dominant norms of behaviour

Young people today rarely accept the generally accepted and dominant cultural norms and values in a society. They approve resistance, unconventional behaviour and desire to create another, unconventional identity that does not fit into the dominant culture (Banse, Oberlander, Koppehele - Gossei, Schmiot F. Alexander, 2013, p. 8). This thesis is in line with the theory of subculture, according to which young people adopt a criminal system of values and do not accept the dominant one that is generally accepted and imposed by the mainstream culture. Therefore,

subcultural behaviour is reflection of disagreement and disapproval of that culture and is an expression of dissatisfaction and frustration to realize the dominant values. These theoretical perspectives are developed in the second half of the 20th century, based on many studies related to the behaviour of young people, primarily of working class, who are unemployed, with limited educational opportunities, deprived and who lived in poor neighbourhoods. The results show that deviant behaviour is an escape of the problems they face; mainly because of their inability to meet the dominant cultural values (Martin, 2009, p. 126). It raises frustration and revolt, and the way out is to find another group, with other values. Albert Cohen (1955) explains this situation as the inability of young people to go along with their peers through transition processes that results in antisocial and criminal behaviour. In his book *Delinquent Boys: the Culture of Gangs,* he says that sub-cultural behaviours are response to problems experienced collectively and escape from conventional channels of authority and control (O'Brien & Yar, 2008, p. 48).

Bearing in mind the previous, the content, nature, impact and types of the criminal attitudes are subject of many studies. As part of them, it's interesting to determine whether the criminal system of values persist after condemnation and incarceration, especially among young inmates. In that sense, based on importation model, one issue for consideration is whether the young inmates bring with them their criminal attitudes and values and what is their impact on the behaviour during incarceration. Consequently, another issue is whether the institutional culture and norms succeed to replace them with positive ones. In fact, the behaviour of young inmates in correctional institutions is much more influenced by the system of values and beliefs adopted or acquired before incarceration. The same values and beliefs are imported, which means that inmate's culture is a reflection of their external (outside) culture. If young people form their own sub-cultural norms of behaviour that are opposed to the dominant mainstream culture, it would also means that young inmates do not adopt the institutional culture (regime and rules of conduct), but rather their own. In addition, the conflict between the young inmates and the institutional values causes a revolt and disapproval, which are manifested by violent or other deviant behaviour in the institution (Tewksbury, R., Connor P. David, and Denney S. Andrew, 2014). The length of the sentence or the stay in the institution also affects the persistence of criminal attitudes and values. According to one study, young people who stay in the prison longer have more negative changes in their criminal attitudes than those who stay shorter (Jones D. Caitlin, 2012).

Certain aspects of criminal behaviour of young inmates sentenced to correctional facility were subject of analysis within *Marginalization and deviance*

of young offenders in conflict with the law in correctional institutions research project carried out by the Faculty of security – Skopje (2018).

2. Methodology

This paper examines the criminal attitudes of the young inmates placed in correctional facility located in Ohrid, North Macedonia. The analysis is based on qualitative data collected by using in depth interview with young inmates to capture their attitudes and experiences in relation to their criminal attitudes. Through content analysis of the statements of young inmates, the survey was intended to identify and articulate their criminal attitudes as one of the risk factors that influence criminal behaviour prior and during incarceration. The survey presumes that young inmates import their criminal value system into the correctional facility, and thus they create a culture that is a reflection of the world they experience prior to incarceration.

The survey aims to provide overview of the criminal attitudes and values, especially in terms of violence and property crimes and how they are manifested. We have identified them trough the used techniques of neutralization and learned negative values from the delinquent peers, as well as through the attitudes of the young inmates about the conventional norms. For that purpose several research questions were posed: Do young inmates maintain the same attitudes, preferences and values in the correctional faculty?, Has the already acquired value system undergo positive change?, What criminal tendencies are most often manifested in the institution?

An interview was conducted with 17 young inmate, out of 19 who were placed in the facility at the time of the interview (March-June, 2018). They were aged 17 to 21 years who have committed crimes (mostly property crimes: thefts and robberies) as juveniles and who were sentenced to correctional institution by the juvenile judge. An appropriate questionnaire for the interviewees was prepared which included partially adapted several scales. Those are: (1) *the Rehabilitation in Correctional Settings Attitude Scale (RICS)*, which is designed to assess the attitudes of prisoners and prison staff towards other prisoners, treatment, society, the legal system, law and their own competencies, (2) *Inmate perception of impact The Way I Look At Things scale* that measures the extent to which a juvenile is influenced by the correctional institutions and (2) *CriminaL Attitude ScaLe (CAS)* designed to assess criminal attitudes of the inmates as well as their changes as a result of treatment or “criminalization” in penitentiary institutions (Brodsky L. Stanley & Smitherman H. O’Neal, 1983).

The collected data was divided into three categories and several subcategories:
- Neutralization techniques: rejecting responsibility, rationalizing certain behaviours and condemning others.
- Rejecting conventional norms: a critique of the system and the law.
- Identification with perpetrators and acceptance of the criminal views from the peers.

2.1. Access to data and ethical issues

Access to data and the timetable for conducting the interviews is supported by written and oral consent from the main stakeholders of the relevant departments within the Ministry of Justice, Prison system and courts system. During the survey, due attention is paid to certain ethical issues related to the protection of the respondents' identity as a specific category and to the guarantees of voluntary participation, informed consent, anonymity and confidentiality of the data collected. In this regard, all respondents expressed readiness to be interviewed and signed a statement of participation and consent that their statements might be analyzed and usedt. Apart from the consent of the young inmates, written consent was also given by the staff from the correctional facility. All transcripts of the interviews are confidential and only the research team has access to them. Also, the research team established an appropriate friendly attitude of trust, emphasizing that the participation of the young inmates in the interview is voluntary, with respect for the confidentiality of the data and their anonymity.

3. Findings and discussion

In general, for the most of the young inmates the criminal world is a world they live in the primary family or in their close social environment (peers, neighbourhood). It is a world of survival (some young people beg, prostitute, abuse drugs), a world of competition, a world to attract an attention or a world in which they are naively pushed and rejected by others.

3.1. Techniques of neutralization and rationalization

The young inmates use rationalizations or justifications for their crimes. They refer to the youth, to the bad peers influence and / or deny the negative consequences.

In the first case, they justify their crime claiming that “every child makes mistakes”, or “that time, as younger, I didn’t think”. In the second case, almost 90% of the inmates (except for three) attribute the responsibility for the offenses to their delinquent peers, as it led them to criminal behaviour or have committed crimes in solidarity with them. In this way they share responsibility with others and accept it more easily. As they state:

The friends drew me more into that.
Because I had deviant friends.
I was hanging out with a lot of kids who were stealing ... I had such a bad friends... I was hanging out with dishonest friends, they were cheating me, they were telling me a word to steal... I was going after them, they were some older.
The friends came together one day and said: we are going to make quite a number of thefts, are you ready to commit thefts with me and I say yes. I was always ready to commit thefts.

These statements indicate that some of the inmates were aware of their delinquent friends, they knew about their thefts, and agreed to be part of them. They also know which actions are good and which are bad, but have not developed enough conscience and sense of responsibility. In fact, individual responsibility is attributed to friends who have dragged them into the criminal circle. But to get into it, they approve and accept crime as something normal, even as part of a family tradition. Joining delinquent friends reinforces the group’s affiliation. Therefore, certain inmates refer to loyalty and solidarity with them, saying:

I stayed because of friends. I have many friends. Some of them are still stealing.
In such circles, you enter “in the deep waters”, as we called.

On the basis of the above statements it can be concluded that the inmates strengthen their criminal tendencies and motives, which are difficult to overcome. They acquire status and position in the criminal group and become conscious that the deeper they get into the *criminal waters*, the harder is to get out of them. So, they attribute the crimes to loyalty to the group and to maintaining their already acquired status, which gives them satisfaction, security and support by the friends. In addition, such statements show that they do not sufficiently understand the seriousness of the offenses and their harmful consequences. Sometimes they blame the victims, by stating t*hey were looking for trouble,* which indicate that the young offenders deny the damage suffered by the victim.

3.2. Attitudes and motives for criminal behaviour

The inmates consider their criminal behaviour as necessity, as learned or normal behaviour and accept the stigma of deviants in their environment without shame and disguise. Namely, the majority of inmates are aware of their criminal behaviour and agree to take risks and to "go to the end". As they say: *Yes, what I do is not okay, but now it is ... There's a mafia bigger, so..."* In fact, there was nothing that could deter them, which means that the family, social services, and the criminal justice system failed to exert preventive influence. Because of the crime and the large number of risk factors (the lack of adequate support and control by both family and social services), they have been already condemned by the society. It was only a matter of time when they would be formally convicted and sentenced to a correctional facility.

With regard to property offenses, although the major motive is to obtain material benefit, the reason for such behaviour among inmates is different. According to their statements, some of the reasons for committing thefts can generally be divided into three categories: hedonistic needs, basic needs and naivety and irrationality.

a) Hedonistic needs. Certain adolescents want to gain independence from the family and to build identity and status in their peer group. Because the family cannot ensure appropriate material goods to satisfy certain needs such as money for disco, drinking, cigarettes etc., they try to obtain them illegally. The *taste of the forbidden*, which ensure easy earning and a "good life" increases appetites and hedonism. In fact, late modernism offers consumerism and hedonistic culture as dominant cultural values, and those who cannot meet those values and needs on a regular way, start to commit crimes. And as criminal motives and inclinations increase, in absence of proper internal and external control, or "brakes", the youngsters continue to behave defiantly. As the inmates' state:

I used to spend on eating, discos, and so on... for a good life.
I'm not like a kid ... I want to have more, to dress for myself, to walk with a girl ...
I've done it ... for example ... to prove which is better, such things.
I have done it for myself, to have (a money), to have a plus. My (parents) gave me money, but they were not enough for me... To have, like other children that have.

Most inmates, in fact, want to attract attention through their look and outfit. They experience money as a power that nourishes their self-confidence. In fact, some of them have a complex of high or low value, and by identifying with criminal individuals they wish to obtain a similar power status, which is usually

obtained primarily through the acquisition of money. Others, aware of their physical strength and attractive appearance, use criminal behaviour to emphasize those characteristics. The desire to look “more powerful,” “greater,” or “equal” to others stems from deep frustration due to lack of recognition, protection, love, attention, and identity. They fill the spiritual and intellectual emptiness with material pleasure and, when they cannot satisfy the material pleasure in a permissible way, they start to commit crimes. Crimes also bring them money, and more money means more power, more self-confidence, and more control and status in the group. Also, any “successful” crime increases their criminal abilities and inclinations, as they state:

It was interesting to me at the time, as if I was in a movie ... I was always successful and could never reach me as I did some things.

That gangster name suits for me, it’s nice.

Those statements acknowledge that the majority accept and agree with criminal behaviour, because they receive reputation and status which strengthen their power, control and superiority.

b) Basic needs. Some inmates justify the thefts in order to gain economic independence from their parents and to meet certain basic needs, such as eating, drinking, and dressing. This category includes those inmates who are raised in extreme poverty or in homes for orphaned children. And, *the wheel starts to spin,* which presumes that “tasting” and satisfying individual needs and economic independence increase “the hunger” for even more material gain. The following conclusions are supported by the following statements:

In the houses I stole only 1000 denars, to eat, to drink, once I stole 200 Euros to buy clothes for my mother, because her sneakers were torn. I do not steal gold.

If I find 5000, I’ll only steal 2000, as much as I need it. Handbags, I don’t know how to steal it.

I did the crime for myself in order to have.

Regarding the attitudes about the violence, based on the interviews conducted, young inmates perceive the violence as a defence mechanism against attacks, both outside and inside the facility. They say:

I fought with the kids because they provoked me.

Two of them touched me, and I couldn’t stand and beat them.

I attacked him, because he provoked me.

What do the above statements show? That the violence is justified when someone provokes them, so it is response and a mean of defence to provocations. They try to neutralize their individual responsibility, by blaming the victim for his provocative behaviour. As they state:

Until they touch me, I don't touch them.
He's going to touch me a little, I'll give him more.

But according to some statements, the violent physical response is over verbal attacks, which means that the level of tolerance is very law. Such attitudes show that young inmates lack control mechanisms for coping in conflict situations, and violence is more a reflection of powerlessness, low self-esteem, poor identity, behavioural problems and other risk factors. On the other hand, violent behaviour can also be viewed through the aspect of violent reactions by the security staff in the institution. Because security officers use physical force to prevent the violent behaviour among young inmates, it seems that violence is a way of responding to certain situations. As one inmate states:

For example, if you make a problem today you will be beaten by commanders ... beatings ... blows, hurts, hurts, I (got) 4-5 times...on the back, to my feet, not to make problems ... but they are right ... if you make problems at home ... at home, for example, they (the parents) will beat you.

The above statement shows that the inmates learn that violence is a legitimate response, or, that it appropriate to respond to violence with violence. And vice versa, "they (security staff) behave well if you treat them well," as they say. In that sense, when they behave inappropriately they expect to be treated inappropriately or to be treated in the same way. In fact, both, the young inmates and the security staff respond similarly to similar violent situations in the correctional facility. Even security officers are perceived as having the right to apply (legal) force because, as they (the inmates) argue, *"I am in their hands"*. According to the above, young inmates develop the view that the force can be legitimately applied over the incarcerated inmates which is silently accepted. But out of the "bars", such an attitude is rejected because they say: *if I come outside, will I be afraid of him ...Outside I will behave with him on another way.* This view suggests that some young inmates consider the street as their territory, where they feel more safe and free, where survive the stronger, even with the use of violence. This, on the other hand, shows that they have negative attitudes towards the penal system, which

confirms the thesis that the repressive penal system, instead of being preventive and part of the process of re-socialization, reinforces the violent inclinations of young people in conflict with the law.

In terms of the property crimes, some of the inmates do not understand the consequences or the injury inflicted on the victim. The young offenders, as socially excluded and marginalized, perceive themselves more likely as victims, who take away something from those who are not endangered and therefore the victims are not perceived as damaged. The victim as personality is invisible and does not exist. Only money, gold, jewellery, material goods exist in their focus of interest. This means that the stolen things are not considered as someone's property, as something that is gained by lot of efforts or that has some meaning for the owner.

c) Gullibility and naivety. Some offenders commit property crimes because of recklessness, boredom, or a desire to take risks. They are socially disadvantaged individuals who have certain mental illnesses and because of that, the correctional institution, without appropriate treatment activities, is not an appropriate place for them.

3.3. Rejection of conventional norms (criticism of law, criminal justice system, exaggeration of structural inequalities)

It is common for condemned person to have a negative and critical attitude towards the criminal justice system because that system has rejected, excluded, failed to provide them with equal opportunities in life, and placed them into the correctional facility. Also, the offenders, based on their own experiences according to which many of their crimes remain undetected, are aware that not all perpetrators are "caught and sentenced' to imprisonment.. Analysing the criminal careers of most young inmates (given that they are multiple perpetrators with previously imposed enhanced surveillance measures) they have come many times in conflict with the law. But, the professional offenders are skilled in committing the crime and in the relationship with the police. They don't leave traces on the crime place, reject the responsibility and use their right of silence during the criminal procedure. As they state:

They never caught me ... I didn't admit it.

They never caught me for theft, I was so prepared, and they couldn't see me.

Only two or three times they have caught me, for other robberies (they) have not caught me ...

Those statements show that some of the inmates not only reject the crime, but continue to commit crimes. This means that the police have no preventive influence and deterrent effect. On the contrary, the criminal career does not stop. Perhaps the success to avoid the sentence once encourages them to commit new thefts. Such attitudes among many young offenders mean that they neither respect the law nor the criminal justice system and other institutions. This confirms the thesis that the system that rejected them does not deserve to be respected. In addition, for example, regarding marijuana use, some inmates don't think that what they do is wrong, but are convinced that the marijuana help them to think and function better. They say:

I smoked marijuana outside, often... I get up in the morning, smoke a coffee with joint.

No one can ban me.... outside I am not afraid of police officers... I will smoke ... I have a place, for example, I will hide, I will make a cigarette, I will go somewhere behind.

I think its okay to smoke two or three days a week, but I get 20-30 joints a day. Now when I will go out I will smoke a little.

Such statements can also be analysed in terms of the wider social context and duality in Macedonian society for or against the legalization of marijuana, pro and cons positive and negative effects of its consumption. Young people are part of that public discourse and seem to be louder those who promote free use for their individual goals and needs. And young inmates, as specific category, are part of the social discourse, but more as its victims than as self-conscious, creative beings who can confront the current drug policy in our country.

However, after their current incarceration, some inmates become more aware that stealing leads to jail and because it is a bad experience, want to continue "on a normal path". As some of them state:

When I get out of here ... I'll go first to social service, if I can get some scholarship from social to get financial help, if I succeed, that means I'll settle down, I'll pay rent. If I fail in that, I'll keep on stealing because, I tell you honestly ... if I have no help from anywhere I will steal, collect that money, which, from stealing I will make a house, I will be educated with that money, otherwise how can I find money, money don't fall from the sky.

At least something the state to give me ... If it doesn't, I'll manage by myself.

These statements show that some of the inmates feel capable of committing theft again, have no fear, and are willing to risk. The stay in the correctional facility

does not change the value system and does not “frighten” them. The young inmates refer the responsibility to the state, which means little is learned from their own mistakes and there is no genuine remorse for the crimes committed.

3.4. Learning negative peer values and techniques, glorifying crime and perpetrators

Criminal attitudes and values are learned from both, the delinquent peers and the family. Most inmates accept thefts and other deviant behaviours (drug abuse, wandering, escape from home) as inherent elements of their lives. Because crimes are often committed in a group, they gradually become part of group code of conduct and grow into sub-cultural behaviour. In regards to their delinquent friends, they state:

To drink, steal, make troubles with friends. I wanted to get some things but I couldn’t, and finally got there.

When we go to steal, we go, when we go to enjoy, we go to enjoy, when we have money.

I explain to them - we can do this, we can do it, and they agree because they see that I know ... At first, there was only one I worked with, I only listened to him, he would tell me, you would go in here and empty the apartment.

Actually, some of the inmates cannot fit into the mainstream of the society since they were neither part of it nor their families. The development of their personality and their socialization goes astray. They are raised without a parent, especially without a mother or proper parental love, in institutions or in poverty. Aside from some “petty” thieves, those inmates who have more money slowly begin to recognize that money are making them more powerful and (falsely) increase their self-esteem at that time. That shows that, for some inmates money is a power that can be easily and quickly gained through criminal activity. Such thinking is an introduction to the further adoption of criminal attitudes and values, which gradually become part of their personality.

3.5. Criminal inclinations and criminal career

Except for three inmates, among the others the criminal career begins early. They have first made problems at school, and then, at 12-13 years of age, start to commit thefts more intensely. During their criminal path no one manages to

deter them, neither the family, nor the social services, nor the police. Even the experience of their delinquent peer, who was previously sentenced to correctional facility or juvenile prison didn't exert any deterrent effect on them. On contrary, such institutional sentence was an expected consequence that will inevitably come. We support the above statements with the following statements:

From age of 7 years I was not obedient.

I'm here for thefts ... I started from 12 to 16 years ... I was caught many times ... they had some spying on me ... they came home and took me.

For thefts, for more thefts. I can't count, many. I started from 13 years. From Stip, Strumica, Radovis, Kocani, everywhere ... Cash, gold, apartments, houses. With three friends ... one was 19 and the other 18, but they are in jail.

For cars, I used to steal cars... I'll take her (car) and go on ... Stip ... and then I'll leave her in place.

I started stealing from a small age, but then I started to steal (very little). I was happy about it, but when I saw that I could do more than that, I start to go on the road where there was more.

I've been stealing for a year, but not stealing steadily ... I know people who steal every day.

Many, I can't count them, I've stolen many times.

What do the above statements show? That the inmates easily perceive themselves as thieves and accept theft as part of their lives, that several years of stealing has changed their identity and that few compared to many thefts are nothing, and one compared to many years criminal career is nothing. Such attitudes show that there is no awareness about the gravity of the offense as such, about the consequence and about the injury inflicted on the victim. The moral binding function of criminal law is unknown and "don't steal" parole has no meaning. So the question arises: was there any end to such behaviour? According to the inmates statements:

Sometimes I think it's better that I came here, if I was out now someone would kill me.

He (the judge) had to judge me to calm me down.

I didn't stop until I came here.

The statements above show that many inmates are aware that only the correctional measure have prevented or "disabled" them from committing thefts. In this sense, we ask whether the social services and the system should have left

them on the street long enough, without timely and appropriate intervention. Where to look for early intervention and prevention knowing that children are without parental supervision? Namely, the social services need to show a much greater understanding of such inmates who are without parental care, to strengthen the human and material capacities and resources in order to respond appropriately and timely to the problems related to their deviant behaviour. In contrary, the consequences are more severe and behavioural improvements difficult to achieve.

3.6. Criminal attitudes as subject of reconsideration by the inmates during incarceration

As there is a close link between the criminal value system and delinquent behaviour, some of the treatment activities in the correctional facility should also be directed towards changing that value system. This changing starts with accepting responsibility for the crimes committed, understanding the negative consequences and harm inflicted on the victim, as well as rejecting illegitimate ways for gaining material goods. All of that also requires support from family, friends, school, and the neighbourhood because apart of the desire for change, additional support is needed to get out of the previous criminal circle. In criminological theory there is a thesis that the earlier young people engages in deviant behaviour, the longer and more serious the criminal career is. At the same time is more difficult to deter from crime (Farrington, 2004: 6). In this regards, we raise several question within our survey: about the relation of young inmates to conventional values in society, the degree of personal responsibility for their own deviant behaviour, their attitudes towards law, deviant peer friends or their crime, their feelings of remorse etc.

Although, most inmates did not show fear of the penal system and a desire to deter crime after being imprisoned and, in current conditions of imprisonment, they change their previous attitudes and show signs of remorse, acceptance of responsibility and a desire to withdraw. They claim that have understood the crime and its consequences, which makes them no longer willing to commit thefts. As they state:

I had enough time to think about my consequences ... I'm sorry I did.

I thought that route was interesting, nicer, but I realized that wasn't it.

This is not interesting to me anymore. I realized when I came back from escape

The state is right, we were hurting the state, we were hurting the people ... yes, yes, I'm so sorry,

I think I deserved the measure, because I made a lot of problems out of it, for example I did a lot of damage.

I've been wrong a lot in life.

In fact, the thought of every inmate is how to get on with life: to work honestly, to form a family, to finish an education. All that was missing in life, young people dream to have and achieve. One of the inmates especially feels the weight of the criminal life, for which he shows sincere intentions that he wants to stop the crime: *I will get away from all the suffering and lead a normal life ... I tell them not to steal, not to make troubles, because I endure suffering, I know on my back.* His statement reveals the saturation of the deviant path which at the same time leads to greater problems in life. While some inmates admit to being wrong, most of them refer to poor institutional conditions, for which they would not want to be sentenced to prison again. The question remains whether they will find own strength to withstand the temptations they will face after release. The reintegration process will require systemic approach, post-penal treatment, support and control by the community and the institutions of the system. Otherwise, the percentage of recidivists will increase. They may have, at the time of conducting the interviews, the best and most sincere intentions not to steal anymore, but that depends on support of the family, of their own strengths and capacities to complete their education, as well as of the opportunity to be employed. But deterring crime will mostly depend on braking up the ties with the previous criminal friends as it has proven to be one of the most risky factors. In that sense, every risk factor should be opposed to a protective factor or the development of new positive social relationships because the inmates themselves say that their delinquent peers have led them to crime.

4. Concluding remarks

Young inmates have built a criminal system of values and attitudes toward crime. Thefts are seen as a way to satisfy their hedonistic and other needs, without understanding the seriousness of the crime and the harmful consequences over the victim. Violence is also a behaviour they have learned, a legitimate way of defending themselves from attacks on their personality or a way to gain identity or status in the group. Actually, young inmates develop criminal tendencies because of the large number of risk factors they face in their social and intellectual development. Their rich criminal careers were so developed that there was no force that could deter them except deprivation of liberty.

For the penitentiary system, after the already imposed educational measures, the pronouncement of the correctional institutional measure is a consequential measure. Having in mind the rich criminal careers of most inmates, it seems as if they are predestined to cross that path: to grow up in the criminal world and spend part of their lives in institutions. Even the possibility of being later sentenced to prison for a possible extension of a criminal career is an expected punishment against which they do not rebel and accept it.

Also, those inmates who were in institutions as children, abandoned from their family who lack full educational upbringing because of the delinquent peers perceive thefts as normal and accepted behaviour. Without own home and feeling alone, struggling and caring for their lives, they learn that thefts are one way to make money. The feeling that they can have money that allows them to buy whatever they want replaces the feeling of being socially excluded and without love and support. That short-lived pleasure is a substitute for all that is missing from the family and home. Taking the "forbidden" under conditions of weaker social control is a great opportunity to do so. Correctional facility as a continuation of institutionalization, orphaned children perceive it as a necessary consequence of their actions. Because of crimes and based on the experience of other friends and children in the home they know that they can be convicted and referred to the correctional institution. But they do not perceive the measure as educational because life and growing up in similar homes tells them that there is no rehabilitation and re-socialization process. Probably, the loss of family and family care refuses to be replaced by the care of institution's staff. Therefore, they perceive them as "bad", who cannot restore the loss, reject them as persons who can help, and do not accept them as positive behaviour patterns. Most of the young inmates have started their criminal careers in a group. The success in stealing increases the desire for even greater success. In this way, criminal behaviour captures them, and in some situations increases adrenaline as they engage in risky situations. Some of the inmates identify themselves with those persons who have involved them into the criminal world. But neither their tragic fate (drug overdose death) nor the repeated prison sentence deter them from committing crimes again. Theft and risk-taking are their lifestyles, and although they are aware that can be caught and punished, that do not have a preventative and frightening effect.

At the end, most inmates show resistance and disobedience to the penal system or to the state system in general, including social services. Some perceive them as "enemies", who not only persecute them, but do not provide them with legal means to fulfil their basic needs. However, most inmates exhibit a low level

of awareness of the role and function of the system. It shows insufficient maturity to understand the meaning of their behaviour, the seriousness of the offenses and the harmfulness of the consequences.

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*Yongtao LI**
Criminal Investigation Police,
University of China in Shenyang, PRC,
Professor

*Alan BECKLEY***
School of Social Sciences &
Psychology in Western Sydney University,
Australia, Adjunct Research Fellow

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CHINA'S COUNTERTERRORISM LAW: A NEW PEOPLE'S WAR AGAINST TERRORISM

Most developed countries in the world, of various political or religious persuasion, are suffering from violent, militaristic attacks against the state and innocent citizens, especially since the conflagration in Iraq and Syria in 2014. To maintain the sanctity and security of their State and progress towards further beneficial socio-economic development, States are increasingly required to devote financial, human and military resources into counterterrorism measures. This paper examines the legislative changes to enhance contingencies for counterterrorism introduced by the People's Republic of China in 2016, and responds to western world criticisms of the provisions of the measures. The new law is analyzed in detailed and then set against similar legislation in western countries to compare the scope and ethos of relevant statutes and regimes. The actual provisions of the legislation appear to be in a "like-for-like" format although differences in political and societal context should be factored in to establish the eventual outcomes of the legislative objectives.

Key words: China, terrorism, counterterrorism law, people's war

* e-mail: lyt1207@163.com
** e-mail: A.Beckley@westernsydney.edu.au

1. Introduction

Terrorism is the common enemy of mankind that endangers the world. The People's Republic of China (PRC) made a major step in the process of combating terrorism when, on January 1 2016, the Counterterrorism Law (CTL) was put into effect. Before the promulgation of the CTL, China did not have counterterrorism legislation, though related provisions feature in the Criminal Law, Criminal Procedure Law, Emergency Response Law, as well as various National People's Congress Standing Committee decisions. China was also facing an increasing number of terrorist attacks for example, three people were killed and 39 others injured when a sports vehicle plunged deliberately into crowds near the Tian'anmen Square in Beijing on October 28, 2013; and 31 people were killed and 141 injured by knife-wielding assailants at a railway station in Kunming City, Yunnan province on March 1, 2014 (Liu, 2015, March 13). The ever-growing threats from terrorist and separatist attacks made it necessary for China to review relevant legislation.

Although this article will be examining CTL in China, it is important to place these changes within a global perspective to identify the potential level of threats and the measures that other countries have placed on their citizens and so-called "foreign fighters". The threats from home-grown terrorists have been called *the enemy within* (Beckley, 2014) and this phenomenon has been examined by several observers. For example, in 2014, an estimated 15,000 foreign fighters from 80 countries were fighting on behalf of ISIS (Islamic State of Iraq and Syria) in Syria and Iraq (Wroe, 2014, October 14). In 2015, the number of foreign fighters was 30,000 (Schmitt & Sengupta, 2015), but recently numbers have been reducing, and research is highlighting the mental health issues and the difficulty of rehabilitation in returning fighters (Entenmann, van der Heide, Weggermans & Dorsey, 2015). Foreign fighters were identified as one type of "enemy within" of the three types discussed (Roessler, 2011): (i) "Jihadists" attending foreign conflict, dubbed foreign fighters in Australia (Allard, 2014, October 24), fighting for ISIS in Syria and Iraq; (ii) Protagonists who work entirely on their own are sometimes called a "lone wolf" or "low-tech, lone actor" operative (Bakker & de Graaf, 2011). (iii) A "self-starter cell" (Goodwin & Gaines, 2009). The types of attack in (ii) and (iii) are often called "black swan" events, that is they are not foreseen and, consequently, more difficult for security authorities to prevent them happening (Pate-Cornell, 2012). It is necessary for states to protect their citizens against all these and other emerging terrorist threats.

The CTL declares that China opposes all forms of extremism that seek to instigate hatred, enflame discrimination and advocate violence by distorting

religious doctrines and other means, to eliminate the ideological basis for terrorism. The CTL for the first time in Chinese legislation gives a definition to terrorism and stipulates the leading bodies, principles, penalties, and other provisions related to prevent and investigate terrorism. The promulgation of the CTL is a milestone in the cause of combating terrorism in China that may also have some impact on counterterrorism operations worldwide, and while most Chinese scholars and statesmen applauded the CTL, a number of countries and enterprises had voiced concerns about certain provisions in the law.

In 2015, US President Barack Obama expressed concern that China's CTL might force foreign technology groups to provide the Chinese government with "back door" access to their products and other sensitive information (Shen, 2015, December 30). US State Department spokeswoman Gabrielle Price asserted that the CTL "would lead to greater restrictions on the exercise of freedoms of expression, association, peaceful assembly, and religion within China" (Li, 2015, December 24). Such opinions were refuted both by Chinese spokesmen and scholars. Hong Lei, Chinese Foreign Ministry spokesman, explained that the CTL "will not restrict companies' lawful operations, nor will it leave a backdoor open or infringe on companies' intellectual property rights and citizens' freedom of expression online" (Li, 2015, December 24). He emphasized that the US should respect China's normal legislation rather than apply "double standards". Shen Dingli, a professor at the Institute of International Studies, Fudan University, also commented that Washington's accusation of the CTL of "infringing on freedom of speech, without referring to its own actions, is solid evidence of its double standard" (Shen, 2015, December 30); this thought was reiterated in Japan Today (Romaniuk and Bobic, 2016). Li Wei, an expert on counterterrorism at the Chinese Institute of Contemporary International Relations, even considered Price's statement as groundless and commented that "It fails to separate extremism from normal religious activity and blurred the issue with freedoms of speech and religious belief" (Li, 2015, December 24).

In fact, China has studied the US and European Union laws in the CTL which requires technology firms to assist state security authorities to prevent and investigate terrorism. Many states have made clear in their legislation the obligations of internet operators and service providers to assist counterterrorism needed and the US *Communications Assistance for Law Enforcement Act* is a case in point. This argument was strengthened by referring to the worldwide surveillance by the US National Security Agency (NSA) and US intelligence agencies' collusion with Internet firms, which was revealed by former NSA contractor Edward Snowden (Shen, 2015, December 30).

Regardless of political and ideological divergences, it seems that the arguments of the Chinese spokesman and scholars outweigh the concerns from some observers in the western world. It is evident that China has followed some western countries as examples in legitimating anti-terrorism cooperation with all relevant technical enterprises, to safeguard social stability and their lawful business activities as well. Furthermore, terrorism is a common threat faced by all humankind; there is no reason to accuse a government's fast determination to eliminate terrorism by all legalized means. The following sections will analyze the major content of the CTL and outline the impacts it will have on China's future counterterrorism operations. In a later section the provisions will be compared with relevant legislation in several western countries.

2. Defining terrorism in a broad sense

The CTL defines terrorism as "any proposition or activity - that, by means of violence, sabotage or threat, generates social panic, undermines public security, infringes personal and property rights, and menaces government organs and international organizations - with the aim to realize certain political and ideological purpose" (Liu, 2015, December 24). According to the CTL, terrorist activities refer to:

(1) Organizing, plotting, preparing to commit, or committing activities which cause or intend to cause casualties, grave loss of property, damage to public facilities, social disorder and other serious social harm.
(2) Preaching terrorism, instigating to commit terrorist activities, or illegally possessing articles propagating terrorism, or coercing others to wear costume or symbols propagating terrorism in public places.
(3) Organizing, leading or joining in terrorist organizations.
(4) Providing terrorist organizations, terrorists, the implementation or training of terrorist activities with information, funds, materials, labor services, technology, places and other support, assistance or convenience.
(5) Other terrorist activities.

This CTL gives terrorism a definition in a broad sense which may include any activity associated with terrorist organizations or terrorists. From the research of the definition of "terrorism" contained within statutes in some states (including Terrorism Act 2000 and Counterterrorism and Security Act 2015, UK; Criminal Code Act 1995, Australia; USA Patriot Act 2001, succeeded by USA Freedom Act 2015), it is found that the constituent parts of the definition are substantially the same globally.

3. Stipulating principles for counterterrorism

As a strategic countermeasure, the CTL stipulates that the state shall establish a National Counterterrorism Leading Body (NCTLB) to lead counterterrorism work nationwide. The NCTLB is Under the NCTLB, local counterterrorism leading bodies are to be established within local people's governments at or above the level of a city or county. The local leading bodies are responsible for leading counterterrorism tasks in their respective regions under the leadership and command of their higher levels. The CTL, however, does not stipulate to whom the NCTLB should be subordinated.

According to the power structure of the Communist Party of China (CPC), it is anticipated that the NCTLB will be under the direct leadership of the State Security Committee (SSC). The SSC was established on November 12, 2013, currently chaired by PRC President Xi Jinping; figure 1 illustrates the structure of the counterterrorism leading bodies of China. Through such a hierarchic structure, the CPC ensures its strong unified leadership over the counterterrorism work nationwide so as to safeguard the political and social security.

The CTL defines counterterrorism as a national security strategy that requires implementing comprehensive policies and tactics to address both symptoms and root causes. Such policies and tactics involve political, economic, legal, cultural, educational, diplomatic, military, and other means. Specifically, the CTL stipulates three principles for counterterrorism that may bring some inspiration to other countries. These principles include: (i) Combining specialized forces with reliance on the masses; (ii) Giving priority to prevention of terrorism; (iii) Gaining the initiative by striking the first blow. Combining specialized forces with reliance on the masses is a tradition of the CPC in implementing the mass line in fighting crime (Li & Beckley, 2017). According to the CTL, the specialized forces include the public security organs (PSO), the People's Liberation Army (PLA), the People's Armed Police (PAP), militia organizations, national security authorities, courts, prosecution organs, prisons, and other relevant state organs. The "masses" include both ordinary citizens and mass organizations such as villagers' committees, companies, schools, hospitals, and other non-state organizations.

The principle of giving priority to prevention is stipulated in Chapter 1 as one general provision. At the very beginning of Article 1, it declares that the objective of the CTL is to "prevent and punish terrorist activities". The CTL comprises 97 Articles in 10 Chapters with Chapter 3 as a section with 26 articles focusing on preventative measures. Such measures involve education, technology, security checks, special substances control, finance control, prison and community correction, targeted institution protection, and public facility protection.

The CTL conveys the idea that preventing the occurrence and harm of terrorist attacks always outweighs punishing terrorists when the harm has been done.

However, the principle of giving priority to prevention alone cannot completely control terrorism. The CTL upholds that the principle of "gaining initiative by striking the first blow" should also be followed (Article 5). This means that preventing terrorism should be combined with punishing terrorism. Promptly stopping or striking at terrorist activities is an effective way of preventing terrorists from generating further harm to citizens and society. The CTL requires that PSO shall, in a timely action, stop anyone that preaches extremism or makes use of extremism to jeopardize public security, disturb public order, and infringe the rights of person and property. Once upon the PSO find extremist activities, they shall order those extremists to terminate immediately, forcibly take them out of the scene and register their identity, confiscate relevant articles and materials, and seal up those places where illegal activities are being conducted.

4. Roles of state organs, social organizations, and individuals

According to the principle of combining specialized forces with reliance on the masses, the counterterrorism task in China is a concerted performance involving state organs, social organizations and individuals. Among those state organs, the PSO shoulder the main tasks, since they are the largest police force in China performing major functions for maintaining social order and security. The PLA, the PAP and militia organizations provide assistance in an emergency and other state organs shall, in accordance with the law, effectively implement their powers and duties. Social organizations and individuals are obligated to provide assistance and cooperation with police and other relevant state organs in preventing and combatting terrorism.

4.1. The role of state organs

In the Chinese policing system, the PSO shoulder the major responsibility in safeguarding the security of the society. According to Article 8 of the CTL, the PSO enjoy not only investigative powers stipulated in the Criminal Procedure Law, but also special powers to obtain technical support from Telecommunications operators and Internet service providers for preventing and investigating terrorist activities. They also have the power to order Internet service providers to delete relevant terrorist or extremist information on the websites or close those

websites. They are also empowered to investigate and control crimes related to firearms or any other weapons, ammunition, explosives, infectious pathogens, or any other dangerous chemicals. Once upon discovering any extremist or terrorist activities, they shall stop them without any delay regardless of whether actual harm has been generated. Article 62 authorizes the use of force against persons who possess firearms, knives, or are using other dangerous methods when committing or attempting to commit violent acts, where warnings prove ineffective. Lethal force may be used directly by police without any warning in emergency circumstances or where giving a warning might cause more serious harm.

Furthermore, PSO and national security authorities, with the approval from the State Council and with agreements from concerned countries, are empowered to send personnel overseas for counterterrorism missions. The PLA and the PAP, as approved by the Central Military Commission, may also carry out counter terrorism operations overseas. The CTL also stipulates that related departments, authorized by the State Council, may cooperate with overseas governments and international organizations in holding policy dialogues, exchanging intelligence, enforcing the law and supervising international funds.

In preventing terrorist attacks, the PSO shall, together with other relevant authorities, determine key targets that are likely to be attacked by terrorists and report to the counterterrorism leading body at the same level for recording purposes. Furthermore, the PSO and relevant authorities are required to have a good knowledge of the basic information and important trends of those key targets, guiding and supervising the management units in fulfilling duties and responsibilities of defending against potential terrorist attacks. The PSO and the PAP jointly bear responsibilities for safeguarding, patrolling and inspecting those key targets. Preventing countermeasures also extend to national border patrolling and exit/entry checking. Upon identifying persons suspected of terrorist activities, the relevant authorities have the right to stop or deny their entry, even detain the person and seize articles, then immediately transfer them to the PSO or state security organs.

To prevent terrorism, the CRL also puts stress on rehabilitating individuals suspected of terrorism or radicalization. According to Article 29, if the circumstances are not serious enough to constitute a crime, the PSO have duties to organize relevant social organizations, such as villagers' committees, schools, or family members, to educate and assist those individuals being coerced or induced to participate in certain extremist or terrorist activities and encourage them to desist. Even for those terrorist or extremist convicts, prisons, jails and community correction agencies shall also strengthen educational measures to help them back into normal society.

In addition, the CTL requires local governments at all levels shall satisfy the requirements for counterterrorism work when they are making urban and rural development plans (Article 27). One case in point is that the law requires local governments to organize and urge the relevant construction entities to install public security surveillance video systems and other technical and material defense facilities for guarding against terrorist attacks on main roads, transport junctions and major public areas. The collected video and image information shall be preserved for no less than 90 days.

4.2. The role of social organizations

Social organizations refer to non-state entities that include villagers' committees, citizens' committees, companies, schools, transport companies, post, logistics operators, telecommunications, internet services, and other registered service providers. Some social organizations are under indirect leadership of local governments but they are not recognized as being public organs by law.

According to the CTL, all social organizations are obligated to assist and cooperate with the state organs in preventing and investigating terrorist and extremist activities. To be specific, financial institutions and specific non-financial organizations should, without delay, freeze the funds or assets of terrorist organizations and individuals identified by the NCTLB, and report to the PSO and other relevant state organs in a timely manner. Schools and vocational training institutions are responsible for disseminating knowledge about preventing and responding to terrorist activities in their courses. Press, Internet, television, culture, religion, and other relevant entities shall also conduct pertinent counterterrorism education to the public. Villagers' and citizens' committees at rural areas and urban communities shall assist governments in enhancing counterterrorism publicity and education. Postal entities, express delivery entities, and other transport companies are responsible for checking clients' identities and the security of goods to be transported or delivered, registering information of their clients and articles to be delivered. Prohibited articles, articles with serious potential safety hazards or articles for which clients refuse to be examined shall not be transported or delivered.

Telecommunications and Internet service providers are required to play more technical roles in providing assistance in fighting terrorism. For the purpose of crime prevention, they are responsible for monitoring terrorist and extremist information within their business operations. They are obligated to put into practice network information supervision rules and technical measures to avoid the dissemination of terrorist or extremist information. Once discovering

any information with terrorist or extremist content, they shall immediately block the transmission, preserve relevant records, delete relevant information, and report to public security authorities or the relevant departments. In the course of investigation, they have responsibilities to provide technical interface, decryption and other necessary technical support and assistance to public security authorities and national security authorities.

4.3. The role of individuals

Individuals are a third force that the CTL requires to play their incumbent roles in controlling terrorism. In countering terrorism, all individuals have the obligation to not only responsively assist and cooperate with, but also actively report any suspected terrorists, terrorist activities, materials or information advocating terrorism to the relevant authorities. Individuals can also be organized into volunteers to participate in counterterrorism rescue work, and provide expert services if they can.

The CTL stipulates that individuals should not fabricate or disseminate false terrorist incident information, not publicize cruel, inhumane scenes of a terrorist incident, not disseminate operational details of terrorist activities that may be imitated, and not disseminate any information of the responding personnel, hostages and responding actions related to a terrorist incident. In addition, individuals shall not illegally manufacture, store, transport, sell, purchase, or even possess firearms and other weapons, ammunition, explosives, and other dangerous chemicals. If any individuals discover any of these articles, they shall immediately report to the PSO.

5. Penalties (Criminal, Administrative, and Disciplinary Penalties)

The CTL declares that the State fights against any forms of terrorism, legally bans terrorist organizations, and in accordance with the law, pursues the legal liability of anyone who commits terrorist activities. Neither shall the state make concession to any terrorist organizations or individuals, nor offer asylum or give refugee status to any terrorists. According to the Amendment IX of the Criminal Law of the PRC, not only those who organize, lead or participate in a terrorist organization but also whoever provides aid in any form to terrorist activities or distribute terrorism-related materials, symbols or information shall be punished.

The CTL further stipulates that any entities and individuals who fail to cooperate with the state authorities in preventing and investigating terrorist and extremist activities shall also be punished, though such punishments are more administrative than criminal in nature. To be specific, for instance, where a financial institution fails to immediately freeze capital or other assets of organization's or an individual's that the NCTLB has announced that they are terrorist organizations or terrorist activity personnel, the PSO may give that institution a fine, this can be between 200,000 to 500,000 yuan, and a fine no more than 100,000 yuan to directly responsible board directors, high level managers and other directly responsible personnel; where circumstances are serious, the fine given to the institution may be more than 500,000 yuan; and directors, managers, and other directly responsible personnel may be given a fine up to 500,000 yuan, and with 5-15 days' detention. Similar punishments may also be applied to telecommunications operators, internet service providers, railway companies, or other entities, and individuals, though the fine given may be lighter and detention is not stipulated to all. Furthermore, whoever obstructs the PSO, the PLA, or PAP lawfully performing their duties, is given harsher punishment.

Penalties may also be applied to personnel working in counterterrorism leading bodies and relevant departments if they abuse their power, neglect their duties, misuse their power for personal benefit, or have other misconducts such as disclosing state secrets, commercial secrets or individuals' private information. Where a crime is constituted, criminal responsibility shall be pursued in accordance with law; where no crime was constituted, a corresponding sanction shall be given. The CTL stipulates that all entities and individuals have the right to report or make an accusation of any conduct violating laws and discipline committed by personnel in state organs performing counterterrorism work to a competent department. On receiving a report or accusation, relevant departments shall handle the matter in a timely manner and give feedback to the informant or accuser.

6. Guaranteeing and protecting measures

Financial support and assurance is indispensable for winning the war against terrorism. The CTL stipulates that costs for counterterrorism work shall be placed within the financial budget of the State Council and local governments at the county level or above. The State will particularly give necessary financial support to key counterterrorism areas for dealing with large scale terrorist incidents. The State also encourages and supports counterterrorism research and technical innovation, aiming to develop, and promote advanced counterterrorism technology and equipment.

Providing economic compensation and relevant treatment is also a necessary guarantee for encouraging all forces to fight against terrorism. The CTL stipulates that the State will grant compensation to anyone who is disabled or relatives of deceased person having implemented or assisted to implement counterterrorism tasks. Where the legitimate rights of an institution or a person are damaged due to the implementation of counterterrorism work, the State shall make compensation, and relevant entities and individuals have the right to make a request for compensation.

Particularly, the CTL stipulates specific items for protecting personal safety. According to Article 76, if the safety of an individual or their close kinsfolk face danger because they report and stop terrorist activities, bear witness in a counterterrorism cases, or undertake counterterrorism work, upon their application, the PSO and relevant departments shall adopt one or more the following protective measures: (i) Not to release details of witnesses' / kinsfolk true names, addresses, workplaces and other personal information; (ii) Prohibit specified individuals from approaching the protected persons; (iii) Adopt special protective measures to their person and residence; (iv) Change the name of the protected person, rearrange for a residence and workplace; (v) other necessary protective measures. The provisions of the CTL in China can be compared to similar legislation in other countries.

7. Discussion

When considering the CTL designed for China, it is instructive to compare this against similar legislation in western countries (see Table 1). Beckley (2014b) identified six policing operations aimed at targeting terrorist activities, but acknowledged that this was not an exhaustive list: (1) governmental; (2) intelligence / counter-intelligence; (3) securitization; (4) "militarization" of the police; (5) critical incident management; (6) liaison with military. This paper will not go into the six solutions in depth as it is mainly concentrating on the effectiveness of legislative provisions; however, some of the factors in the CTL of China, link to these solutions. Revised government policy has been found effective in some countries (Brighton, 2007), but many factors need to be taken into account in utilizing government action. For example, where multiculturalism exists (Brighton, 2007) success hinges on whether the general population is open to explore inter-ethnic, inter-racial and inter-faith relationships or revert to previous antagonisms or racism and discrimination.

Table No. 1*: Comparison of Counterterrorism Laws: China, UK, Australia, USA.*

	China - Counter terrorism law	UK [1]	Australia [2]	USA [3]
Definition of Terrorism (Comparison)	✓	✓	✓	✓
Organisation of internal CT lead bodies	✓	✓	✓	✓
National Security strategy	✓	✓	✓	✓
Role of State Organs in CT	✓	✓	Pending	✓
Role of Social Organizations in CT	✓	✓	Pending	✓
Role of individual citizens in CT	✓	✓	✓	✓
Criminal Law penalties for Terrorism	✓	✓	✓	✓
Government finance for CT	✓	✓	✓	✓
Protection of informants or CT operatives	✓	✓	✓	✓
Measures against Foreign Fighters	✓	✓	✓	✓
- Powers to seize travel documents	✓	✓	✓	✓
- Temporary exclusion orders	✓	✓	✓	
- Permit to return	✓	✓	Pending	
- Obligations after return	✓	✓	Pending	
Terrorism Prevention and Investigation Measures (TPIMs)	✓	✓		
- Overnight residence measure		✓		
- Travel measure	✓	✓		
- Weapons and explosives measure	✓	✓		
Control Orders	✓	✓	✓	
Retention of relevant internet data	✓	✓		
Aviation, shipping, rail	✓	✓	✓	✓
- Authority to carry schemes	✓	✓	✓	
Preventing people being drawn into terrorism	✓	✓	✓	✓
- duty on specified authorities	✓	✓		✓
- power to specify authorities	✓	✓		
- power to issue guidance	✓	✓		
- power to give directions	✓	✓		
- freedom of expression in universities	✓	✓		✓
- monitoring of performance, further higher education bodies	✓	✓		✓
Support for people vulnerable to being drawn into terrorism	✓	✓	✓	✓

1 Terrorism Act 2000 and Counterterrorism and Security Act 2015

2 Criminal Code Act 1995

3 USA PATRIOT ACT 2001, succeeded by USA Freedom Act 2015

Some countries have introduced hard-hitting policies to target foreign fighters such as enhanced travel security, cancellation of passports and travel documents or cancellation of welfare allowances (Lee & McKenzie, 2014). Increased surveillance can be introduced through legislation (Beckley, 2013; Williams, 2014) which may lead to intrusions on the accepted freedoms and privacy within society such as freedom of the press (Cozine, Joyal & Huseyin, 2014; Williams, 2014). In modern cities, the safety of the community is also linked to security systems in public places and new technology which can impact on privacy and confidentiality. Intelligence-led counterterrorism "de-radicalization" programs can be delivered through community liaison/advice (Brighton, 2007; Dahl, 2014) but these solutions can be expensive on the public purse. Links into the community can be made through informants or covert human intelligence sources facilitated through versions of Community Policing. In a research project in New South Wales, (Dunn, Atie, Kennedy & Rogerson, 2015) asked the question "Can you use community policing for counterterrorism?", and the answer was in the affirmative; this result was backed up by a study in the USA (Schanzer, Kurzman, Toliver & Miller, 2016). The authors have identified similarities in community policing in western democracies to the mass line in criminal investigation (Li & Beckley, 2017).

In China, many of these points are specifically addressed as the CTL stipulates three principles for counterterrorism that may bring some inspiration to other counties in the world. These principles include: (i) Combining specialized forces with reliance on the masses; (ii) giving priority to prevention of terrorism; (iii) gaining the initiative by striking the first blow. As in any country, although legislation assists the fight against terrorism, the outcomes are, at best, uncertain, and, at worst, counter-productive. However, it seems that China has achieved some ideal outcomes since the implementation of the CTL. Chinese officials reported at the Forty-first Session of the United Nations Human Rights Council June 25 2019 that no terrorist attacks had occurred in the past three years in China (Xinhua News, 2019 June 25) .

The CPC as a state has three advantages in combatting terrorism. First, the PRC is a one-party ruled state, though there are eight other democratic parties, due to the role played in history, they are only participants in political life instead of leaders or deciders. The one-party ruled state may enable the CPC to concentrate its efforts more on resolving social problems, including combating terrorism, rather than competing for election. It will also ensure the continuity of the Party's policies and political will.

Second, through more than 40 years' reforming development, China has become the world second largest economy entity. This provides the necessary economic guarantee in implementing the required counterterrorism strategies and measures.

Third, China is a country with a long history of centralism, and the Chinese people have formed a culture of respecting and accepting the authority of the central government. Such a culture along with the top-down structure of the counterterrorism leading bodies stipulated by the CTL will ensure the CPC maintains coordination of counterterrorism measures nationwide.

8. Conclusion

The content of this paper has mainly outlined the provisions of new counter terrorism legislation in the PRC, while also comparing the law with the countries of Australia, United Kingdom, and the United States of America. The new legislation was criticized by several observers, but spokespersons from the PRC stated that the provisions it contained are relevant, proportionate and modelled on the criminal law in other countries. It appears, on the face of it, the counterterrorism legislation in the four countries to be very similar, although it could be interpreted or executed in different ways or contexts by the police or the courts. Indeed, there have been criticisms of China's human rights record; however, this should be balanced against the record of other countries. Examples of egregious infringements of human rights are the "temporary" detention of alleged terrorists in the Guantanamo Bay Centre by the USA which has existed for 14 years (Moss, 2016, January 21), and Australia's record on detention of asylum seekers arriving by sea in several off-shore locations (Beckley, 2014a).

Certainly, the CPC faces also some challenges both home and abroad in combating terrorism. Borrowing from an old Chinese saying, he who wins the hearts of the people wins the sovereignty under the heaven. The ongoing anti-corruption campaign reveals that the CPC wants to win back the hearts of the people. The CTL stipulates "combining specialized forces with reliance on the masses" as the first principle in combating terrorism, which shows that the CPC is determined to continue its mass line philosophy in fighting terrorism. However, whether the Chinese masses are willing to follow and support the CPC as usual will depend on whether the CPC can reconstruct a clean and effective government. If the CPC can, it can be optimistically expected that Chinese PSO and other state organs, supported by social organizations and the majority of the people, will not lose the new people's war against terrorism.

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*Vladan JOLDŽIĆ**
Institute of Criminological and Sociological Research
Principle Research Fellow

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LEGAL PROTECTION OF VALUES, RIGHTS AND OBLIGATIONS ESTABLISHED BY THE ECOLOGY (ENVIRONMENTAL) LAW, WITH SPECIAL EMPHASIS ON MISDEMEANOR NORMS

This paper observes the Ecology (Environmental) Law as the scientific and, at the same time, practical discipline, which also requires its adequate guaranties within the provisions of penal law. The author of this paper discusses principally those of criminal guarantees, which are considered the most numerous, explaining the matter with the examples from the legislation the Republic of Serbia, but also highlighting the legislative solutions of other states, as well as scientific and research papers analyzing the same topic in the context of other countries and legal systems.

Key words: Environment, environmental penal law elements, environmental offences.

* e-mail: vladanj@eunet.rs

1. Introduction

If we wish Ecology Law to exist as a scientific, and, at the same time, practical discipline, we also need adequate penal law guaranties that will ensure this. Having in mind the fact that environmental law is in the process of constant development as well as the environmental protection, the author of this paper has initiated a special research project: “Environmental Penal Law – Roots, Logic and Structure of Environmental Offences” in 2011, as a part of the Project 47011 “Crime in Serbia, Phenomenology, Risk and Social Prevention” conducted by the Institute of Criminological and Sociological Research and financed by the Ministry of Education, Science and Technological Development of the Republic of Serbia. The efforts made within this project represent the continuation and further development of previous results of the author’s wider reflections on the following topics:

1. Environmental Penal Law, possibilities to excerpt it as a special law theoretical and at the same time practical discipline and

2. the roots, logic and structure of Environmental Penal Law

The author has previously discussed the first theoretical elements that primarily treat the questions of environmental crimes as well of penal politics connected with such incriminated acts in this scientific work (Joldzic, V. 1995a, 1995b, 2007), dedicated to the issues related to penal law and material responsibility for environmental offences, in both - the Republic of Serbia as well as worldwide.

Penal law in general incriminates and prescribes a variety of sentences for all behaviors that: a) endanger, or b) harm, not only common values and qualities, such as life and material goods, but other values too. It should not be forgotten that the development of penal law over time has led, in almost all countries, to the development of two categories of punishable behaviors: 1. Crimes, and 2. Offenses (also known as the *misdemeanors* and *infringements*). The explanation of the basic elements of these two categories is of utmost importance for the effective protection of environmental rights, values and relations. This protection is based on the norms of laws and bylaws, which are either environmentally oriented, or relevant to both - environmental as well as some other issues.

The most important part of the overall Penal Law is the so-called Criminal Law. Criminal Law, especially as a practical discipline, can be observed as the entity formed through: 1. the norms of so called *Basic Criminal Law*, located in the texts of Criminal Code(s) or criminal legislation(s)[1], and 2. the norms of the *Secondary* (Subsidiary) *Criminal Law*, constituted from many criminal law norms

1 See logic of criminal legislatures, for example: French Pénal Code, German Criminal Code and United States of America Federal Criminal Code.

(articles) integrated in numerous but rather different legal acts, which treat different problems, the acts that are not criminal laws, but contain a number of articles that can be considered as the provisions of criminal law, and that are commonly placed at the end of these legal documents.

At this place it should be pointed out that Japan, for example, in the *Basic Criminal Law* "Criminal Code of the Year 1907", only one norm (Article 211) can be applied to the protection of humans the from injuries or death induced by negative environmental impacts. At the same time, Japan has a purely environmentally, but also human-oriented, criminal code that belongs to the so-called *Secondary Criminal law*: "Law No 142". The specificity of the relevant law is expressed in the fact that it prescribes criminal liability of both - natural as well as legal persons, exclusively for the environmental crimes (Kentsuku, 2001: 278). In that context, it should be highlighted that crimes are more serious injuries of certain social values and often, but not always, legally established relations, than the offences. One should also take into consideration the fact that the offenses differ in relation to crimes, starting from the fact that laws that established them are constituted from the following elements: at first place, in every state, a special legal act that regulates this law breach generally[2]. This means that this special legal act particularly inducts: 1.1. Who can commit the offence, 1.2. the forms of the offence, 1.3. When and under which conditions can be the responsibility for the offence manifested; and 2. special laws that establish actual offences and their sanctions[3].

At this point, one more fact should be taken into account. Unlike most countries, the Republic of Serbia, as well as the other countries that had emerged from the former Yugoslavia, is not familiar only with the crimes and offences, but also with the third category of punishable acts: Economical offences. About this category of penal acts we had discussed in detail in our earlier books (1995a: 47, 1995b: 27-45, 2013). More than 40 environmental crimes regulated by current legislation of the Republic of Serbia have been further explained and thoroughly analysed in a book published within the aforementioned macro Project 47011 (Joldžić, Jovašević, 2012). But this research also indicates that in reality such penal acts are far less present than the environmental offences defined by the elements of positive legislation. That is the reason why the second phase of the research Project 47011, has been oriented towards numerous issues that need to be resolved in the field of environmental values and rights and their protection by the norms that define offences. Some of those questions are briefly explained in this paper.

2 Such example is Misdemeanour Law, *Official Gazette of the Republic of Serbia*, No. 101/2005, 116/2008, and 111/2009.

3 Republic of Serbia Misdemeanour Law, Article 4.

2. The role and ways of including the offences into the protection of the respect of environmental values, relationships and obligations.

2.1. How the ecological offences can be determined?

For the explanation of the environmental offences we shall use some examples of the Republic of Serbia legislature. Since 2005, the Serbian Law on Misdemeanors has had the starting and, at the same time, key and principal role in this process. Its “Article 2 - “Misdemeanors Definition”, within Paragraph 1, defines offence as “an illegal, offended and performed doing which is by the norm designated as offence”. This law also prescribes that nobody can be punished for some offence if such specific activity had not been previously enacted and incriminated as punishable (Art. 3).

The first logical question is: On which bases can offences generally be determined? (which refers to the environmental offences as well). Formally, on the distinct norms’ base that define them precisely. Practically all the modern legislations (including Serbian) define environmental offences starting from some formally and precisely defined substantial-legal base, which refers to the norms that establish: 1. Environmental rights, 2. Environmental values, 3. Environmental obligations, 4. Duties of various subjects, and 5. Environmental responsibilities. From this point of view, it is clear that environmental offences are formally defined (enacted) offences based on strong substantial-legal, often substantial-legal and accompanied by sub-legal base[4]. This basis establishes obligatory elements of legal relations of importance for the environmental values, rights, relations, duties and responsibilities, as well as of their protection via adequate environmental offences. This clearly means that logical essence of the environmental offences has been formed not only by the actual offence norm but, almost always, by the accompanied obligatory elements from laws and bylaws that regulate legal relations of importance for the environmental values, rights, duties and responsibilities, thus providing a basis for prescribing punishment for their endangerment and/or injury.

4 Sub-legal as supplementary elements.

2.2. The logic of the systematization of environmental norms as well as norms of environmental offences

As it has been explained previously, within the author's earlier studies and books that established and discuss the General Part of Environmental Law (Joldzic, V., 1988, 1996a and 1999), so-called Special Part of the Environmental Law, starting from the knowledge of the General Part of Environmental Law, is in logical obligation to direct its' energy towards the cognition and understanding of the growing mass of the environmental legal relationships, to define them more precisely and, of course, to *systematize* them. Only in such manner can the quality of complex mosaic of the rules incriminating environmental offences be developed and explained. We also point at the fact that environmental norms, as the elements of the environmental legislations, thus also as formal and material-legal base for environmental offences formulating, can be, in this theoretical but at the same time practical and concretized approach, observed, thus systematized, methodologically starting from *general* toward *particular*, as: 1. General rules, placed in legal acts of so called *lex generalis* category, 2. Entities of separated rules, legislative texts located in so called *lex specialis*, and 3. Entities of singular rules, named (at *Latin*) as *lex singulum*[5]. In this process of considering the formation of the *Systematic of the Environmental Offences Law*, we, at first place, have to aim our attention at its general predecessor: *Systematic of the so called Separate Part of the Environmental Law*. Of course, based on actual legislature of the observed state, taking into consideration that all the mentioned norms are automatically of importance to adequately form *Systematic of the Environmental Offences (Misdemeanors) Law.*

Into *Systematic of the Separate Part of Environmental Law* logically belong distinct entities that we (Joldzic, V, 2011: 96-97) named as: 1. - General rules and other texts that form the basement for protection of the environment generally, as well as the rules that treat the elements of the environment that have to be specially protected in a general way (Joldzic, 2011: 101-259), 2 - Rules that treat nature generally and especially protected natural values, 3. - Waters, 4 - Air, 5 - Land, 6 - Forests, 7 - Plant and animal world, 8 - Hunting and fishing, 9 - Mining, 10 - Ionizing radiation, 11 - Nuclear safety, 12 - Loudness, 13 - Dangerous materials, 14 - Poisons, 15 - Accidental situations, 16 - Traffic, 17 - Construction, especially 17.1 - Construction of objects, and 17.2 - Ambience arranging, 18 - Waste, 19 - Cultural properties, and 20 - Legal norms which are hard to classify, but can be described as "the other group objects", but which can also be internally classified.

5 Nearly every state possess such laws that treat one singular problem, not two or more identical.

Each of the aforementioned group objects can be, at the same time, observed as the object of importance and base for the: Ecology (Environmental) Law mosaic forming, and also for Ecology (Environmental) Offences defining. We observe them with law-logical order, starting from generally oriented norms toward the norms of lower hierarchical level (Joldzic, 2011: 91-92), which are of importance for the environmental regulating as well as environmental penal law elements that protect them.

Having in mind the fact that the environmental legal texts are mainly of complex (L. *blanket*) nature, with logical beings formed not by one but by the elements from two or more norms, in reality we have the duty to analyze them, observing at first place legislative texts, but also the elements off bylaws if they are mentioned in observed articles of environmental laws and laws of importance for the environment also.

2.3. Offences generally oriented towards the protection of the environment and their substantial-legal fundaments

Excellent examples of previously explained legal - logical approach, can be observed in actual legal and accompanying bylaws, for example of: Sweden[6], Norway[7], Germany[8], Great Britain[9]… In the Republic of Serbia, this had been represented within the “Law on Nature Protection (1975)” (adopted more than 40 years ago), and after that, within the “Law on the Environment (1991)” and current “Law on the Protection of Environment (2004)”. Precise elements of the actual “Law on the Protection of Environment” provide the framework and the ground for the forming of environmental offences. This law: 1. Makes environmental protection fundaments, 2. Regulates adequate relations to them, and 3. Forms obligations for relevant entities to adopt and apply a series of specialized laws regulating: air, water, soil, forestry, ionizing radiation, waste, *etc*.

6 Kingdom of Sweden, Environment Protection Act.

7 Act No 63 of 19th June 1970 relating to nature conservation.

8 See the following German laws: Bundesnaturschutzgesetz (Law on the Protection of Nature and Care for Land), Year 1976, Gesetsz uber die Umwelthaftung (Law on the Responsibility for Environmental Contravention), Year 1990, and latest:Bundesnaturschutzgesetzes (Law on the Protection of Nature and Care for Land), Year 2009.

9 Environmental Protection Act, Great Britain, 1990.

2.4. Offences Regulating the Protection of the Environment based on specialized legal fundaments

As it has already been pointed out, while explaining the *Systematics of the Separate Part of the Environmental Law*, some twenty specially designated group objects of ecological importance exist in a large number of laws and complementary bylaws (rulebooks, regulations, standards, lists of substances…) and of significance for the environmental offences defining. Only a few examples of these from Serbian national legislation are presented in this paper, relevant to the protection of basic environmental values that are, at the same time, considered eco-mediums: air, water and soil.

Air is protected by the norms of the "Law on air protection", among them also with the articles that define a number of offences directed against air protection rules. To be precise, articles 81, 82 and 83, prescribe a number of different violations of environmental regulations. But the texts of those norms are not sufficient to precisely determine the essence of those offences. That is the reason why the so-called *supplemental elements* are required, which complete the constructions of their logical beings, the elements emerging in a series of laws and, also, sub-legal documents referred to as "regulations". Among them, the utmost significance is given to those that regulate:

a. Which activities and installations with volatile compounds (voc) emissions shall be controlled,
b. Which substances are important for the protection of the ozone layer,
c. Limited values of air pollutant emissions, and especially, and
d. Limited values of air pollutant emissions from stationary sources of pollution.
e. Waters are protected by the elements of the "Law on waters (year 2010)", and the elements which also are of importance to determine whether in a particular case is, or is not, expressed the element of some ecological offence determined not only by the articles of this law (articles: 212, 213 and 214) but also the elements of few sub-law texts[10].

The general treatment of soil is regulated by the "Law on soil protection (2015)" (articles 44-47). Additional elements, which are necessary for the finding of a distortion or damage to the observed land area, are given by the specific

10 See, especially: Regulation on emission limit values for pollutants in waters and the deadlines for their reaching, Regulation on emission limit values for pollutants in surface and ground waters and sediments and the deadlines for their reaching, and Regulation on limited values of priority substances and priority hazardous substances polluting surface waters, and the deadlines for their reaching.

bylaw - Regulation on the limit values of polluting, dangerous and hazardous materials in the soil (2018).

The protection of other environmental values is regulated in the same way, including the protection of these values from the violations directed against them. For example, if we observe mining, we must take into consideration the provisions of the "Law on Mining and Geological Research (2015)", which in its 13th chapter, with the articles 182-186, establishes basic elements for more than 15 offences. Most of them have logical beings completed with the norms of some 31 specific sub-laws (rule books) specifically regulating the field of mining. The same can be said for the protection from waste pollution, regulated by the specialized "Law on Waste (2009)" and also by the accompanying sub-legal texts. The same can also be concluded for the "Law on chemicals", especially its articles 98-101, which define basically formulated elements of the environmental offences, offences that also have to be completed with some of sub-legal texts elements[11]. Similar assumption can be made for "Law on Waste Management" accompanied with adequate sub-law texts (provisions)[12], as well as for the other group objects[13] protected by the norms that establish environmental offences.

3. Apparatus and Conditions Necessary for the Offences Treatment – the Questions of Principled Approach

When analyzing the role and forms of offences relevant to the protection of environmental values, relationships and obligations, it has been explained: 1. How the ecological offenses can be determined, 2. How the establishment of the classification of environmental norms as well as norms of environmental offences has been made, 3. Offences generally directed towards the protection of the en-

11 See, for example: Rulebook on the import and export of certain hazardous chemicals, Rulebook on the manner of performing chemical safety assessment, and the content of the chemical safety report, and Rulebook on classification, packaging, labeling and advertising of chemicals and certain products in accordance with the globally harmonized system of classification and labeling of the united.

12 For example: Provisions on the documentation submitted in the procedure for the issuance of import-export and transit permits, The provisions on the criteria for determining the location and disposal of waste materials to waste disposal site, Provision on the conditions and the method of selection, packaging and storage of secondary material, Provisions on the handling of hazardous waste, and Provision of the construction of the liquid oil and the gas storage and loading of liquefied petroleum gas.

13 For which the Law on Environmental Protection, with the Article 10, clearly stipulates the need and obligation for our State to establish specialized laws. Such laws, few dozens of them, had so far been formed by the actual legislature.

vironment and their material-legal fundaments, and 4. Offences directed towards the protection of the environment based on specialized legal fundaments.

But for practical approach to the observed matter the knowledge about the norms of importance for the environmental offences is required. We are familiar with the fact that *Ecology (Environmental) Law*, thus environmental legislations also, form substantial-legal bases for *Environmental Offences* legislation. However, they do not comprise all the elements necessary for their understanding and application. Norms of general importance for the treatment of offences in every state are systematized within a special law dedicated to this matter, law that regulates the general issues of importance to all offenses threatening. Such law "Law on Minor Offences" exists in the Republic of Serbia also. The analysis of this law provides the answers about the general substantial and procedural questions important for the environmental offences. Basic substantial questions of importance for the environmental offences are: 1. Who prescribes the offence, 2. Why the offences are prescribed, 3. Who is responsible for the offence, and 4. Which of sanctions are of special importance for the environmental offences? Basic procedural question are: 1. Who, 2. Where, and 3. When, starts and implements *offences procedure* for environmental problems?

"Law on Minor Offences" proclaims that "Offences may be prescribed by law or regulation, or decision of the Assembly of the Autonomous Province, the Municipal Assembly of the City Assembly and the City Assembly of Belgrade (Law on Minor Offences, Article 4, paragraph 1)", in order to refrain from committing them (Art. 5, par. 2). It also prescribes that the following entities may be responsible for the offences: individuals, entrepreneurs, legal persons and responsible persons within legal persons (articles: 17, 18, 27 and 27). This law clearly prescribesthat sanctions of special importance for the treatment of the environmental offences are: 1. Penalties (Art. 32, paragraph 1, under 1, and Art. 32.) and 2. Protective measure (Art. 32, paragraph 1, under 4 and also Articles 51 and 52.).

In the Republic of Serbia, the following protective measures are of special importance for the environmental offences,: 1. Subtraction of the object (Art. 52, paragraph 1, under 1 and Art 54), 2. Prohibition of carrying out certain activities (Art. 52, paragraph 1, under 2 and Art. 55), 3. Prohibition of the legal person to perform specific activities (Art. 52, paragraph 1, under 2 and Art 56), and 4. Denying access to the injured party, to protected objects or place of the delicts execution (Art. 52, paragraph 1, under 8 and Art. 61).

The research and analysis of current legislation suggests that, in general, the sanctions for some environmental offence can be imposed by: 1. Competent court, at the request of the prosecutor (Art. 87, paragraph 1, under 1 and art. 127),

and 2. Authorized body, or person authorized for misdemeanor threatening, in accordance with the law (Art. 87, paragraph 1, under 2, and Art. 128).

Authorized officers, primarily inspectors, can impose a fine (also known as the *mandate* and *pecuniary*), up to a certain height (Art. 168, 169 and 179). The competent authority often makes its decision, about the environmental offence, basing it on the expertise (Art. 218). Powers and procedures of inspectors needed for the protection of the environmental rights values and relationships, as we explained, are regulated by a number of laws (Joldzic, V, 2010), usually in their finishing parts. Knowing them in this momentum in the Republic of Serbia we can single out the following inspectorates: 1. Republic inspectorate for the protection of environment (part of Ministry competent for the environment), 2. Agricultural inspectorate, 3. Water inspectorate, 4. Phyto-sanitary inspectorate, 5. Veterinary inspectorate, 6. Forestry inspectorate, 7. Hunting, and 8. Fishing inspectorates, 9. Building inspectorate, 10. Communal inspectorate, 11. Town planning inspectorate, 12. Road-ways inspectorate, 13. Railway inspectorate, 14. Inner navigation inspectorate, 15. Sanitary inspectorate, 16. Pharmaceutical inspectorate, 17. Workmanship inspectorate, 18. Market inspectorate, 19. Traffic police, 20. Fire inspectorate, 21. Electro-energy inspectorate, 22. Inspectorate for utensils under pressure, and 23. Mining inspectorate. All mentioned inspectorates, which exist not only in Serbia but practically in every state, although not always under the identical names, had been formed and their authorizations, obligations, duties and responsibilities have been précised through numerous legal acts in force. All the mentioned inspectorates will be present, in the future also, with the same obligations, duties and responsibilities, having many of such obligations and duties not only regulated by our inherent legal products but also as the answer at demands from the ratified convention of global or local importance.

4. Conclusions

When discussing the environmental offences, we need to have in mind the fact that this matter is constantly changing. These changes largely depend on the continuous development of the economy and supporting technology, and loads of new products, hence the constant multiplying and growing of environmental problems. All this requires new laws, sub-laws and especially standards. This has to be recognized as the process constantly present at the international level and, at the same time, at the territory of the Republic of Serbia. Hence we have a permanent obligation to improve environmental legislation, including it's' penalty environmental elements.

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Mladen JELIČIĆ, PhD[*]
Misdemeanor Court in Šabac
Judge

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BASIC RULES OF APPLYING THE PRINCIPLE OF EQUALITY OF ARMS IN THE MISDEMEANOUR PROCEDURE OF THE REPUBLIC OF SERBIA

The author discusses the principle of equality of arms in the misdemeanour procedure of the Republic of Serbia. Following the introductory remarks, the basic characteristics of the misdemeanour procedure are indicated. The subject matter of the analysis is the case law of the European Court of Human Rights, which establishes this principle as the basic principle of fair trial. The author emphasizes the importance of the proper management of the misdemeanour procedure by the court by linking the principle under consideration with the principle of the party which requires legal assistance. The relationship between the said principle and the defendant's right to a defence, has been analysed. The subject of interest of the author is also a specific institute - a decision without hearing the defendant. The author concludes that the application of the principle of equality of arms in the practice of misdemeanour courts must be grounded in normative frameworks and that this principle must be the guiding principle that obliges the court to resolve any doubts in the interpretation and application of law, bearing in mind the imperative of a fair misdemeanour procedure.

Key words: equality of arms, misdemeanour procedure, right to defence, party which requires legal assistance, decisions without hearing defendant

[*] e-mail: mladen.jelicic.kaishin@gmail.com

1. Introduction

Serbian penal law has three kinds of delicts: criminal offences, misdemeanours and economic offences. The misdemeanours are the most common delicts. Misdemeanour law, as a part of positive legal norms has had long tradition in the Republic of Serbia. As a part of penal offences, misdemeanours have been regulated by legal acts since 1851 (Vuković, 2015: 21), and since then this part of legal norms has been constantly improving. There is no part of life regulated by legal norms that is not in touch with misdemeanour law. Everyone who applies misdemeanour law has big challenges in realisation basic principle of the law skills – applying law or legal act in a concrete case, because there are large number of legal acts that predict misdemeanours, the different social relation, subjects of misdemeanour responsibility and legal-technical specification of misdemeanour's legal norms (Jeličić, 2018a: 148). The doctrine indicates that multiplicity and variety of misdemeanours, represents a special problem both in positive law (regulation of the matter) and misdemeanour's practice (applying law regulation), but also in the theory of misdemeanours law (Dimitrijević, 2001: 16). The misdemeanour's law is not exclusively legal law because the attribute of misdemeanours can be defined by assize and acts (Vuković, 2015: 32).

In the Republic of Serbia misdemeanour courts are courts of special jurisdiction since 2010. Forty-four first instance misdemeanour courts were created, as well as Misdemeanour Appellate Court as a court of republican rank, with headquarters in Belgrade and departments in Niš, Kragujevac and Novi Sad. The new stage in development of misdemeanour legislation started after that. Misdemeanour courts became a part of judicial power and in that way multi decade stage "mixed" status of misdemeanour bodies which were in the middle of executive and judicial power, was finished. New position of misdemeanour courts gave the new challenges in practice, especially in the field of the application of human rights in misdemeanour proceedings.

The legal architecture of international human rights has been established by formal legal texts negotiated and ratified by governments of sovereign states, as well as by the institutions and procedures for implementation that have been given an intergovernmental role either within the United Nations or elsewhere (Falk, 2008: 8). Everyone has human rights, and responsibilities to respect and protect these rights may, in principle, extend across political and social boundaries (Beitz, 2009: 1).

The European Convention on Human Rights and Fundamental Freedoms (ECHR) was created under the auspices of the Council of Europe after the end of the Second World War, as a result of the aspirations of the people of Europe to create a different and more modern way of mutual cohabitation, as well as a dif-

ferent and more modern attitude of people towards the authorities in his own state (Jakšić, 2006: 11). States are perceived as having “inherent” positive obligations to protect and guarantee human rights within their territory and the ECHR has passed to its complete phase under which entitlement to human rights means entitlement to enjoy human rights and not merely an entitlement to their non-violation by state agents (Xenos, 2012: 2).The European human rights system has spurred majority - rule parliamentary democracies to transition into more pluralistic systems in which the principle of the rule of law trumps the principles of parliamentary supremacy and popular sovereignty (Duranti, 2017: 340).

The ECHR was adopted in 2004 by the Republic of Serbia. The case law of European Court of Human Rights (ECtHR)[1] has had important criteria which determine characteristics of judicial proceedings, and therefore misdemeanour proceedings. Misdemeanour proceedings became the proceedings where the guarantees of ECHR must be respected. The ECtHR said that the principle of equality of arms is a fundamental principle of the fair trial. The doctrine emphasized that two related but distinct equality considerations interact within the concept of equality of arms: formal equality: ensuring equality between two equally situated parties; this corresponds to ‘a level playing field’ where the advantage of one party would lead to an unfair outcome; and material equality: the idea that a state should ensure some level of equality between the stronger and a weaker party (through, for example, a legal aid system) (Fedorova, 2012: 11).

2. Basic characteristics of misdemeanour procedure in the Republic of Serbia

The misdemeanour procedure is conducted by the misdemeanour courts, as well as the Republic Commission for the protection of the rights in public procurement procedures, which conducts the first instance misdemeanour procedure in accordance with the Law governing public procurement. The decision by which the Republic Commission can lead first instance misdemeanour proceedings on the basis of a special law, violates the original concept that the misdemeanour procedure is organized exclusively as a court, and the legislator did not take into account that such a decision could be contrary to Article 6 of the ECHR, and that other procedural provisions that are intended for court procedure cannot be applied in the procedure conducted by the Republic Commission (Petrović, 2014: 15).

1 The ECtHR case law is available at: https://hudoc.echr.coe.int/eng#{%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22]}

The Law on Misdemeanours[2] of 2013 changed the concept of misdemeanour proceedings. The introduction of the principle of proof was abandoned by the principle of determining the material truth which implied that the court was obliged to establish truthfully and completely the facts that are important for proving and making a lawful decision (Đuričić, Bejatović, 2015: 90). Article 89, paragraph 2 of the Law on Misdemeanours prescribes that the burden of proof mark of the misdemeanour and misdemeanour responsibility is on the applicant for the initiation of misdemeanour proceedings. The new concept of evidence procedure, caused a radically different position of the court, emphasizing the principle of equality of arms as a part of fair trial.

The consequences of the previous position of misdemeanour judges as a part of the executive branch are still present today. There is still a perception that the misdemeanour court is “on the same side” as the applicant for the initiation of a misdemeanour proceeding. In practice, authorized prosecutors do not understand what the realization of the burden of proof means and what is their role in the misdemeanour procedure (Jeličić, 2019: 55). The legacy of the past, when the applicant considered that all his work was completed by submitting a request for the initiation of a misdemeanour procedure, while not providing in a certain number of cases even the smallest evidence for the allegations made in the application (Bošković, Skakavac, 2017: 84) is still present. The authorized prosecutor is a party in a procedure with a clearly defined procedural role - to prove the mark of the misdemeanour and misdemeanour responsibility. He must bear the consequences of his inactivity or his mistakes. The doctrine indicates correctly that the court cannot prove on the side of the prosecution by self-initiative acquiring evidence that supports his request, because it would call into question the equality of arms and the role of an impartial arbitrator (Delić, Bajović 2018: 136). As the judge cannot instruct the defendant how to present his defence in order to avoid misdemeanour responsibility, the judge also must not help an authorized prosecutor (Jeličić, 2019: 55).

The authorized prosecutor in misdemeanour proceedings may be a public prosecutor, injured party, administrative authorities, authorized inspectors, and other authorities and organizations, which exercise public powers whose power include direct enforcement or supervision over the enforcement of regulations in which misdemeanours are stipulated.[3] The Law on Misdemeanours does not define the term authorized prosecutor. The provision of Article 88 prescribes the accusatory principle, which provides that misdemeanour proceedings are ini-

2 Published in the Official Gazette of the Republic of Serbia, No. 65/2013 and 13/2016.

3 Article 179 paragraph 2 and Article 127 Law on Misdemeanors.

tiated and conducted upon the request of the authorized body or the injured or misdemeanour order, in accordance with this Law. Therefore, under the term of "authorized prosecutor" in a misdemeanour proceeding we consider all legal entities who can submit the request for initiation of a misdemeanour proceeding and issue of misdemeanour order that have certain powers in the case of submitting a request for judicial decision on issued misdemeanour order (Jeličić, 2018a: 150).

The defendants in misdemeanour proceedings and subjects of misdemeanour responsibility may be a legal entity, responsible persons in a legal entity, natural persons, entrepreneurs, foreign natural persons, foreign legal entity, responsible persons in foreign legal entity and minors.

There are two ways of initiating a misdemeanour procedure: by submitting a request for the initiation of a misdemeanour proceeding of the authorized body or the injured party or on the basis of a misdemeanour order, against which a request for judicial decision was submitted. An essential characteristic of misdemeanour proceedings is the coherent application[4] of the Criminal Procedure Code.[5]

2.1. Application of Engel criteria to misdemeanour procedure

The ECtHR in case *Engel and Others v. Netherlands*[6] said that criminal connotation have many delicts, not just criminal offences. These criteria are: the classification of the offence in domestic law, the nature of the offence, and the severity of the penalty that is at risk. On this judgment the Court emphasized that "it is first necessary to know whether the provision(s) defining the offence charged belong, according to the legal system of the respondent State, to criminal law, disciplinary law or both concurrently." Second, the Court said that "the very nature of the offence is a factor of greater import. When a serviceman finds himself accused of an act or omission allegedly contravening a legal rule governing the operation of the armed forces, the State may in principle employ against him disciplinary law rather than criminal law." Finally, the Court stated that "in a society subscribing to the rule of law, there belong to the "criminal" sphere deprivations of liberty liable to be imposed as a punishment, except those which by their nature, duration or manner of execution cannot be appreciably detrimental."

4 Article 99 Law on Misdemeanors.

5 Published in the Official Gazette of the Republic of Serbia, No. 72/11, 101/11, 121/12, 32/13, 45/13, 55/14 and 35/19.

6 *Engel and Others v. Netherlands* App. No.5100/71; 5101/71; 5102/71; 5354/72; 5370/72, Judgment of 8 June 1976, par. 82.

In case *Lutz v. Germany*[7] the Court points out that “the second and third criteria adopted in the judgments in the Engel and Others case and the Öztürk case are alternative and not cumulative ones: for Article 6 (art. 6) to apply in virtue of the words “criminal charge”, it suffices that the offence in question should by its nature be “criminal” from the point of view of the Convention, as in the instant case, or should have made the person concerned liable to a sanction which, in its nature and degree of severity, belongs in general to the “criminal” sphere.”

In case *Jussilia v. Finland*[8] the Court said that “the autonomous interpretation adopted by the Convention institutions of the notion of a “criminal charge” by applying the Engel criteria have underpinned a gradual broadening of the criminal head to cases not strictly belonging to the traditional categories of the criminal law, for example administrative penalties, prison disciplinary proceedings, customs law, competition law, and penalties imposed by a court with jurisdiction in financial matters. Tax surcharges differ from the hard core of criminal law; consequently, the criminal-head guarantees will not necessarily apply with their full stringency.”

3. The principle of equality of arms in case law of the European Court of Human Rights

Regardless of whether the trial concerns criminal or civil matters, it must be “fair”. The words ‘just’ and ‘fair’, as we have them in ordinary speech, are such that, so long as the context or the speaker makes clear what sort of justice is under discussion—distributive, retributive, procedural, or so on—we largely agree on what is at issue (Griffin, 2008: 17). Fairness is clearly a variable standard and, in relation to trials, may depend upon technical procedural issues and wider circumstances including considerations of the public interest (Greer, 2006: 251). According to the text of article 6(1), this consists of two components: a hearing must take place “within a reasonable time”; and it must be held before “an independent and impartial tribunal established by law”. Case law has added a number of other principles: equality of arms; the right to be present at the hearing; protection against self-incrimination; and protection from pre-trial publicity (Schabas, 2015: 287). Equality of arms, however, relates to persons with essentially opposing interests (Trechsel, 2005: 95).

The principle of equality or arms has been established as a significant part of the right to a fair trial since the earliest decisions of the European Commission and the ECtHR.

7 Lutz v. Germany App. No. 9912/82, Judgment of 25 August 1987, par. 55.

8 Jussilia v. Finland App. No. 73053/01, Judgment of 23 November 2006, par. 43.

The European Commission used the term equality of arms in the criminal cases of *Ofner and Hopfinger v. Austria* and *Pataki and Dunshirn v. Austria.* Although the cases concerned different procedures, the unifying point was that they all revolved around the determination of an appeal in a non-public setting, in which the accused had not had an opportunity to be heard, even though the opposing side had been given this chance (Summers, 2007: 104).

In case *Dunshirn v. Austria* the European Commission determined that "the equality of arms, that is the procedural equality of the accused with the public prosecutor, is an inherent element of fair trial."[9] But, in case *Ofner and Hopfinger v. Austria*,[10] the Commission considered the involvement of the Attorney General who had not influenced the decision-making process in anyway and was, thus, not prejudicial to the accused. In the view of ECtHR, "equality of arms implies that each party must be afforded a reasonable opportunity to present his case - including his evidence - under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent."[11] In case *Steel and Morris v. United Kingdom*[12] the ECtHR said that "it is not incumbent on the State to seek through the use of public funds to ensure total equality of arms between the assisted person and the opposing party, as long as each side is afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* the adversary."

The judgment of the ECtHR in case *Borgers v. Belgium*[13] is important because the Court focused that a certain institutional or procedural inequality violates equality of arms, the less need there is for the defence to show that it suffered

9 *Pataki and Dunshirn v. Austria*, App. No. 596/59 and 789/60, report of 28 March 1963, Yearbook volume 6, 1963, p. 732. The European Commision said that "even on the assumption that the Public Prosecutor did not play an active role at this stage of the proceedings, the very fact that he was present and thereby had the opportunity of influencing the members of the Court, without the accused or his counsel having any similar opportunities or any possibility of contesting any statements made by the Prosecutor, constitutes an inequality which is incompatible with the notion of a fair trial." Source: Fedorova, 2012: 39.

10 *Ofner and Hopfinger v. Austria*, App. No. 524/59 and 617/59, report of 23 November 1962, Yearbook volume 6, 1963, p. 680. Source: Fedorova, 2012: 44.

11 *DomboBeheer BV v. Netherlands*, App. No. 14448/88, Judgment of 27 October 1993, par. 33; *Bulut v. Austria,* App. No. 17358/90, Judgment of 22 February 1996, par. 47.

12 *Steel and Morris v. United Kingdom,* App. No. 68416/01, Judgment of 15 February 2005 , par. 62.

13 *Borgers v. Belgium*, App. No. 12005/86, Judgment of 30 October 1991, par. 27. The Court emphasized that "once the avocet général had made submissions unfavourable to the applicant, the latter had a clear interest in being able to submit his observations on them before argument was closed." In this case ECtHR has changed its earlier practise established in the decision *Delcourt v. Belgium* and found that the Belgian practice of having an Avocat Général present at the deliberations of the Court of cassation and submitting his views on the case, while this opportunity is denied to the accused, was incompatible with equality of arms and a fair trial (Fedorova, 2012: 34, 35).

actual prejudice arising from that inequality (Fedorova, 2012: 40). The same view the ECtHR had in the judgment *Lanz v. Austria*,[14] when it stated that "the principle of equality of arms does not depend on further, quantifiable unfairness flowing from a procedural inequality". Also, in case *Bulut v. Austria*[15] the ECtHR took the view that "it is a matter for the defence to assess whether a submission deserves a reaction. It is therefore unfair for the prosecution to make submissions to a court without the knowledge of the defence." In this case, the Court concludes that "the principle of the equality of arms has not been respected. Therefore, there has been a violation of Article 6 para. 1 (art. 6-1) on account of the Attorney-General's submission of observations to the Supreme Court without the applicant's knowledge".

In case *Rowe and Davis v. United Kingdom*[16] the ECtHR said that "it is a fundamental aspect of the right to a fair trial that criminal proceedings, including the elements of such proceedings which relate to procedure, should be adversarial and that there should be equality of arms between the prosecution and defence." The same opinion the ECtHR gave in case *Salduz v. Turkey.*[17] The Court emphasized that equality or arms is "the generally recognised international human rights standards, which are at the core of the concept of a fair trial and whose rationale relates in particular to the protection of the accused against abusive coercion on the part of the authorities. They also contribute to the prevention of miscarriages of justice and the fulfilment of the aims of Article 6, notably equality of arms between the investigating or prosecuting authorities and the accused."

In case *Borisova v. Bulgaria*[18] the ECtHR notes "that in the present case, the applicant was not allowed to call any witnesses in her defence even though she asserted on several occasions during the court hearing that she could do so and that their testimonies would refute the statements given by the witnesses for the prosecution… In contrast, the Court finds that the prosecution had an unfair advantage over the applicant to prepare for the hearing and to find witnesses to support its case. As a result, the witness testimonies heard by the domestic court may appear one-sided and supported only the prosecution's version of the events in front of the Employment Office".

14 *Lanz v. Austria*, App. No. 24430/94, Judgment of 31 January 2002, par. 58.

15 *Bulut v. Austria*, App. No. 17358/90, Judgment of 22 February 1996, par. 49, par.50.

16 *Rowe and Davis v. United Kingdom*, App. No. 28901/95, Judgment of 16 February 2000, par. 60.

17 *Salduz v. Turkey*, App. No. 36391/02, Judgment of 27 November 2008, par. 53.

18 *Borisova v. Bulgaria,* App. No. 56891/00, Judgment of 21 December 2006, par. 47, par. 48.

4. The relation between the principle of equality of arms with the obligation of the court to manage the misdemeanour procedure and the principle of the help to a party which requires legal assistance

The management of the misdemeanour proceedings is the procedural activity of the court which influences the establishment, the course and the termination of the misdemeanour procedure by undertaking actions of management and passing of court decisions (Jeličić, 2018b: 9). The management of misdemeanour proceedings, as the basic and essential activity of the court, must not be aimed at favouring any party to the proceedings, and the court must carry out its activities in such a way as to preserve its impartiality and equality of parties (Jeličić, 2018b: 11). Even in the early cases ECtHR it is clear that the equality of arms exists as a guarantee within the framework of Article 6(1), and perhaps most importantly alongside the guarantee of the right to an impartial judge, and envisages a relatively specific type of proceedings (Summers, 2007: 107).

The objectification of the principle of equality of arms during misdemeanour proceedings is caused by the manner in which the court handles the proceedings. The imperative of the court is to provide the conditions for a fair misdemeanour procedure in which the parties have the opportunity to carry out the process activities in an equal manner. It should be clear to the judge that his management of the misdemeanour proceedings must be impartial and that all the procedural activities he undertakes must be in that direction. There must be no difference in the procedural position of the parties for him, and he must not show the affection or intolerance of any kind to any of the parties or participants in the proceedings (Jeličić, 2019: 53). Only by such treatment a judge can ensure the equality of arms for the parties, managing the proceedings in such a way that, in the framework of the law procedural institutes, he enables the parties to have an equal position in the evidentiary duel.

The management of the misdemeanour proceedings by the court of second instance is particularly expressed in the reasoning of its decision. The second instance court should point out to the observed omissions, but its instructions must not impair the impartiality of the court. The reasoning of the second instance decision must not lead to the conclusion that the applicant for initiation of the misdemeanour procedure is favourable in relation to the defendant. Therefore, instructions of the second instance court must be process neutral, that is, the principle of equality of the parties must be respected (Jeličić, 2019: 56).

The law provided certain procedural institutes that aimed at ensuring equality of arms in court. The most important principle is the help to a party which

requires legal assistance, aiming at equalizing the party which requires legal assistance with the help of a court with the other party.

The help to a party which requires legal assistance is the basic principle of misdemeanour proceedings. The doctrine is unique in the view that this principle applies only to the defendant or the injured party, if they do not have a defence counsel or proxy. The public prosecutor, as a legally educated person, and the administrative bodies, various inspectors and other bodies and organizations exercising public authority cannot be considered as a party which requires legal assistance because the detection of the misdemeanour and the submitting of a request for initiating the misdemeanour proceedings belongs to the domain of their duties (Delić, Bajović 2018: 137).

The help to a party which requires legal assistance is actually manifested in two modalities: the duty of the court to instruct the party in misdemeanour proceedings about their rights and to warn it of the consequences (point to consequences) of case of non-use of those rights (Pihler, 2000: 116). It is emphasized that the provision of this assistance also consists in pointing out legal resources that a party which requires legal assistance may use, what evidence, if it has, could use, in informing it about the deadlines and consequences of their omission (Đorđević, 2015: 199). However, this obligation does not mean that the misdemeanour court is obliged to teach the party how to defend itself, to give legal advice, etc., but it is the court's obligation to teach the party about the rights and obligations it has during the proceedings, to enable it to the most appropriate way to present the defence and points out to the consequences that may arise from its actions (Vukčević, 2014: 81). The court indicates to the participants of the proceedings their rights and possibilities, but does not assist them in the substantiation of those rights, which the court has to decide later (Vasiljević, Grubač, 2013: 52).

The concretization of this principle is manifested in the presentation to the defendant how he can exercise his right of defence and participate in the evidentiary proceedings. The essence of that instructions is to enable the defendant to exercise the right to a defence, which includes a number of rules and principles, that are procedural actions by which the defendant opposes the request for the initiation of the misdemeanour proceedings (Mitrović, 2014: 162).

In practice, the court most often applies this principle to the defendant, but in the event that the authorized prosecutor is an injured party who does not have a proxy, the court is obliged to provide assistance to him.

In relation to him, the application of the principle to a party which requires legal assistance is manifested through giving instruction on the position, rights and duties of the authorized prosecutor, as a party in the proceedings, on the essence of the procedural role that it entails: the burden of proof and the duty to provide the evidence whose presentation is proposed, pointing to the exceptions, when the court can obtain

evidence if the injured party as a prosecutor cannot do so, pointing out the characteristics of the misdemeanour procedure, as an adversarial procedure, and the procedural position of the defendant, in order for the injured party as a claimant to understand fully procedural position in misdemeanour proceedings (Jeličić, 2018c: 234).

The help of the court to a party which requires legal assistance that shows its procedural position, indicates the rights and obligations, and the consequences of undertaking or not taking particular actions, must be implemented in practice in a way that the court preserves its impartiality and ensures the equal position of the parties (Jeličić, 2018c: 235).

5. The principle of equality of arms and the defendant's right to defence in the misdemeanour procedure

The obligation of the court is to give the defendant the opportunity to plead the facts and evidence that burden him and to present all the facts and evidence that benefit him, except in cases provided by law. [19] That is the condition that the authorized prosecutor and the defendant have an equal position in the misdemeanour proceedings. It is a basic principle of penal law that relates essentially to the realization of a defendant's right to a defence. Its application encourages equality of arms because the defendant is given the opportunity to confront the authorized prosecutor.

The first step in this process is introduction with the evidence that exists in the case files. It follows from the legal provision that the quality of the evidence is a necessary condition for this form of realization of the defendant's right to a defence. Namely, there must be some evidence that charge the defendant, for which reason the court is not obliged to introduce the defendant with the evidence that goes in his favour, which was presented in the court without the presence of the defendant or his counsel. The legislature does not impose an obligation for the court to give the defendant the opportunity to plead all the facts and evidence, but only those which go to the defendant's detriment.

It should be pointed out that the application of the cited provision implies that the court marks the evidence before making a decision, therefore, during the misdemeanour proceedings. The court's conclusion that the facts and evidence charged to the defendant, who is unfamiliar to them, causes the court's obligation to take adequate procedural steps and to enable the defendant to become aware and familiar of them.

19 Article 93 paragraph 1 Law on Misdemeanors.

There are numerous decisions in the case law pointing to a violation of the defendant's right of defence when he is not given the opportunity to plead the facts and evidence against him. The Constitutional Court[20] noted that the defendants' right to a defence were violated when they were denied the right to examine the prosecution witnesses themselves or through their defence counsel.[21] The Supreme Court of Cassation[22] pointed out that the violation exists when the defendant is not allowed to give evidence about the testimony of the police officer who is charging him,[23] the defence counsel is not allowed to attend the witness hearing,[24] or the expert witness findings and opinion were not provided to the defendant,[25] or when the verdict was issued based on the defendant's written defence who didn't have opportunity to plead about facts and evidence against him and adversarial evidence was presented during the proceedings.[26] The Misdemeanour Appellate Court found that an injury existed when summonses were not served on the defendant and that he was not given the opportunity to attend the hearing of witnesses, police officers, nor was he given the opportunity to comment on the testimony of witnesses.[27]

The defendant has the right to propose evidence and participate in its presentation. The exercise of this right must be in the spirit of the principle of equality of arms. This means that the procedural position of the defendant must not be less favourable than position of the authorized prosecutor. Namely, the Constitution of the Republic of Serbia[28], in the provision of Article 33, paragraph 5, stipulates that any person prosecuted for criminal offense shall have the right to present evidence in his favour by himself or through his legal counsel, to examine witnesses against him and demand that witnesses on his behalf be examined under the same conditions as the witnesses against him and in his presence.

In a misdemeanour proceeding, the rule is that the party is obliged to obtain the evidence whose presentation it has proposed.[29] It refers to the authorized pros-

20 The Constitutional Court case law is available at: http://www.ustavni.sud.rs/page/jurisprudence/35/

21 Decision of Constitutional Court Už. 1036/11 from 26 May 2016.

22 The Supreme Court of Cassation case law is available at:https://www.vk.sud.rs/sr/solr-search-page/results?court_type=vks&matter=33&registrant=_none&subject_number=&date_from%5Bdate%5D=&date_to%5Bdate%5D=&keywords=&phrase=&sorting=by_date_down&redirected=216&referer=216&results=10

23 Decision of Supreme Court of Cassation Kzz. Pr.26/15 from 26 May 2015.

24 Decision of Supreme Court of Cassation Przz. 6/16 from 22 December 2016.

25 Decision of Supreme Court of Cassation Kzz. Pr.16/17 from 29 September 2017.

26 Decision of Supreme Court of Cassation Kzz. Pr. 50/16 from 19 January 2016.

27 Decision of Misdemeanor Appellate Court, department in Novi Sad, Prž. 86/17 from 17 January 2017.

28 Published in the Official Gazette of the Republic of Serbia, No. 98/2006.

29 Article 89 paragraph 4 Law on Misdemeanors.

ecutor and defendant. As an exception, it is provided that the court may of its own motion obtain evidence if the defendant is unable to do it on its own or is justified on grounds of the expediency and efficiency of the proceedings.[30] Such a solution is justified because the defendant is not always able to provide the evidence he wants to be presented, unlike authorized prosecutors, who are usually state bodies with a far greater degree of authority than the defendant. Another possibility relates to the reasons for the expediency and effectiveness of the proceedings for which the court may of its own motion obtain the evidence proposed by the parties, regardless of whether the presentation of the evidence was proposed by the defendant or the authorized prosecutor. One of the cases in which the defendant waives his right to present the facts and evidence in his favour is the ability of the court to make a decision without hearing the defendant.

6. The principle of equality of arms and the institute of decision without hearing the defendant in misdemeanour procedure

It is important to consider the relationship between the institute of the decision without hearing the defendant and the principle of equality of arms. The provision of Article 93, paragraph 3 of the Law on Misdemeanours provides that if a duly summoned defendant fails to appear and to justify the absence or fails to file a written defence within a certain time period, and his examination is not indispensable for establishing the facts that are of importance for making a lawful decision, it may be handed down even without examination of the defendant.

The existence of three cumulative factors are condition of the application of this institute. The first factor concerns the proper delivery of the summons to the defendant. This means that the summons to the defendant was served in accordance with the delivery provisions laid down by the Law on Misdemeanours. In doing so, the orderly delivery of the summons implies that the defendant was also served the request for the initiation of a misdemeanour procedure with a summons.[31] When this was not done, according to the Supreme Court of Cassation, the conditions for making the judgment without the hearing of the defendant were not met.[32] An integral part of the summons must also be a warning to the defendant that in case of failure to appear, the decision shall be handed down without his examination,

30 Article 89 paragraph 5 Law on Misdemeanors.

31 Article 187 paragraph 4 of Law on Misdemeanors.

32 Decision of Supreme Court of Cassation Kzz. Pr. 7/16 from 10 March 2016.

which is conditioned by the court's assessment that the presence of the defendant is not necessary for establishing the state of facts.

The second factor concerns the defendant's unjustified failure to attend a scheduled trial or failure to provide a written defence. If the defendant justified his absence, the conditions for applying the institute were not met. In a misdemeanour proceeding, the defendant can present his defence in two ways: during an oral hearing, which is often the case in practice, but also by providing a written defence. It is important to point out that in the summons of the defendant must be indicate that it can provide a written defence, because the application of this institute does not depend on the defendant's discretion, but on the evaluation of the court. The doctrine states that if a defendant does not use the opportunity to present his defence, he bears the consequences of such action and agrees with a decision which will not be based on his defence (Vrhovšek, 2010: 110), and that the defendant cannot decide for himself to submit the written defence although he was invited to an oral hearing (Delić, Bajović, 2018: 280). The same is the case law. The second-instance decision stated that "the first instance court did not find that a defendant's direct hearing was not necessary; on the contrary, the first instance court summoned the defendant for a hearing, and therefore it follows that the defendant's written defence was given on his own initiative."[33]

The third factor of the institute under consideration relates to the court's assessment that a defendant's hearing is not necessary to establish the facts that are relevant to the lawful decision. This condition will be fulfilled only if there is evidence in the case file that enables the court to reach a decision without hearing the defendant. This means that the attached evidence may indicate the defendant's responsibility or his innocence, which the court assesses in each case.

Although the legislature did not explicitly prescribe the obligation of the court to inform the defendant with the evidence that charged him before making decision without hearing the defendant, we consider it is necessary. In addition to the summons and request for the initiation of a misdemeanour procedure, the court must also provide the defendant with the evidence provided by the authorized prosecutor. In this way, the defendant becomes aware of the evidence against him and if the other analysed conditions are met, the court can make a decision without hearing the defendant. The contrary action of the court would not be justified in terms of the defendant's right to a defence.

The expediency of this ruling is obvious because it allows the defendant the opportunity to familiarize himself with the evidence against him and prepare his de-

33 Decision of Misdemeanor Appellate Court, department in Novi Sad, Prž. 23804/17 from 12 December 2017.

fence for the scheduled trial. In this situation, the justification of applying the institute of decision without hearing the defendant becomes even more important because the defendant is aware of all the evidence presented by the authorized prosecutor.

7. Conclusion

It is the duty of the court to take care of the application principle of equality of arms in practice, which the court makes with lawful management of misdemeanour proceedings. The application of this principle is caused by two factor. The first of these concerns the normative regulation of this matter. The Law on Misdemeanours and the Criminal Procedure Code, set the procedural framework in which the practical aspects of the principle of equality of arms can be implemented. The second factor concerns the interpretation and application of law by the court. Respect of the principle of equality of arms is imperative in misdemeanour proceedings, so the vagueness of certain legal norms must always be interpreted in the spirit of this principle. Interpretation of law is a creative activity of the court that must be based on the principles of fair process. That is why the court must resolve any unclear situation in practice with only one idea in mind - to ensure equality of arms of the parties and to conduct a fair misdemeanour procedure.

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Branko LEŠTANIN[*]
Ministry of Interior of Republic of Serbia
PhD candidate Law Faculty of Niš

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SMUGGLING OF GOODS AS A FELONY IN REPUBLIC OF SERBIA: THE HISTORICAL ASPECTS

The author starts with the thesis that smuggling is part of the shadow economy phenomenon. The emergence and development of smuggling is linked with the emergence of borders between states, which created the conditions for establishing an administrative control over the movement of goods. Harmonization of the legal framework leads to frequent changes in the positive legislation of the Republic of Serbia, which results in huge changes in the field of crime suppression (especially economic and financial). The rich legal tradition and legal heritage must not be overlooked in the process of legal harmonization. The aim of the research is to answer the questions when smuggling emerged as a social but first and foremost criminal law phenomenon, its development in criminal law in the Serbian state throughout history and whether certain lessons can be drawn from our rich legal tradition. The first part of the article analyzes the literature and sources of law in Serbia in the middle Ages, where Dušan's Code is the main source of criminal law and law. The second part explores criminal sources in Serbia in the 19th century after liberation from the occupation of the Turkish Empire. The third part examines the criminal-legal framework in Serbia of the 20th century, in which the communist social political system prevailed. The last part of the article analyzes the positive legislation of Serbia.

Key words: Smuggling, Serbia, Customs legislation, Criminal legislation

[*] email: b.lestanin@gmail.com

1. Introduction

Smuggling of goods[1] and other similar felonies are part of the so-called 'The shadow economy'. In fact, this term covers all illegal economic activities aimed at gaining economic benefits for the person who performs those activities, and to the detriment of the state and persons who carry out economic activities legally. It is, therefore, a matter of engaging in economic activity beyond or against legal regulations. The shadow economy is also referred to in the literature as tax-free, informal, black, underground, or unofficial. However, regardless of which of these terms are used by individual authors, almost everyone agrees that this is an activity with something that is wrong or wrong with the information about these activities (Jovašević, 2009:826; Jovašević, 2018:381).

The emergence and development of smuggling is linked to the emergence of state borders, which created the conditions for establishing a regime of administrative (customs, police etc.) control over the movement of goods. Throughout history, smuggling has had the stamp of conditionality on specific social and economic occasions. This applies not only to the range of goods, but also to the forms and methods of smuggling. Up until the advent of smuggling capitalism, it could be said that it had more political and military aspects. Later, it gained much more commercial aspects, manifesting itself as a widely spread illicit 'business' that in certain periods put the national economy in a difficult position (Delić, 2010:476)[2].

The perpetrating of this felony by organized crime groups can also lead to economic instability in one country. In addition, smuggling of goods can result in the commission of other serious crimes such as assault and murder of police and customs officers, corruption, terrorism, money laundering, tax evasion, etc. which, in addition to the economy, threaten other forms of security (e.g. individual, public, national, etc.) of a country.[3] Organized criminal groups are increasingly involved in the smuggling of goods and thus gain illicit property gain without leaving a trace that could indicate their criminal activity and the like. By incorporating illicit income into legal flows, organized crime threatens the economic system and healthy market competition, thereby affecting economic, political and even social trends, both nationally and internationally.

Considering all of the above, as well as obligations in the pre-accession negotiations with the EU, certain domestic strategic documents as well as the need for a greater degree of coordination of state bodies in combating corruption,

1 Synonyms are contraband, trafficking of goods etc.

2 Similar in Nicević, Ivanović, 2013:190-191

3 Paraphrased according to Nicević, Ivanović, 2012:96

financial and economic crime, the Republic of Serbia in 2016 adopted the Law on Organization and Jurisdiction of Government Agencies in the Fight against Organized Crime, Terrorism and Corruption[4]. This legal act as part of the so-called ‘organizational legislation’ for the first time, the felony of smuggling is placed under the jurisdiction of special organizational units of the police, prosecutor’s office and court. For the first time, local police departments do not have, as their original jurisdiction, the suppression of economic crime and therefore smuggling.

In order to assess the time distance, an analysis of available literature and legal regulations was made with the application of historical legal methods was carried out. The aim of the research is to answer the questions when smuggling emerged as a social but first and foremost criminal law phenomenon, such as its development in criminal law in the Serbian state throughout history and whether certain lessons can be drawn from our rich legal tradition.

2. Smuggling in the Middle Ages

Before the Dušan’s Code, there were no independent laws in the field of world law in the Serbian state. The sources of law at that time were: a) numerous charters, which were of a particular nature, b) international treaties that also passed general norms, but limited to international relations, and c) translated Byzantine legal collections, whose application was uncertain. Common law was still prevalent (Krkljuš, 2002:56).

The earliest information about the existence of an independent fiscal part in our region is recorded in the early Middle Ages. This is already, a time when in many places there are well-established systems for determining and collecting taxes and other levies. Namely, the Dušan’s Code already enacted at the councils of 1349 and 1354 provided for punishment for the perpetrators of the criminal offense of tax evasion or non-payment of taxes (Jovašević, Glamočlija Gajić, 2008:133-134)[5].

4 Official Gazette of RS No 94/2016

5 The Dušan’s Code, passed on May 21, 1349 (almost two centuries before the famous German Code of Constitutio Criminalis Carolina of 1543 (Jovašević, 2016b: 26)), at the assembly of Serbian lords and church dignitaries in Skopje (North Macedonia), is the oldest written legal act in this region and ’one of the most important monuments of our Middle Ages’ (Petrovic, 2014: 6) and ’lasts as an amanet of a great past, chaos is a messenger of deep political aspirations’ (Krkljuš, 2002: 61). According to the degree of development at that time, because the original was not preserved there are several variants (manuscripts) of the Dušan’s Code: Strug’s, Prizren’s, Hodoš’s, Hilandar’s, Šišatovac’s, Bistrica’s, Baranja’s, Atonic, Studenica’s, Rakovica’s, Ravanica’s, Grbalj’s, Zagreb’s, Sofia’s, Tekelian, Belgrade’s , Stratimirian, Bordjoškian and Kovilj’s (Solovjev, 1928:18-36). The names of the manuscripts were created on the basis of the places where they were found, or on the basis of the surname where the manuscript was found. Regardless of the various variants, it can be

For the purposes of this article, it is essential to consider the provisions of the criminal law and the possible existence of a felony of smuggling or similar criminal offenses. The synthesis of the provisions concludes that felonies against religion, the state and the monarch are issued here, generally dangerous felonies (arson, witchcraft), then offenses against morality (rape, bloodshed, etc.), life, body and honor (murder, bodily injuries and insults) and against property (theft, theft at the expense of the church and robbery).

Dušan's Code issues the crime of tax evasion or failure to pay. Of course, this act is unnamed in the law itself (which was the custom of all the older legal sources), but its content, nature and character consist precisely in avoiding payment of duties to the ruler. This offense is prescribed by Article 189 of the Dušan's Code according to the Rakovica's Manuscript. Specifically, this legal provision is contained only in this transcript of the Code of Stefan Dusan IV, which originated sometime around 1701. In the primal version, this legal provision refers only to a specific tax (Serb. '*soće'*), and some others were added by the transcriber himself (these are terms that are in the known to our people only after the Turkish invasion of the Balkans) (Anđelković, Jovašević, 2006: 143).

Traders were guaranteed freedom of movement and business, and the Emperor's customs officer was forbidden to obstruct and detain them, for which a fine was imposed, for such usurpation (according to Petrović, 2014:78-79; Randjelović, Todorović-Krstić, 2009:40-41). There was even an obligation to provide the trader with lodging, and if he lost any profit or suffered damage from the prohibition of lodging, the village was obliged to compensate him (according to Novaković, 1870:49; Randjelović, Todorović-Krstić, 2009:49).

It is concluded that the Dušan's Code as the basic source of law at the time did not explicitly issue smuggling of goods as a felony. But it must be emphasized that there was a fiscal system consisting of taxes and customs whose non-payment was punishable, and thus the possible occurrence of smuggling of goods and evasion of customs duties was also penalized. The State's Treasury was then considered to be the personal property of the monarch and the income, which was abundantly overflowing, was his personal income. The main sources of wealth were: minting, mines and customs. Government revenue was also increased by inheritance taxes (so-called 'soće'), other taxes, penalties and fines (Salzer, 1960:130).

From the 15th and 16th centuries most of the territory inhabited by the Serbian people was within the Ottoman Empire whose occupation lasted until the First Serbian Uprising in 1804. The sources of rights at that time were Sharia law, that

concluded that the Dušan's Code, by virtue of Byzantine legal acts, contains provisions of church, civil and criminal law.

is, the religious laws of Islam on which the individual legal acts of the Sultan were based, e.g. *canoes, fermans, hatysheriffs, ahdnams* and the like (Krkljuš, 2002: 155-157). Considering the fact of free trade, the socio-political situation, the constant armed conflicts and the expansion of the Ottoman Empire, one can conclude that the smuggling of goods was not the focus of the legal activity of the Turkish monarchs.

3. Smuggling during the 19th century

The first customs tariff was issued by Prince Milos on March 1st, 1819 and amended on December 16th, 1822. This tariff included a total of 31 items (the highest tax was for horses and cattle, two groats per head, 20 pairs for pigs and 10 pairs for sheep). For other goods, it is envisaged that, in relation to value, two pairs will be taken for each groat. The above tariff was valid until March 7th, 1828, when it was replaced by a new one. The new tariff included 71 items and was slightly lower than the previous tariff. Import-export duties were also levied on other territories (Tur. *Paşalik*). Seven years later, on July 3rd, 1835, a 'short supplement' of the tariff of 1828 was issued, which prescribed customs duties on eight items (seven livestock and wheat), for products exported to Turkey, which was very high (20 groats for horses and 10 groats for oxen and pigs).[6]

If we also look at the sources of criminal law (in the narrow sense) in the Middle Ages, we can conclude that the provisions on smuggling are not an immanent part of criminal law. Specifically analyzing the Law of archpriest Mateja[7], Karadjordje's Criminal Code[8] and the Criminal Code of the Principality of Serbia[9], we do not find contraband provisions. At the assembly of Valjevo district, in May 1804, the first judges were elected and were instructed to stand trial with several provisions, which were called the Law of archpriest Mateja after the text was published by archpriest Mateja Nenadović in his Memoirs. According to the time in which the uprising against the Turkish Empire was made, this legal act refers primarily to serious crimes against life and body, state authorities and the army (according to Krkljuš, 2002:193-194).

The Karađorđe's Code (or Karađorđe's Criminal Code-KsCC) contains a slightly broader scope of provisions relating to criminal and civil law. It regulates felonies against the state and social order, life and body, military offenses and

6 According to http://www.carina.rs/cyr/ONama/IstorijatCarinskeSluzbe/Stranice/IstorijatZakonaITarife.aspx accessed at 23.06.2019

7 According to Krkljuš, 2002:193-194; Jovašević, 2016a:65

8 According to Krkljuš, 2002:194-196; Mirković, 2008; Jovašević, 2016a:65-74

9 According to Ranđelović, Todorović-Krstić, 2009:77-80 и 145-160; Nikolić, 1991

disciplinary offenses, etc. In terms of the types of penalties, it is imbued with cruelty, relying on the legal tradition of the Dušan's Code, the influence of Sharia law and Austrian border law (Mirković, 2008). The peculiarities of the construction of the Serbian state after 1815, its rather specific international legal status, as well as the social, economic situation, population structure, etc., inevitably influenced the character of domestic law in general, and therefore criminal law (Nikolić, 1991:60).

The KsCC did not divide the provisions into a general and a separate section (although such systematics were already known in the criminal law of Europe since the French Revolutionary Criminal Code of 1791). In a separate section, which represents the most extensive part of KsCC, two distinct areas can be clearly distinguished: a) general felonies and b) military felonies. They describe the individual felonies and punish them for their perpetrators in accordance with the above general provisions (Jovašević, 2016a:66, 68).

The Criminal Code of the Principality of Serbia consists of three parts: a) introductory provisions, b) provisions on criminal offenses (and penalties) and v) provisions on appearances as a third type of unlawful acts. From the aspect of the crime of smuggling, the second part that regulates the crimes that are classified according to the protective object against which they are directed is most important (Nikolić, 1991:98).

However, if we look at criminal law sources in a broad sense, then in Serbian first Customs Law of 1850, Article 121, we can find provisions on smuggling (according to Lončarić, 1908:17). As a young country, and similar to the more developed European countries, Serbia issues smuggling as a crime to protect the economy and the customs system. The act of committing this felony consisted of the secret entry, removal and transfer of goods (*auth. rem.* through the border or customs line). The object of smuggling was removal goods which were forbidden to be trades and the offense could only be carried out in the border area. Removal goods were goods that could be traded. According to the form of culpability, an intent was required, which not only was presumed, but it was an irrefutable presumption where the offender intended to avoid paying duties and putting the goods on the market (Lončarić, 1908:18-25). It must be emphasized here that 'duties' did not imply only customs duties but all other taxes levied by the state at that time for the import of goods (toll, monopoly taxes, etc.).

Customs laws of 1863, 1897, 1899 and 1904 were later enacted, which did not substantially alter the grounds laid down. Until the enactment of the 1899 law, smuggling could only be carried out with the intent which the customs officer (a bureaucrat official) was obliged to determine. By enacting the law of 1899, the

perpetrator of the felony of smuggling could be punished for the willful and negligent commission of this crime (Lončarić, 1908:18). The act of doing this felony (Šuput, 2015:69) was determined alternatively as:

1) Entry of goods from abroad via customs line in the territory of the Kingdom of Serbia, avoiding reporting to the competent customs office;
2) Transfer of goods specified in the import or export via hidden, not roads that served for export or unloading of such goods on a side road;
3) Unloading of goods in the territory of the Kingdom of Serbia without reporting to the competent customs or authorities;
4) Failure to report to the competent customs office the goods on which customs duties and other duties were levied; and
5) Arbitrarily disposal (e.g. sale or gift of imported goods) before the goods are declared to the competent customs house or in the same way the disposal of goods designated for customs warehousing or other goods required to be reported to the competent customs house in accordance with the Customs Law of the Kingdom of Serbia.

In addition to the basic form of the felony, the amendment of 1899 in Article 151 also issued a more serious form of smuggling, which consisted of committing the felony of restitution, if the export or import of the goods was prohibited or if the goods were transferred at night. These circumstances had to be covered by the intent of the perpetrator, in which case the penalty was increased by 50% of the sentence prescribed for the basic form of the felony.

When it comes to penalties, the laws at the time were not rigorous. The Customs Laws of 1850 and 1863 provided for a fine of half of the goods to be smuggled - with the confiscation of half of the smuggled goods. Later amendments to the customs legislation of 1879 issued the penalty by requiring the confiscation of all smuggled goods, and even introduced a ‘real’ fine of ten times the amount of the duties at the time, which had to be paid. If the offender could not pay the fine, it could be replaced by a prison sentence.

4. Smuggling in 20th century

Until the advent of capitalism, smuggling could be said to have had a more political and strategic-military aspect (Nicevic, Ivanovic, 2013:190). The basics laid down by customs legislation in the 19th century were also followed by the amendments to the Customs Law of 1904, where, in addition to smuggling in the border zone, smuggling was introduced in the country (Lončarić, 1908:18-19). The act of committing a felony consisted in the transfer of goods (domestic or foreign

origin) across the state border and the placing of such goods in free circulation, which resulted in the avoidance of payment of certain taxes and consequently damage to the state budget. The customs authorities were obliged to carry out a certain procedure when importing or exporting the goods and to charge certain fees. The smugglers sought to avoid this procedure and thereby reduce their own costs (Lončarić, 1908:21-29).

The analysis of legal regulations concludes that the felony of smuggling remains part of the secondary criminal legislation in the subsequent periods of the historical development of the Serbian state and the subsequent unification of the southern Slavs.[10]

After World War II, a large number of different, combined factors led to the expansion of the smuggling of various commodities. Namely, trade was in disarray, and the lack of many goods, most often the elementary ones, was increasingly felt. Also, the pronounced migration of the population, refugees and prisoners of war from one end of the world to the other, as well as one general confusion due to the effects of the WWII lead to the creation of favorable conditions for the flowering of smuggling, not only professional but also amateur, which reaches unprecedented proportions (Nicevic, Ivanovic, 2013:191).

The Second World War was followed by the rebuilding of the country first in social, political, economic and normative terms. In 1976, the SFRY Customs Law[11] (further: CLSFRY) was adopted[12], which in Chapter XVI was titled: ‘Penal Provisions’ in Art. 359-365 issued the crime of smuggling. The object of protection of this crime was the customs system of the former SFRY. The felony had two basic and one qualified forms.

The act of execution of the first basic form (Article 359 of the CLSFRY) consisted in engaging in the transfer of goods across the customs line, avoiding measures of customs control. Engaging in implied a certain contingency so that if the offender only once transported the goods through a customs line outside the customs control, he/she did not commit this felony. The customs line was defined

10 According to Živanović, 1939:64-66; Law on Suppression of Illicit Trade, Illegal Speculation and Economic Sabotage (Official Gazette of the FPRY, No 56/46 and 74/46 – correction); Krivični zakon SR Srbije, Krivični zakon SAP Vojvodine, Krivični zakon SAP Kosova i Zakon o izvršenju krivičnih sankcija sa registrima pojmova, 1977; Krivični zakon Savezne republike Jugoslavije (prečišćen tekst), Krivična dela predviđena posebnim zakonima Savezne republike Jugoslavije, Krivični zakon Republike Srbije (prečišćen tekst), Krivična dela predviđena posebnim zakonima Republike Srbije, Pravilnik o uslovima i načinu upotrebe sredstava prinude, 1995; Bačić et. al., 1995:830-831

11 Official Gazette of the SFRY No. 10/1976, 36/1979, 52/1979, 12/1982, 61/1962, 7/1984, 25/1985, 38/1986, 28/1988, 40/1989, 70/1989 and 21/1990

12 Later, a new Customs Law was adopted (Official Gazette of the SFRY, No. 34/90), which essentially did not make many changes from the point of view of smuggling other than changes in numbering (Article 340) and increased individual penalties.

in Article 1, paragraph 2 of the CLSFRY and coincided with the SFRY border line. Customs surveillance included measures taken to prevent the unauthorized handling of customs goods and to ensure their identity until the customs procedure was carried out, and in particular: 1) safekeeping and inspection of customs goods, 2) customs clearance, 3) putting the customs marks, 4) sampling, prospectuses, photographs or other data to ensure the identity of the goods 5) search of means of transport and transfer and of the crew or crew, and 6) inspection of the luggage of passengers and personal search of passengers (Article 6 of the CLSFRY). This form of crime could only have been committed intentionally, for which a sentence of imprisonment of one to five years and a fine were cumulatively issued. The *ratio legis* of such a solution stems from the intent of the perpetrator to obtain unlawful material gain in this way, and therefore the fine is a normal response of the state to endangering the customs system.

The second basic form of the felony was issued in Article 360 of the CLSFRY. It existed if the transfer of goods through the customs line was made armed, in a group or by use of force. Here it was enough to carry the goods once because there was no engaging as a condition, but the person had to have with him a weapon that he/she did not have to use when carrying the goods. The group was not defined by customs or criminal legislation, so it was interpreted that the group must have three or more persons. Force, in addition to the use of physical or mechanical strength, according to criminal legislation[13] was also considered the use of hypnosis or seductive means to overcome the resistance of a passive subject or to bring him to an unconscious state.

This form of felony could only be committed with intent, while the punishment was differently determined depending on whether the felony was committed with a weapon or in a group (imprisonment for one to three years) or the use of force (imprisonment for one to five years). In both cases, a fine was imposed in addition to imprisonment. Although, by its nature, this form of crime is more severe than the first, the legislature did not issued a severe sentence at the time, but on the contrary issued a milder sentence for dealing with a weapon or in a group.

The qualifying form of this felony existed if someone organized a group or a network of persons for the purpose of transferring customs goods through a customs line while avoiding customs controls. The qualifying circumstance for this form of offense is organization, which implied criminal association or the existence of a network of traders of smuggled goods. This form of crime was punishable by one to seven years prison sentence. It should be noted that even belonging to a group was punishable, regardless of whether a member of the group committed

13 Criminal Law of SFRY (Official Gazette of the SFRY, No. 44/76)

the crime or not, for which the legislature provided him the possibility of imposing a sentence of up to one year in prison and a fine (privileged form of felony).

With regard to security measures and the handling of smuggled goods, the CLSFRY issues the mandatory seizure. The goods subject to the commission of the crime had to be seized, later sold and the value thereof, which, according to the provisions of the Customs Laws at that time, constituted the customs duty basis. Later, the customs procedure for collecting customs duties and other import duties was also carried out. It was also issued that the means of transport/transfer, as well as the smuggling goods, which was seized or charged, would be handed over to the competent customs office, which was treated them according to the regulations, and the proceeds from the basis for collecting the value of the items was the revenue of the SFRY budget.

In addition, Article 364 of the CLSFRY issued the seizure of a means of transport or a means of transfer who's secret and hidden places were used for the transfer of goods that were smuggled or intended for smuggling. The precondition was that the owner or user of the vehicle knew or had to know that the item will be used for the purpose of smuggling (eventually intention) or if the value of the goods subject to smuggling exceeded one third of the customs duty base of that means of transport or means of transfer at the time of the felony.

With the breakup of the SFRY, the former republics declared independence, leaving only Serbia and Montenegro together, which established the Federal Republic of Yugoslavia, which had a single customs territory regulated by the Customs Law[14] (further: CLFRY). The felony of smuggling was issued in the provisions of Art. 179-184, in Chapter XVIII. The essential of felony remained the same with the minimal differences we cite (Bačić, et. al., 1995:830-831):

1) there was one basic form with three alternatively set enforcement acts (engaging in, with weapons and in groups) and the same penalties (imprisonment for one to five years and a fine);
2) there were three qualifying forms (use of force, organizing a group or network to carry out the basic form, and organizing a network of resellers or brokers for dispersing non-cleared goods) for which one to eight years' imprisonment and a fine were imposed.

Subsequent socio-political changes inevitably led to changes in the normative framework, and thus in 2003 Serbia adopted a new Customs Law[15] (further:

14 Official Gazette of the FRY, No. 45/92 with later Novels published in the Official Gazette of the FRY, No. 16/93, 50/93, 24/94, 28/96, 29/97, 59/98, 23/01, 36/02 and 7/03 - decision CC

15 Official Gazette of the RS, No. 73/03, with later amendments published in the Official Gazette of the RS, No. 61/05, 85/05 - other law, 62/06 - other law and 63/06 - other law

CL/03). Article 330 issues the felony of smuggling with one basic and three qualified forms.

The basic form of the felony was partially modified in relation to the CL-FRY. The enforcement act consisted of seven alternatively issued actions of transferring through a customs line, entering into a customs territory, receiving, hiding, buying, selling or any other operation with customs goods that enabled the transport, concealment or sale of smuggled goods. For the existence of the felony, it was necessary to take this actions in order to avoid customs supervision, which included a set of general measures and actions of the Customs Administration in order to enforce customs and other regulations in relation to goods subject to customs control, including measures to ensure the identity of goods from their arrival at the customs territory until the completion of the customs procedure (monitoring and safekeeping of customs goods, taking of samples, prospectuses, photographs or other data), putting customs marks and certification of the prescribed documents (Article 5, paragraph 1, item 11 of CLFRY).

To commit this form of felony required intent. It was punishable by a term of imprisonment of six months to five years and a fine. Here we see that the legislature has decided to move the special legal minimum of the issued prison sentence from one year to six months, while maintaining a special legal maximum for the basic form of smuggling, which has led to changes in the penal policy.

The first qualified form of smuggling existed if the basic form of the felony was committed in a group, armed or using force or threat, for which one to eight years' imprisonment and a fine were imposed. We note here that the legislature recognized the qualifying nature of the use of weapons, force, threat and the smuggling in a group, which was not the case in the previous period.

Second qualified form of smuggling existed if a network was organized to carry out the basic form. Although the legislator *explicite* omitted resellers and brokers, they were not exempt, but the concept of the network was extended to all persons who are part of the smuggling network from transferring/bringing in goods through receiving, hiding, buying, reselling and selling. This form of smuggling was punishable by two to eight years in prison and a fine. We note here that the legislature has increased the special legal minimum of imprisonment to two years and thus further qualified the organization of the smuggling.

The third qualified form of smuggling recognizes the objects of the crime as a qualifying circumstance and they are narcotics, weapons, nuclear material and hazardous wastes. Here, the legislature shifted the legal maximum of a prison sentence and provided for a sentence of two to ten years in prison and a fine. It must be noted that the main and secondary criminal legislation (federal and republican)

criminalized illicit activities with weapons, narcotics, nuclear and waste materials, so this more severe form, as we will see in later novelties, has been deleted. The reason for this may be sought in the fact that the issued form of the crime has identical special elements of other crimes that have incriminated certain acts with narcotic drugs, nuclear material, etc.

Other provisions regarding the seizure of smuggled goods, means of transport and means of transfer remained the same with one supplement. A transport, transfer or other means specially made or tampered with to enable the concealment of goods shall be forfeited regardless of the value of the goods or the right of ownership of that means of transport.

Smuggling remains part of the secondary criminal legislation in Serbia until the major codification of criminal legislation in 2005, when it was exempted from customs legislation and became part of the main criminal legislation in the Republic of Serbia.

5. Contemporary solutions

According to the positive law of the Republic of Serbia, smuggling is criminalized as a felony of blank character against the economy in Article 236 of the Criminal Code[16]. It has a basic and qualified form. The criminal law norms in this section are supplemented by the customs legislation governing the procedures and procedures for import and export of goods to Serbia, customs line and customs control.

The object of protection of the felony of smuggling, in the narrow sense, are customs and the customs system, while, in the broader sense, they are the market and the market economy. For this felony the criminal sanctions (cumulative imprisonment and a fine) and security measures (confiscation of items) are issued. The perpetrator may also be imposed another criminal sanction if the conditions provided for by the law (work in the public interest, probation and educational measure against a juvenile offender) are fulfilled. The qualifying form of smuggling also requires seizure of proceeds of crime (so-called extended seizure) (Nikač, Leštanin, 2019:160).

16 Official Gazette RS No.85/05, 88/05-corr., 107/05-corr., 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19

6. Conclusion

Smuggling occurs at a time when states, aware of the need to protect their own economy and in order to increase the yield of the monarch's cash register, introduce customs. Although it was not explicitly issued, already in the time of Emperor Dušan the Mighty, certain forms of customs aimed at merchants were introduced. The first legal source who issued smuggling as a felony was the 1850 Law on the Establishment of Customs as part of the secondary criminal legislation, which was made in accordance with the then Austrian legislation.

This situation, with minimal changes in the nature and elements of the crime, persisted during the time of communism (socialist self-government) until the great codification of the criminal legislation in 2005. In essence, smuggling is a form of tax evasion and involves multiple handling (transfer, concealment, storage, purchase, sale, etc.) of goods that are subject to customs procedure and which are subject to customs duties while avoiding customs controls. Consequently, goods that are so brought into the market become cheaper than those for which customs duties have been paid, and unfair competition and damage to the state budget occur.

Considering that in the process of harmonization of our legal framework with EU, material criminal legislation may (will) be amended. The object of protection of this felony is and should remain the customs and the customs system in general. The basic form of the felony should involve (engage in) the transfer of goods through the customs line, while the qualified forms should take into account qualifying circumstances such as the modus operandi (using firearms), the value of the goods, the circumstances under which the basic form was carried out and the like. With regard to criminal sanctions, in addition to penalties (fine and imprisonment), the imposition of confiscation of items used to commit or be smuggled must be mandatory. Lastly, the most important recommendation is that institutions that actively participate in the fight against smuggling (customs, police, public prosecution, criminal court, etc.) must strengthen their resources, educate their officers, strengthen their integrity and thus become more efficient.

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Miklós TIHANYI, PhD[*]
National University of Public Service
Faculty of Law Enforcement
Senior lecturer

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THE EFFICIENCY OF FAITH BASED PRISON IN HUNGARY

The purpose of this paper is to introduce the effects and results of religious education in the correctional facilities in Hungary. The operation of the Prison Chaplaincy as well as the changes in the inmates' value systems are the two key topics this research focuses on. The author carried out on-site observations and conducted interviews with prison chaplains in four facilities. Additionally, he compiled data by using questionnaires – Shalom Schwartz's value scale – to assess nearly 100 inmates participating in religious education activities and other nearly 100 non-participating inmates. In addition to these two groups, the author used the same questionnaire to assess a nearly 100-member civilian congregation as a control group. It can be concluded that religious education may have an impact on their value systems and it is also capable of shifting them from the world of crime towards that of religion. Values emphasizing individual responsibility and community interest can become underlined and more accentuated. These effects show no correlation with the crimes committed. At the same time, the intensity of religious education is of relevant and decisive nature.[1]

Key words: faith based prison, value system, religion, religion education

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* e-mail: tihanyi.miklos@uni-nke.hu

1 This paper is the English-language excerpt from my essay „Bűn- Hit – Szabadulás" (Sin-Belief-Salvation) published in Hungary

1. Premise

According to the Fundamental Law of Hungary *„everyone shall have the right to freedom of thought, conscience, and religion. This right shall include the freedom to choose or change one's religion or other belief, and the freedom of everyone to manifest, abstain from manifesting, practice of teach his or her religion or other belief through religious acts, rites or otherwise, either individually or jointly with others, either in public or in private life."*[2] The Act on the Right to Freedom of Conscience and Religion, and the Legal Status of Churches, Denominations, and Religious Communities pays a particular attention to the situation of the inmates, when it stipulates that: „*The exercise of the freedom of conscience and religion shall also be made possible for those (...) detained in prison, both at individual and community level."*[3]

2. The object and the purpose of the research

Religious observance carried out in prisons can be examined from two aspects. According to the first approach, the main characteristics of the inmates' freedom of religion can be examined carefully from a constitutional legal point of view. The features must be ignored within this paper because it would be beyond the purposes of research. The other approach seeks to find an answer what role religious observance can play in the process of reintegration. The results of religious observance in prisons will be further examined below. In this context the concept and the definition of religious observance is not entirely accurate. This definition is a legal one, therefore it is primarily open to legal interpretation. It can be poorly interpreted in the language of either penology or theology. Since the research, the results of which are discussed in this paper primarily belong to the area of penology, the term religious education has been used within its scope. It needs to be explained what is meant by the concept. Within the framework of this research, the narrower meaning of the term 'religious education' refers to the availability of the religious occasions to the extent necessary to achieve the goals of the church and of reintegration, as well as the regular, active, and motivated participation in these occasions (Tihanyi, 2018: 210). Religious education is definitely different

2 The Fundamental Law of Hungary, Section VII, Paragraph (1) 11. Apr. 2011. Hungarian Gazette No. 2011/43

3 Act on the Right to Freedom of Conscience and Religion, and the Legal Status of Churches, Denominations, and Religious Communities. Section 3, Paragraph (1) 31. Dec. 2011. Hungarian Gazette No. 2011/160

from other reintegration programs to the extent that while educators, psychologists, and mediators have religiously neutral goals and methods assigned to achieve such goals, the churches and their priests/pastors/clerics are, naturally, religiously committed. The basic research questions is whether in which way, and to what extent religious education can contribute to the social integration of the inmates.

The most important question as regards the measuring the effectiveness of religious education is *what are the outcomes that can be considered effective*. Answering this question can be done from several aspects. According to preliminary research, the definitions of 'outcome' can be visualized along a straight line. At one end of the straight line is the theological concept of 'repentance/conversion', which means the acceptance of the religious tenets accepted by a given church (Burnside, 2007). The other end of the straight line the outcome is the entirely secular concept of 'avoidance of recidivism' (Ellis, Ellis-Nee, Lewis, 2016). In between, as some kind of synthesis, is the concept according to which the outcome of religious education is preventing recidivism by accepting and following religious values. *Correspondingly, it is necessary to examine during the research to which direction and to what extent the value system of those participating in religious education change compared to the value systems held by the other members of the inmate population.*

The choice of values sets out, or at least influences, the individuals' relation to the phenomena of reality. Through these choices, the individuals' responses and actions are similarly influenced. Essentially, the individuals' conscious actions reflect their attitudes for values – or at least its pivotal elements (Ádám, 2015: 184). This latter statement has its limitations. Sometimes, individual interests may supersede individual values. The situations where they may occur can be emergencies, when livelihoods and safety are endangered. To a not so strong and solid value system, a conflicting yet very profitable activity may pose an enormous challenge. Not all values are equally represented in an individual's value system. In decision-making processes, particularly in conflict situations, the dominant elements of the value system hold considerable sway (Váriné, 1987: 253). At the same time, it is uncontested in the relevant literature that the individuals' choices of values are reflected in their actions. This statement is not valid in each specific action, but it is as regards the direction of the entirety of the interrelated actions. For instance, one would hardly imagine that a person whose own prosperity has a considerable value for the person would not at least now and then have a generous spirit, despite the fact that their generous act at that given moment would run counter their prosperity. At the same time, it is definitely true for this person that they more frequently refuse donation requests compared with those for whom

others' prosperity is also of critical value. It is not always the case for this latter ones either, those for whom others' prosperity is also of critical value, as they are not always willing to have their own interests overshadowed for the benefit of others. Still, it is true that comparing two persons with two different perceptions of value, considering the entirety of the interrelated actions, there are marked differences between their value perceptions (Schwartz, 2000).

Therefore, based on former references, it seems that based on the changes in the inmates' value systems, the orientation of their subsequent actions can be forecast. This prediction, considering the nature of conflict between values and interests, does not guarantee to avoid recidivism, but it has a potential to increase the individuals' odds to become repeat offenders.

3. The methodology of the research

In the framework of this present research, I rely on the value theory of Shalom Schwartz (Schwartz, 2000). Schwartz uses a pie chart to introduce us to the entire patterns of conflicts and harmonies between the values. The circular arrangement of the values illustrates and demonstrates motivational continuum. The closer the two values appear to each other, the more they have in common as regards their underlying motivations. The larger the distance between the two values, the greater the conflict is between their underlying motivations. The conflicts and harmonies between the ten universal values constitute an integrated value system. This value system can be summarized in a two-dimensional reference grid. One axis shows us the values of self-enhancement vs. self-transcendence. In this segment, hedonism, power, and achievement face universalism and benevolence. The first ones emphasize following the self-interest, while the other ones pay attention to others' prosperity and interests. The other axis illustrates the values of openness to changes vs. conservation. In this part the values of self-direction and stimulation face conformity, security, and tradition. The first one emphasize independent thoughts and actions, the openness to new experience. The latter ones put emphasis on restraint on actions, as well as order, and the resistance to changes. Hedonism has an exceptional position by being located between openness and individualism – that is both universal values can claim this fundamental core value.

Based on the relevant literature, Schwartz defines values as desirable goals crossing situations, which goals serve as guiding principles in people's lives (Schwartz, 2000: 24).

Schwartz's 21-question value survey measures the relevance of values that are universal and independent from either society or culture. By using the survey,

the extent to which the inmates participating in religious education followed religious value systems cannot be measured, but it can be measured whether or not their value systems showed similarities of differences in comparison with those of other inmates' and those of the members of the civilian congregations. From the findings, it cannot be inferred to what extent they had become religious. At the same time, we can infer, however, that what kind of correlation is shown between the value systems of those incarcerated inmates having criminogenic value systems, who participate in religious education compared to those of other inmates' not participating in religious education and those of the members of the civilian congregations. This answers how religious education impacts the individuals' value systems.

Based on the above, the value systems of three groups were compared. The test group included those inmates who regularly participated in religious occasions in prisons. Additionally, I set up two control groups as well. One control group included inmates not participating in religious occasions at all, whereas the other one consisted of members of civilian congregations outside prisons. As the majority of the inmate population consists of men, and the value system may differ according to the sexes, therefore the members of all groups were exclusively men (Prazsák, 2015: 8). The established groups were almost of identical group sizes. In order to ensure that the data obtained have countrywide validity, the sampling was carried out in four different penal institutions. Those institutions were designated where, in accordance with my preliminary collection of data, high quality religious education is carried out. In case of civil congregations, religious affiliation seemed irrelevant, as it is also irrelevant in prisons; consequently in order to seek diversity, the samples were taken from four congregations of Christian churches.

4. The findings

In order to ensure that the formative influence of religious education be demonstrable, I chose the solution as follows: The 10 elements of Schwartz's value system were interpreted individually in a scale, whose one end presented those inmates not participating in any religious education at all, while the other end presented the members of the civilian congregations. The calculated values were based upon the calculation weighted as defined by Schwartz. The scale cannot be interpreted as being closed-end, as it could be expected that in cases of one or another value elements, the data from the tested population would not fall between those of the two control groups, but they would rather 'extend beyond' them in any direction. The subject of the examination was as to which direction

and to what extent would changes be observed in test group values compared to the weighted averages of the control groups' values. To carry out the examination of the elements of the groups value systems, two criteria were used. On the one hand, it was necessary to examine the value systems characteristics of various groups on the basis of the value ranks, and on the other hand, their weighting was in the focus. The value ranks themselves reveal only that which values a given group consider important, and which they consider less important. But the fact how important these values are, or how unimportant they are, can only be interpreted based on the weighted scores of the different value groups.

Those who did not participate in religious education submitted 98, and those who participated in religious education submitted 85 measurable questionnaires. This latter group, however, seemed that it could be broken down further from the aspect of the intensity of the religious education they participated in. Based on the previous, there were 34 inmates, who were outstandingly regular participants in religious occasions compared to the remaining 51 inmates. In total, 94 measurable questionnaires were obtained from the civilian control group.

As this paper is an excerpt of the entire research findings, the introduction and the explanation of how the weighted calculations of the different value groups were done must be dispensed. The conclusions that can be drawn from the findings are briefly presented hereby.

Comparing the order of the values, and the scores given to the various value groups, it can be inferred that the weighting of the values both in the congregation in the penal institutions, and in the civilian control group cover a far wider and more varied range than those of the control group in the penal institutions. That is, the group value systems are not as differentiated as those of the two other groups. In case of the control group in the penal institutions, another interesting point is that the values located on the opposite poles of the different value axes can exist side by side quite well in the value systems. It is conspicuous that the most supported value is self-direction, whereas the most rejected one is conformity. This clearly demonstrates that the value systems of the inmates are characterized by strong self-centeredness and, parallel to this, the rejection of the expectations of their environment. It is difficult to adjudge whether the rejection of conformity is due to the rejection of the institutionalized detention system or it is against the other members of the prison population – or both. At the same time, the place of benevolence and security in the hierarchy of values are surprising. It may indeed be that the findings are but the reflections of desires and expectations stemming and resulting from their lack.

The civilian control group's positively assessed and clearly rejected values are also outlined precisely. It is also observable that some parts of the values on the

same value axis are located next to each other. These values are the most-widely accepted benevolence and universalism on the self-transcendence axis, and security, tradition conformity on the conservation axis. At the same time, the values on the openness to change axis are divided. While self-direction is reputed to have relative acceptance, stimulation, on the other hand, is among the strongly rejected values. It is quite telling that the value most rejected by the group is power. This is located on the totally opposite end of those values most supported by the group. Consequently, their values located along the self-enhancement vs self-transcendence axis are sufficiently differentiated. The big difference between the two extreme values shows us that the well-being, interest and prosperity of their fellow humans is more important for the Christian community than the desire that they should exercise power. These findings are not that surprising – it is quite natural. The same can be said about the rejection stimulation, achievement and hedonism. The lack of the prevalence of self-direction could have demonstrated that in the Christian group's value system, the consideration of traditions, community, and others' interests completely overrides and supersedes the individuals' interests. Thus the value of self-direction established a balance between individuals' and others' interests.

During the first measurement, the findings were interpreted as regards the group of inmates participating in religious education as related to a homogenous group, namely no difference was made between those regularly and quite intensely participating in religious education, and those in case of whom religious education is limited to ad hoc occasions. The findings obtained here show some correlation with the value systems of the civilian control group, but these findings fall significantly below my prior expectation and hypothesis.

Investigating the reasons for the findings, the measurement was repeated, but at that time the group of inmates participating in high intensity religious education were separated from those ones who participated in an ad hoc basis. Concerning the value systems of the first group, the following statements could be made. The value systems of the congregation in the penal institution is organized in a highly differentiated way along the axis of self-enhancement – self-transcendence. From the findings it shows clearly that they definitely consider the values of self-transcendence to be sought and followed, and in a similar way they strongly reject the values of self-enhancement. Taking into account other persons' or the entire community's interests is very characteristic of their value systems. The huge disparities shown between the weights of the values indicate that the community values definitely override the individuals' self-centered values.

The comparative analysis of the statistically adjusted value elements of the congregation in the penal institution and the civilian control group allows the

following main conclusions to be drawn. The prominent spot and weight of benevolence, universalism, self-direction is equivalent to those of the civil control group. The value of conformity is the only one that is rejected from the values in the conservation group. Of the rejected values by the test group, power and achievement equals, concerning their spot and weight, with those of the civilian control group. So, the acceptance of values associated with self-transcendence, and the rejection of the values associated with self-enhancement follow a similar pattern in both groups. The values associated with self-enhancement were ranked even further back in the hierarchy, since the value of achievement came immediately before power. Therefore, the explicit choice between the two opposite poles of the axis of values is even more significant. Tradition and security, though changing places with each other, occupy the same spot in the hierarchy of values, similarly to the case of the civilian control group. Conformity is strongly rejected by the test group. Its weighting is comparable to that by the civilian control group, but it is a less rejected value in their case. The spot for the value stimulations can be interesting, as this is the only exception that shows significant differences in the value systems of the two groups. What seems like the most reasonable explanation is that seeking thrills and living a varied life may be associated with the monotony of prison life.

The comparative analysis of the values by the congregation in the penal institution and the control group in the penal institution showed several significant differences. These differences were most noticeable and visible as regards the values 'power', 'conformity', 'tradition', and 'benevolence.' Power is among the strongly rejected values in both groups, but while in the case of the congregation in the penal institution power is the most strongly rejected value, in case of the control group in the penal institution, it ranks in the penultimate place 'only.' At first sight, this does not seem to be a significant difference. However, it is more meaningful to observe that the difference between the weightings calculated from the scores given by the two compared groups is huge – 2.81 times higher. And it is different in such a manner that the congregation in the penal institution reject the value of power to the utmost. A tremendously similar phenomenon can be observed in case of the value benevolence found on the other endpoint of the axis of self-enhancement – self-transcendence. In spite of the similarities in ranking, the difference between the scores indicates the significant differences between the rankings of the two groups. According to this, the value benevolence, that is others' prosperity and interests, is substantially more significant for the congregation in the penal institution. These two differences definitely point towards the fact that, along the axis of self-enhancement – self-transcendence, the value systems of the congregation in the penal institution is much closer to those of the civilian

control group than to those of the control group in the penal institution. A similar phenomenon, although not as strong as the above, can be observed between the values universalism and achievement, the two other values of this axis. From the aspect of peaceful existence in a society, this value axis is probably the most essential, because it expresses the extent to which an individual cares about his/her self-interests, or to what extent this individual takes into consideration the interests of others or the community, and thus our society, instead. The two other values showing significant differences (conformity and tradition) are found in the universal value conservation. Tradition shows significant differences not only in its scale, but also in its position in the hierarchy. The religious values considered more traditional are substantially more significant for the test group. There are no significant differences found in the values self-direction, stimulation, and hedonism located in the universal value openness to change that is opposite conservation.

As expected, the comparison between the control group in the penal institution control group and the civilian control group indicated the maximum variation and divergence possible. The weighting of the following values showed significant differences: Power, universalism, achievement, stimulation, conformity, tradition, benevolence, and hedonism. In essence, it was only the weighting of the values self-direction and security that showed no significant differences.

5. The evaluation of the research

The members of the statistically adjusted test group regularly and actively participated in the religious education in the prison. As indicated by the questionnaires, none of them had ever had any previous presence of religious observance in their lives. The value systems of this group, in respect of both the ranking of values and their strength, show slight differences compared to the value systems of the civilian control group, but shares with them, at the same time, identical features in certain crucial points. Parallel to this, there are several significant differences are observable in comparison with the value systems of the control group in the penal institution. With the exception of the value stimulation, it can be said that the value systems of the control group in the penal institution definitely and considerably closer to the value systems of the civilian control group that those of the control group in the penal institution.

It has been demonstrated that religious education has a fundamental impact on the value systems of the inmates. This impact unequivocally converges their value systems to those of the congregations in the civilian world. Based on the differences of the first and second measurement, the following conclusions could

be drawn: 1. *The changes in the value systems and the intensity of the religious education are statistically significantly associated.* Only sufficiently intense and regular religious education is capable of impacting the value systems of the inmates. 2. *The findings are influenced by the fact whether the inmates are housed in a separate unit,* where they are the least exposed to the effects of prisonization, but most exposed to the inculturation by the prison missionary activities. 3. *It is essential to properly select the inmates participating in the religious education carried out in the separate unit, in order to ensure that those who end up here should consider this opportunity of religious education an escape from the world of crime and from being a career criminal rather than a favorable treatment.* When selecting the participants, neither the crime committed, nor its punishment – in particular the time remaining to be served – can be a matter of consideration. At the same time, the individual's motivational basis, and his/her family support could be a decisive element.

If we accept the precept that the individuals' value systems could affect their actions, then the consequence inevitably follows that the social activities and actions – or at least their dominant elements – of those participating in the religious education will reflect a value system, which is more acceptable and useful to society rather than a value system of criminality, which is dangerous and deservedly rejected.

In order to ensure that the achievement are reflected in the social actions in the long term, it is necessary to provide the recently released ex-inmates will receive „continued religious education." These can be programs that facilitate integration into congregations. A religious person's life can be problematic alone. That is why it is important to ensure that he participants in the religious programs, upon their release from the penal institution, be integrated into the church communities. This is indicated by the fact that those who attend the religious occasions only, but do not participate in at least separate programs will be more heavily influenced by life in prison than by the religious occasions It requires no further comment that these programs should not be state-initiated, but church-initiated, instead.

Finally, it must also be mentioned that religious education does not mean a general solution applied in and addressing all situations. Namely, it cannot be said that similar progress and outcome could be achieved by it in case of any and all groups of inmates. Similarly to the selection processes used in the APAC model originated from Brazil, such a model must also be applied in the domestic religious education. This should not and must not mean arbitrariness or discrimination. This can only mean that the opportunities must be open to those volunteers only, who are open to changes and are willing to change – and could find religion as a tool for it.

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Marina MATIĆ BOŠKOVIĆ, PhD[*]
Resesarch Fellow,
Institute of Criminological
and Sociological Research

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INFLUENCE OF EU ACCESSION PROCES ON ENFORCEMENT OF CRIMINAL SANCTIONS: ALTERNATIVE SANCTIONS IN SERBIA[1]

Non-custodial measures are recognized in international instruments as useful tool for promotion of social reintegration and solution for reduction of prison overcrowding. Author provided overview of policy instruments that Serbia adopted over last ten years in order to modernize criminal sanctions and its enforcement. In addition, Serbia took obligation to take measures and promote implementation of alternative sanctions and increase capacities of probation services. The aim of the article is to examine possibilities for strengthening role of Commissioner Service in Serbia based on comparative experience and practice. Effectiveness of engagement of volunteers in Probation Services is widely recognized in some EU countries, however introduction of such solution should be carefully assessed and prepared in Serbia to ensure quality of services, oversight and control. The article is based on desk analysis of comparative legislations on probation services, competences and obligation of probation officers. One of the key functions of probation services is advisory role in pre-trial or pre-sentence phase of criminal procedure. Although, Serbian probation officers (commissioners) do not have competence to provide pre-trial advices, the article presents advantages and relevance of involvement of probation officers from the beginning of criminal procedure.

Key words: alternative sanctions, non-custodial measures, pre-trial advice, commissioners

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* e-mail: maticmarina77@yahoo.com

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1. Enforcement of criminal sanctions - policy and normative framework in Serbia

International standards state that imprisonment should be used as a last resort and that non-custodial measures should be used as much as possible.[2] The development of alternative sanctions is relevant for dealing with challenges of prison overcrowding and for promotion of social reintegration and reduction of recidivism. Rule 2.3 of the Tokyo Rules holds that criminal justice systems should provide "a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions". The Tokyo Rules put focus on involvement of society in implementation and promotion of non-custodial alternative sanctions (Ćopić, 2015: 11). Although non-custodial sanctions are more effective than imprisonment at rehabilitation, social reintegration (Škulić, 2014: 250) and reduction of recidivism, the success of alternatives to imprisonment depends on a reform of the criminal justice system, as well as communication with the wider community and media to increase the awareness.

Even though the reform of the penal system in Serbia is long term process that has been initiated in 2001,[3] the bilateral screening for Chapter 23[4] identified in 2013 several deficiencies that should be addressed through the EU accession process: overcrowding of accommodation capacities and poor prison conditions;[5] insufficient application of alternative sanctions and measures;[6] insufficient staff capacities; healthcare protection; and insufficient number of professional training programmes and specialized treatment programmes for convicted persons.

As a follow-up, Screening report for Chapter 23 recommended that Serbia should "further improve prison conditions and take measures to reduce the prison population, in particular alternative sanctions could be further explored."[7] In application of recommendations from the Screening report the Government of Serbia took

2 United Nations Standard Minimum Rules for Non-custodial measures (the Tokyo Rules), 1990; Bangkok Rules, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, 2010.

3 To ensure comprehensive approach in the reform process the first Serbian Penal Reform Strategy was adopted in 2005, followed by adoption of the entirely new Law on Enforcement of Penal Sanctions in 2006 with the aim of alignment with relevant international standards.

4 Chapter 23: Judiciary and Fundamental Rights, opened for negotiations in July 2016.

5 Prison population increased for almost 100 percent from 2001 to 2010 when it reached the number of 11,000, which resulted in overcrowded prisons and consumed significant portion of Prison Administration resources.

6 According to Bilateral screening data in 2012 only 919 persons were serving alternative sanctions and measures.

7 Screening Report Serbia, Chapter 23 – Judiciary and Fundamental Rights, Negotiating accession to EU, MD 45/14, 15.05.2014.

into consideration relevant EU acquis: European Convention for the Protection of Human Rights and Fundamental Freedoms; Charter of Fundamental Rights of the European Union; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as amended by Protocol 1, Protocol 2; Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules in the field of execution of criminal sentences and post-penal treatment[8]; and Recommendation Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules.[9]

To accelerate the reform of the penal system the Ministry of Justice and Government of Serbia adopted several strategic documents in recent period to address abovementioned challenges of the penal system: Strategy for Reducing Overcrowding in Institutions for Enforcement of Criminal Sanctions for the period 2010-2015; the Strategy for Development of System for Enforcement of Penal sanctions for period 2013-2020; and a new Strategy for Reducing Overcrowding in Institutions for the enforcement of Penal Sanctions in the Republic of Serbia for the period until 2020. In addition, the Ministry of Justice prepared draft Strategy for social reintegration and acceptance of sentenced persons for the period between 2015 and 2020.

To address problem of increased prison population the Ministry of Justice adopted Strategy for Reducing Overcrowding in Institutions for Enforcement of Criminal Sanctions in the Republic of Serbia for the period 2010-2015. According to the Council of Europe SPACE I Report in 2010 Serbia was among states with the highest prison population rate.[10] The Strategy and accompanying Action Plan were on alternative sanctions and improvement of capacities in prisons. The Strategy took twofold approach. The first focuses on the development of alternative sanctions to reduce number of those who are serving sentences in custodial institutions. The second focus relates to increasing the capacity and living conditions of inmates through investments in new prison facilities, as well as through improved standards of the work of prison staff. The Strategy had also foreseen the establishment of preconditions for the efficient re-socialization of inmates as well as the creation of more secure and humane accommodation and an improved use of

8 Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules in the field of execution of criminal sentences and post-penal treatment, adopted by the Committee of Ministers on 11 January 2006 at 952nd meeting of the Ministers' Deputies.

9 Recommendation Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, adopted by the Committee of Ministers on 20 January 2010 at the 1075th meeting of the Ministers' Deputies.

10 Report available at http://wp.unil.ch/space/files/2014/04/SPACE1_2010_English.pdf 12 March 2019

alternative sanctions. Implementation of the Strategy contributed to achievement of specific objectives and reduction of overcrowding in prisons:

- Reduction in number of detainees from 3,332 to 1,539,[11] since Criminal Procedure Code[12] introduced bail and house detention with and without electronic monitoring as an alternative to detention in specific circumstances;
- The Rulebook on Treatment and Classification on Convicted Persons[13] have been finalised with adjusted risk assessment instruments for convicted persons serving prison sentence of up to three years and convicted persons serving prison sentence of over three years;
- Law on Amnesty from 2012 significantly contributed to relieve of pressure from prisons. Pursuant to this Law in the period from 2012 to 2015, in total 2,780 inmates were released from prisons[14].

To boost implementation of alternative sanctions and continue with reforms Government adopted the Strategy for Development of System for Enforcement of Penal sanctions for period 2013-2020.[15] Although this was the third strategy its focus is on the legislative framework rather than changes of processes and practices. The Strategy aims to continue to fulfil reform tasks set forth in the National Judicial Reform Strategy for period 2013-2018, including continuing priorities and commitments to improve standards and performances in accordance with modern and developed penal systems. Priority measures from the Action plan relate to further strengthening the alternative sanctions system in Serbia, post penal care and strengthening of the healthcare capacities in prisons. In line with priorities set in the Strategy the new Law on Enforcement of Criminal Sanctions[16] and the Law on enforcement of alternative sanctions and measures were adopted in 2014. Law on Enforcement of Criminal Sanctions from 2014 is significant because of introduction of Enforcement Judge into Serbian Legal System.[17]

In May 2017, the Administration for enforcement of penal sanctions (AEPS) adopted a new Strategy for Reducing Overcrowding in Institutions for the enforcement of Penal Sanctions in the Republic of Serbia for the period until 2020. The Strategy is developed around six priority areas: measures to ensure presence of

11 Official statistics of the AEPS from Strategy for Reducing Overcrowding in Institutions for Enforcement of Criminal Sanctions in the Republic of Serbia in the period 2017-2020

12 Criminal procedure Code, Official Gazette RS, No. 72/11, 101/11, 121/12, 32/13, 45/13 и 55/14.

13 Official Gazette RS, No. 66/2015.

14 Official statistics of the AEPS from Strategy for Reducing Overcrowding in Institutions for Enforcement of Criminal Sanctions in the Republic of Serbia in the period 2017-2020.

15 Official Gazette of the Republic of Serbia, No 114/2013.

16 Official Gazette of the Republic of Serbia, No 55/2014

17 Under activity 3.3.1.10. of the Action Plan for Chapter 23.

accused person; increased efficiency of treatment; further development of alternative sanctions and measures and commissioners (probation) service; conditional release; and increase of accommodation capacities and conditions in prisons.

2. Alternative sanctions – rules and capacities

Normative framework for introduction of modern system of alternative sanctions in Serbia was established in 2006 when 2005 Criminal Code[18] entered into force (Mrvić-Petrović, 2010: 56). The Criminal Code from 2005 envisaged alternative sanctions in article 43 and 52 (Ćirić, 2013: 4). Types of penalties according to the article 43 of Criminal Code are: imprisonment; fine; community service; and revocation of driver's license. Enforcement of alternative sanctions were detailly regulated by the Law on enforcement of criminal sanctions from 2005[19] and later by the Law on enforcement of alternative sanctions and measures from 2014.

Concept of alternative sanctions could be understood differently, depending on interpretation only in line with system of criminal sanctions or in line with function that are achieved in the judicial system through implementation of alternative sanctions (Mrvić-Petrović, Obradović, Novaković, 2005: 37). According to the narrow definition, alternative sanctions include only sanctions and measures that are replacement for prison sanctions (according to the criminal sanctions system). According to the broader definition of alternative sanctions, alternative sanctions include also different measures of educational, medical, treatment character, as well as procedures that lead to diversion of regular criminal procedure (Mrvić-Petrović, Obradović, Novaković, 2005: 38).

Alternative sanctions could be divided into group of old alternative sanctions that represent replacement for prison sanction, like fine, security measures of forced medical treatment, caution, conditional release, seizure of assets, etc.; and group of new alternative measures, such as community work, home imprisonment with or without electronic monitoring, diversion of criminal procedure, like principle of opportunity (Konstantinović-Vilić, Kostić, 2006: 241).

Community work is sanction that is based on "combination of purpose of punishment, rehabilitation and reparation of caused damage" (Mrvić-Petrović, Obradović, Novaković, 2005: 43). Community work is one of alternative sanctions defined by article 52 of the Criminal Code and that could be imposed for crimes for which sanction is up to three years of imprisonment or fine.

18 Official Gazette, No. 85/2005.

19 Article 181-184, Official Gazette, No. 85/2005, 72/2009.

Like other alternative sanctions, if community work is not performed completely or partially, prison sanction is the last resort that court could use (Mrvić-Petrović, 2006: 56). In situation that condemned person do not enforce all hours of community work, court will replace the community work with prison, so each 8 hours will be substituted by one day of prison (art. 52 para 5 of the Criminal Code). Also, if perpetrator fulfill all obligations related to the community work, court may decrease duration of the community work for one fourth.

Probation with protective monitoring presents model of probation, that is regulated by article 64, para 2 of the Criminal Code. Probation is applied only to adults for simple criminal act and when it is assessed that caution will reach the purpose.

To decrease recidivism and pressure on prisons, Serbia introduce house detention with (Mrvić-Petrović, 2015: 98) and without electronic monitoring.[20] In line with United Nations Standard Minimum Rules for Non-custodial Measures[21] Article 8 the judiciary authority when deciding on non-custodial measures should take into consideration the rehabilitative needs of offender, while Article 10.3 highlights that the most suitable type of supervision and treatment should be determined in each individual case of noncustodial measures.

House detention in Serbia is used to substitute short term prison sentence. It is the most widely used alternative to imprisonment in Serbia, with approximately 1,500 enforced house detention and 3,500 received orders annually. In 2018, 61 percent of all enforced alternative sanctions and measures were house arrest and 70 percent of all received enforcement orders. Although the house detention aims to decrease recidivism and re-offending the lack of treatment programs will lead to limitation of positive effects and increase of recidivism and overcrowding of prisons.

To boost positive effects house detention should be followed by treatment programmes designed to improve social functioning of offenders. The Probation Offices should implement targeted prosocial treatment programmes that include individualized measures aiming to deal with specific needs and risks identified in the initial phase of enforcement. These programmes should address needs of continuation of education, vocational training, treatment for drug and alcohol addiction, etc.

House detention enables higher involvement of community in enforcement, which provides additional level of support to reintegration efforts and motivates offenders to change. Civil society organization are widely use in comparative ex-

20 See M. Matić Bošković, J. Kostić, Kućni zatvor iskustva u primeni, in S. Bejatovic (ed.), Izmene u krivičnom zakonodavstvu i statusu nosilaca pravosudnih funkcija i adekvatnost državne reakcije na kriminalitet (Međunarodni pravni standardi i stanje u Srbiji), LXI Redovno godišnje savetovanje Udruženja, Srpsko udruženje za krivičnopravnu teoriju i praksu, Zlatibor, 2019, 216-229.

21 Adopted by General Assembly resolution 45/110 of 14 December 1990.

perience to ensure reintegration of offenders since they are flexible and innovative in approach.[22] Serbia has range of CSOs that are well placed and have experience in working with offenders.[23] However, issue of sustainability of their support, financing of their services and control of quality are challenging areas that should be addressed before their comprehensive involvement.

Principle of opportunity (diversion from criminal procedure) was introduced in Serbian legislation in 2001 as an important novelty of criminal policy (Bejatović, et al. 2012: 13). There are two possibilities for application of this principle: one is conditional diversion of criminal proceeding, and second is rejection of criminal charge from reason of fairness (Đurđić, 2010: 5) or as an institution of remorse. The article 283 of the Criminal Procedure Code regulates that public prosecutor can divert from criminal prosecution for crimes for which imposed sanctions are fine or imprisonment for up to five years. However, diversion is conditional, and offender has to accept one of the measures listed in the law and fulfill within the defined timeframe, which is no longer than one year. Implementation of the measure is monitored by the Probation Service and if offender does not implement it the public prosecutor can continue with the criminal procedure.

In Serbia Probation Service, in a form of Commissioners Service is a relatively new institution. Pilot implementation of alternatives began only in 2009 through a first Commissioners Office established for Belgrade area. Workload increased only in 2011 with introduction of electronic monitoring and service was spread to the rest of the Country. Development of Commissioners Service faced significant obstacles. Initial phase coincided with global economic crisis and very limited budget. In addition, since 2014 there is a ban on employment in public sector as one of the measures for fiscal consolidation. As an illustration, according to data published in Council of Europe Annual Penal Statistics - SPACE II for 2016, Serbian Probation Service had by far the lowest reported budget.[24] Those circumstances to a large extend influenced on organisational setup and staffing of Commissioners Service preventing it to transform to a separate Probation Service or at least to a specialised organisational unit within Prison Administration dealing exclusively with enforcement of alternative sanctions and measures.

Probation service as an independent state body was considered as a development aim and it was one of recommendation of “Strengthening the Alternative

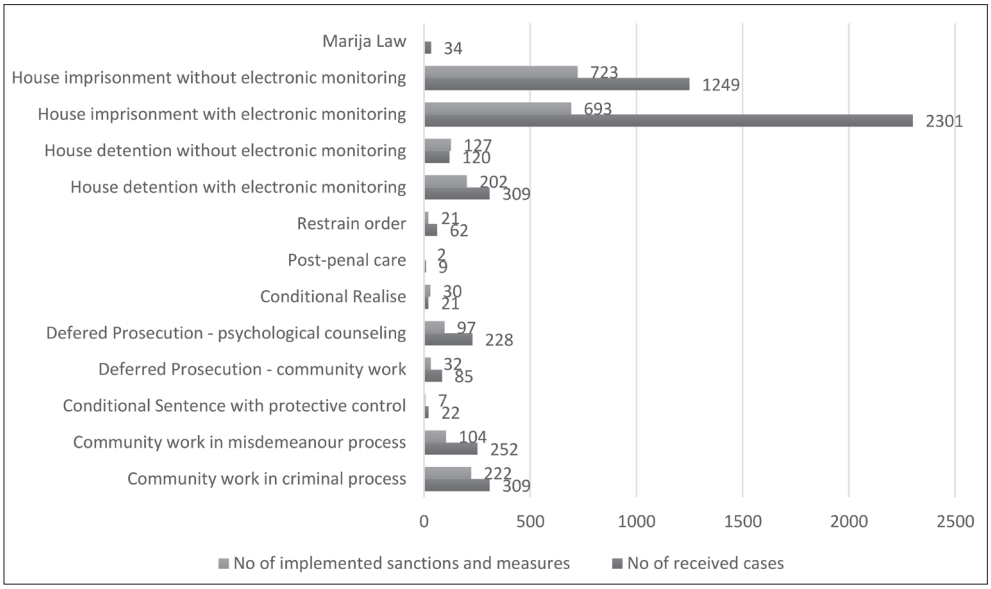
22 UNODC, Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders, Vienna, 2018.

23 On March 21, 2019 the network Center for prevention of crime and post-penal support was established. 20 civil society organizations are members of the network.

24 In 2016 the budget of Probation service was 222,613 EUR.

Sanctions System in Serbia" an EU funded project.[25] European Probation Rules only state that the structure, status and resources of "implementing agencies" shall correspond to the volume and the complexity of the tasks and responsibilities they are entrusted with and shall reflect the importance of the services they provide. On the European level there is a variety of solutions but in the Serbian context, tasks and responsibilities entrusted to Commissioners Service do rise a concern that an administrative status of a Service should be strengthened.[26] This challenge is recognised in Action plan for Chapter 23 through Activity 3.3.1.13. - Reorganization of existing services for the treatment and alternative sanctions within the Administration for enforcement of criminal sanctions by establishing a separated special department for alternative sanctions in accordance with the new job classification.

Chart 1 *Statistical data on enforcement Alternative sanctions and measures for 2018*



Source: Commissioner Service statistics for 2018

There is no common model and setup of Probation Agencies across Council of Europe member states. The most represented model is positioning of Probation Agencies within the Ministry of Justice and Prison Administration. Only in limited number of countries the Probation Agencies are independent state bodies, or

25 Information on project activities are available at: https://europa.rs/eu-supports-strengthening-the-alternative-sanctions-in-serbia/?lang=en

26 At the moment there are 25 Commissioners Offices in Serbia.

association, like in Ireland, Portugal, Romania, the Netherlands (van Kalmthout, Durnescu, 2008: 20).

Today there are 27 Commissioners, 7 administrative workers, 2 heads of departments, 36 educators working half time as educators in prisons and half time as Commissioners on enforcement of alternative sanctions. In addition, 25 members of security services in prisons are trained to install and de-install electronic monitoring equipment.[27] Having in mind the number of cases and the current workload, numbers of employees is below required. As an illustration, the estimate of the “Strengthening the System of Alternative Sanctions” Project made in 2013 in “Business Case for the Establishment of the Serbian Probation Service” for the period 2014-16 was that a total of 148 additional staff will be required to boost application of alternative sanctions.[28] Based on statistical data provided in SPAS II from 2016 it is possible to calculate an average number of probationers per probation officer, European average is 50 while Serbian is 37.

In the recent years there has been discussions on use of volunteers within Commissioners Service as one option, in the present circumstances, for increasing the capacity of Commissioners offices. It is an option that is fully in line with European standards. Recommendation of the Committee of Ministers to member States on the European Rules on community sanctions and measures CM/Rec(2017)3E recommends the use of volunteers for the purpose of stronger involvement of the Community in enforcement of alternative sanctions and recommends that criteria for their engagement should be clearly defined. Volunteers shall be guided and supported by professional staff and enabled to perform duties appropriate to their skills and interest within the boundaries of their role

Volunteers can contribute to the quality and efficiency of the enforcement of alternative sanctions and measures, but their deployment and scope of work must be carefully and thoroughly planned. Concrete tasks of volunteers should be identified through a targeted needs assessment exercise and in close collaboration with Commissioners. Commissioners Service should be responsible for recruiting, guiding and providing trainings for volunteers.

Finland has strong tradition in volunteering and develop practice for recruiting volunteers in criminal justice system support services (support to probation service and victims of crime). The Finland good practice could be useful example for Serbian Commissioner Service to consider pro and cons. On the other side the use of volunteers in probation in Germany is limited. In Germany, approximately 17

27 Official data from AEPS.

28 4 commissioners, 123 junior commissioners, 5 regional centre managers (senior commissioners), 2 administrative assistants, 6 central EM staff and the equivalent of 8 full-time EM installation staff.

percent of the population are involved in voluntary activities, but only one percent of the volunteers are involved in criminal justice related work (Kury, Sato, 2014: 97). There is no centrally organized volunteer system. What we see in Germany is a sporadic existence of local NGOs, often with unstable funding. For example, there is a nationwide umbrella organization called 'Bundesarbeitsgemeinschaft für Straffälligenhilfe' that deals generally with criminal justice matters from offender reintegration to services provided and victims of crime. Vast differences in between European countries indicate that Serbia has to find its own model.

There are two approaches that could be considered here. Conservative approach according to which duties related to core competences of Commissioners and exercise of their official authority could remain reserved for professional staff, while administrative and technical duties can be entrusted to volunteers. More liberal approach, on the other hand, would involve volunteers in some aspects of work of commissioners under professional guidance and support. This approach is more in line with CoE recommendations for the use of volunteers aiming to enhance the involvement of the community in the implementation of alternative sanctions and measures.

Having in mind the number of pending cases per year (in 2018 it was 5,001 out of which 2,260 were completed) and inadequate number of staff, assistance of volunteers would be welcomed. For the purpose of comparison, Serbia is among countries with lowest number of probation staff per 100,000 inhabitants in Europe. Those numbers indicate that there is a potential for growth because "demand" for alternative sanctions coming from judiciary is higher than the current "supply" provided by the Commissioner Service. This also confirms that at this stage of development of system for enforcement of alternative sanctions and measures attention should be focused on Commissioners Service.

In 2010 Serbia adopted the Law on Volunteering, according to which public administration bodies can use volunteers pursuant to the Law (Matić, 2014: 195). Volunteering is promoted as an activity of public interest, which contributes to the active involvement of citizens in social processes and the development of a more human and equitable democratic society of equal opportunities, as well as to improving the quality of life of citizens. Before their actual engagement of volunteers, a range of preconditions needs to be ensured, such as quality of services provided by volunteers, training of volunteers, control and supervision of their services, etc. Involvement of volunteers and NGOs should follow recommendations for their engagement in victims support services.[29]

29 More on this topic: Ensuring Quality of Victim Support Services in Serbia, Multi Donor trust Fund for Justice Sector Support in Serbia, Victim Support Europe, 2018; The Role of Civil Society in

3. Advisory role of Commissioner Service

On European level majority of Probation Agencies are entrusted with the task to produce different reports required for decisions to be taken by competent authorities. Those advisory reports are: pre-sentence reports; reports on feasibility of the offender's release in the community; report on any special conditions that might be included in the decision regarding the offender's release; and report on any intervention required to prepare the offender for release (van Kalmthout, Durnescu, 2008: 31).

According to Serbian legislation the Commissioner Service has an advisory role in respect of offender's release, however the rules do not envisage involvement of commissioner in the pre-trial process. European experience indicate that pre-sentence report is a very useful tool provided to holders of judicial functions in determining the most appropriate sanction. Probation Officers in the Netherlands (Kalmthout, Tigges, 2008: 42), England and Wales (Hall, Canton, 2014: 21), Finland (Linderborg, Tolvanen, 2014: 24) and other EU countries gave advisory role to probation offices in pre-trial process.

European Probation Rules dedicate several articles to pre-sentence reports. The Rules underline that depending on the national legal system, probation agencies may prepare pre-sentence reports on individual alleged offenders in order to assist, the judicial authorities in deciding whether to prosecute or what would be the appropriate sanctions or measures. Where this is the case, probation agencies shall regularly communicate with the judicial authorities regarding the circumstances in which such a report may be useful.

The main purpose of the pre-sentence report is to help the court determine an appropriate sentence, especially in the cases when decision has to be made on potential use of alternative sanctions and measures. In the case of conviction on prison sentence, report can be used for allocation of offender to a most suitable institution and even to assist in determination of the most appropriate treatment program. The Commissioner assigned for the offender's case during probation and supervised release can also use the report to increase efficiency and quality of its work and make an initial assessment of offender's needs and risks in less time using reliable data from the pre-sentence report. Pre-sentence report usually contains following information on the accused: background and ties to the community, substance abuse history, physical health, mental health, financial circumstances, employment history, education history, victim-impact statement, marital history

Development of Victims' Rights and Delivery of Victims' Services, Multi Donor trust Fund for Justice Sector Support in Serbia, Victim Support Europe, 2018.

and risk assessment. In addition, pre-sentence reports provide baseline data on the offender that should be used throughout enforcement period and post-penal care as reference values to more accurately determine his progress in treatment and revaluate risks.

Experience of the England and Wales Probation Service is a good practice of extensive use of pre-trial/pre-sentence reports (PSR). If a judge orders a PSR, a probation officer will interview the offender, the offender's family, friends, and employer. A case is usually adjourned to allow a probation officer time to prepare the PSR and usually it takes between two and six weeks to prepare. In relation to an adult offender, unless the court considers a report to be unnecessary, it is required to request a report before deciding: that the community or custody threshold is passed; what is the shortest term of a custodial sentence that is commensurate with the seriousness of the offence; whether the restrictions on liberty within a community order are commensurate with the seriousness of the offence; and whether the requirements are suitable for the offender.

A report may be oral or written. Oral reports are provided for less serious offenders when the court is seeking to sentence immediately. Fast Delivery Reports (FDRs) are made available to the court within 24 hours. They are completed without a full assessment through the Offender Assessment System and are appropriate for low or medium seriousness cases where community orders are being considered. Every report should contain basic facts about the offender and the sources used to prepare the report; an offence analysis; an assessment of the offender; an assessment of the risk of harm to the public and the likelihood of re-offending; a sentencing proposal.

Data from this report, including initial risk assessment is used during trial but also in all phases of enforcement of sentence until release. This instrument is crucial for follow up of progress of the offender and determination of the most adequate type of treatment program. Initial risk and needs assessment are periodically reviewed and updated.

Advisory role of different institutions is not a novelty for Serbian judiciary and legislative framework. Whenever court needs to evaluate the "best interest" of a child it must consult Social-Care Centre to provide an advice or an assessment.[30] This advice is not obligatory for the judge. It provides a specific expertise that judge doesn't have but it is essential for making a decision in a concrete case. Examples like this one and lessons learned, could be used in assessing possibilities for use of pre-sentence reports and involvement of Commissioners Service in pre-trial phase.

30 Article 270 Family Law, Official Gazette RS, No. 18/2005, 72/2011, 6/2015.

4. Conclusions and recommendations for improvement

Although alternative sanctions are introduced more than 15 years ago the implementation of alternative sanctions are still relatively modest in Serbian judicial system. The most often imposed alternative sanction is home imprisonment, while other alternative sanctions are applied in relatively small number of cases. Several reasons are preventing increase in implementation of alternative sanctions. One of the main challenges are limited capacities of Serbian Commissioners Services and the lowest number of probation officers per 100,000 inhabitants in comparison to other Council of Europe countries. This challenge is recognized in the policy instruments, but also EU documents such as Screening report for Chapter 23.

To overcome challenges of limited capacities some countries are relying on volunteers. In Serbia volunteering is not widely spread so this solution could have limited effects. In addition, sensitive area of probation requires fulfilling of some preconditions before introducing of volunteers in commissioner services. Some of the preconditions are introduction of mechanisms for ensuring quality and oversight of work of volunteers.

Experience from European countries to involve probation officers in all phases of criminal procedure is recognized as a good example, especially in preparation of pre-trial reports. Inclusion of probation officers in drafting pre-trial report enable courts to determine an appropriate sentence, but also monitoring of progress over time, since report can be used as a baseline. Serbian legislator should consider extension of the commissioners' role to preparation of pre-trial reports as non-obligatory assessment. This type of advisory role is already given to some institutions (Centre for Social Work in family cases), so it would not be completely novelty for Serbian legal system.

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*István KOVÁCS, PhD**
National University of Public Service, in Hungary
Assistant Professor

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IKARUSZ THE NEW MODEL, WHICH IS ABLE TO HANDLE THE HUNGARIAN PHENOMENON OF PROSTITUTION

According to estimates, thousands of women and children in Hungary regularly become victims of sexual exploitation and prostitution year by year.Today, in Hungary, the practice of prostitution and its regulation are contrary to international law. This study - that provides a comprehensive overview of this problem based on material already published, which has been collected, analyzed and discussed in my dissertation - shows that there are solutions.One of my objectives aiming at resolving the above problem is to create a new regulatory model and a related institutionalized network system that will be suitable to attempt to eliminate the problems stemming from the current situation. Mapping up – with the combined use of qualitative and quantitative techniques, for example interviewing and making McNemar tests -, analysing – with SWOT - and assessing the components of the common system of relations between prostitution and the culture of police measures helped me to make the new model and regulation.

Keywords: prostitution, law enforcement, new model, police, constitutional and human rights

* e-mail: kovacs.istvan@uni-nke.hu

1. Introduction and background

Today, in Hungary, the practice of prostitution is not a solved activity. Prostitutes have limited access to justice and are unable to meet state obligations towards them. The primary reason for this is the disorganization of domestic and international regulation. The focus of the dispute are the recognition of the prostitute's victim character, the management of records, the persecution of girls' traffickers and the creation of legitimacy. While the New York Convention[1] deals with prostitutes as victims, provides for the prosecution of girls' traffickers by States Parties, and prohibits the establishment of brothels, in the meantime - even though Hungary is a part of the Convention – the system considers prostitutes to be criminals in the event of a misdemeanour, and keeps a record of them.

Since 1955, since Hungary ratified the New York City Convention the state sought to regulate prostitution, however, it has not been successful, and is still in violation of international law. The model of total prohibition – which also punishes a prostitute, a trafficker and a client - is inapplicable due to the human and constitutional rights (Dohy, 1976:73-74). The model of regulation, which makes the practice of prostitution subject to certain rules, but uses tools such as record keeping, state and medical surveillance, coercive healing and stigmatization, is also incompatible with the exercise of fundamental human rights. It testifies to the primitiveness of the system (Doros, 2010:183-185). The abolitionist model that recognizes the sacrificial nature of prostitutes, orders punishment of the traffickers, but does not treat the clients any differently, which is contrary to the practice of law, they are stigmatized too (Fehér, 1997:14-27). Today, in Hungary, the system governing the practice of prostitution is regarded as a system of semi-regulation model and semi-abolitionist model, which, for the reasons given above, is also not a solution to the prostitution phenomenon (Borai, 1997).

The scientific problem is also centred around this issue. However, scientific research can help to solve phenomena in a complex way, can help to suggest alternatives, and can help to develop good practice. However, research on Hungarian prostitution is almost 10-15 years old or older, which no longer reflects current actualities. Such is Borai's book on legal comparison (Borai, 2003), or Betlen's research based on interviewing and content analysis (Betlen, 2009), but there is also a dissertation based on Sárkány's statistical analysis (Sárkány, 2012) and Fehér's recent conference series featured domestic results (Fehér, 2011:1-39). These results point to flaws in any one treatment system, but none provide a complex solution.

1 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 96 UNTS 271, 1949

In order to find a complex solution to the practice of prostitution in Hungary, a complex understanding of the phenomenon is needed. It is not enough to examine it one-sidedly - for example from the perspective of prostitutes or the authority - it has to be analyzed from several sides. For example, the police have a key role in the operation of the misdemeanour system (Endrődy, 2017). They have the biggest responsibility, because by law, they will be the first who arrange with the prostitute. If the measure is unprofessional and unlawful, there will be a breach of law, which is unacceptable within constitutional frameworks. A prostitute, on the other hand, must comply with the law. If she do not fulfil the obligations, she will not be entitled to practise her rights.

It is a fundamental scientific problem whether the Hungarian practice deriving from the national legislation is sustainable, whether it is valuable and useful from the perspective of law enforcement and/or the entire society. All of the above questions may be answered by way of an exact, falsifiable, empirical socio-psychological research conducted among police officers and prostitutes. All this was the subject of my doctoral research. The study presents a model for treatment of prostitution as a result and a suggestion, which is able to handle the phenomenon.

2. Objectives

Regarding the models allowing for the control of prostitution, my objective was to apply an analytical approach (SWOT analysis) based on international standards, which helps identify the strengths, weaknesses, opportunities and threats of the existing models, and evaluate them in light of the global system. In addition to developing proof on a theoretical platform, one of my objectives is to scrutinize also empirically whether the followed facts:

- Mapping up, analysing and assessing the components of the common system of relations between prostitution and the culture of police measures, the subjective and objective reasons lying expressly behind those components, as well as the representations of motivational drives and goals.
- Mapping up the underlying reasons and goals is essential for me to be able to model the phenomenon of prostitution as part of a complex system, and to devise such a map of this secluded phenomenon, cut off from the outside world and hidden behind latency that is going to guide us through the components of the social reality of Hungarian prostitutes, and the social reality as perceived by the police about prostitution.

My aim is to create a model and a system that, in accordance with the international legal commitments, will be able to establish cooperation between the member states within the area of law enforcement and social affairs, and whereby the legal regulatory environment shall ensure that this phenomenon be exercised within the set framework, and the fundamental constitutional and human rights be sustained and observed to a maximum extent possible.

3. Scientific method

Since the study is one of the results of my dissertation, it is indispensable to describe the scientific method used in it. Considering the complexity of the problem, I thought it would be reasonable to apply several complex research methods. Taking advantage of the dialectical unity of analysis and synthesis, I analysed and assessed the national and international statistics. Based on international standards, I applied an analytical approach to the models meant for the control of prostitution. Using a SWOT analysis, I mapped up the strengths and weaknesses, opportunities and threats of the existing models, and used those to build further models in theory.

The study contain the results, together with their interpretations too, achieved through the combined use of qualitative and quantitative techniques exploring the social representations of the phenomena scrutinized in conjunction with prostitution, relating to the scientific domain of psychology, based on my empirical research efforts.

In this I conducted semi-structured interviews with the persons involved. I analysed the body of the text with the help of the sequential-transformative model of content analysis. (The essence of the model is that quantitative, ‘scalable’ variables are identified via encoding the components of topical texts carrying identical meanings.) The encoding also extended to specifying the logical relationships of “part of something” between each of the text components, on the basis of which I identified hierarchies of meanings.

With the help of a non-frequency analytical approach (a nonparametric procedure), mathematical and statistical processing was ensured through McNemar tests (relative significance of components conveying meanings within a group). By using chi-squared tests, I explored the significance of components conveying identical meanings between test groups.

4. The concrete problems with the prostitution phenomena in Hungary

My PhD results have shown that the former and present models in themselves cannot handle prostitution (Kovács, 2016). I verified that the latent phenomenon of prostitution may be mapped up by way of a combined use of qualitative and quantitative techniques unveiling social reality. In the course of interpreting reality by police officers and prostitutes, I managed to devise a map, which shows the system of relations between the culture of police measures and prostitution, casts light upon the underlying subjective and objective reasons, and describes the representations of motivational drives and goals. However, I could not verify that there is a correlation between the components identifiable on the micro and macro environmental levels, neither could I prove that the components of the social reality as perceived by the Hungarian prostitutes and the Hungarian police officers are in striking contrast to each other in every respect. With those, overall, the following results were obtained:

- I verified that in Hungary, the weaknesses and threats revealed by the SWOT analysis of the models created for the control of prostitution do exist in the current legislation and its implementation, but the strengths and opportunities remain unexploited. However, the models contain such weaknesses and threats, which render them unfit for controlling prostitution alone.
- I verified that of the models, the 'prohibitionist' approach prevails, which goes together with abuse of power by authorities, including law enforcement authorities as well; I also verified that police officers take prostitutes for criminal offenders, but not their pimps, against whom they do not take actions.
- I revealed that the Hungarian legal regulations do not ensure, or just partly guarantee the implementation of the provisions of the relevant ratified international convention. The international legislative obligations assumed under the Convention do not prevail within the Hungarian legislation and its implementation.

Regarding the fact that since the last regulation of the previous decade did not change anything, we should give a thought to what extent and quality would a regulation be able to handle the phenomenon. If we create a model that is based on the exercise and guarantee of fundamental human and constitutional rights, and its pillars are the strengths and opportunities of the old models, we could

ensure that the weaknesses and dangers of old models can be eliminated. In my opinion the basis of the new model could be the guarantee of the human and the constitutional rights, which will be constructed as a basic pillar by the legislation, the police work, the defence of the victims, and the resocialization. The legislature, and law enforcement are in a difficult situation too, because they have to comply not only to the citizens, and the prostitutes but also to the required task by the national law (Kovács, 2017a). Therefore we need to be careful, and doing things prudent, when we think of a new regulation. We have to create such a new regulation which guarantees the practice of the human and constitutional rights, does not disturb public health, and public order, and is able to execute the defined tasks of the national law (Kovács, 2017b: 41-58).

To solve those problems, it would be possible to devise a new model for the control of prostitution in Hungary, which would eliminate the weaknesses and threats, and utilize the strengths and opportunities identified via an analytical SWOT analysis. In the next part the created new model will be presented, as a solution.

5. IKARUSZ, the new model

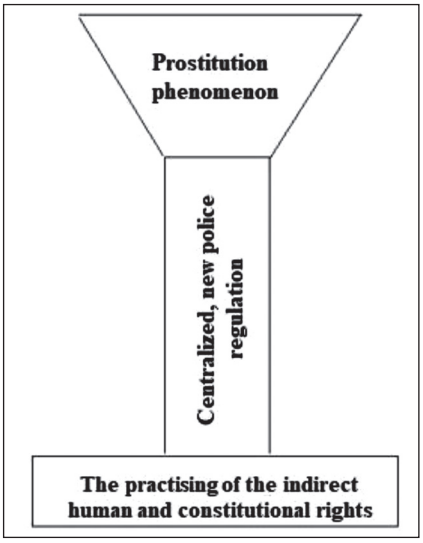
The name of the new model was inspired by an ancient Greek myth, Ickarus, the son of Daedalus. Minos called on Daedalus to build the famous Labyrinth in order to imprison the dreaded Minotaur. Daedalus and Ickarus were held in captivity, in order not to be able to tell the secret of the Labyrinth. Daedalus conceived to escape from the Labyrinth with Ickarus by constructing wings and then flying to safety. He built the wings from feathers and wax, and before the two set off he warned Ickarus not to fly too low lest his wings touch the waves and get wet, and not too high lest the sun melt the wax. But the young Ickarus, overwhelmed by the thrill of flying high, did not heed his father's warning, and flew too close to the sun whereupon the wax in his wings melted and he fell into the sea. His body was carried ashore to an island now called Dilokhe, where Heraclitos found his body, and buried him (Pinsent, 1982).

The name IKARUSZ was given to the new model by me to remind us, that we always have to seek the golden middle way (IKARUSZ is an acronym. "I" means that the rights are indirect, they come from the law. "K" means that the regulation is centralized. "A" means the constitutional rights. "R" means the police work. "U" means the word "new". "SZ" means the word "regulation"). Despite all the warnings, if we fly too low, we can die in the water, and if we fly too high, too close to the Sun, we can burn out. The same is true with the regulation of the prostitution. If we want to meet only the requirements of the citizens, then the rights

of the participating parties of the prostitution could be eroded, inversely, if we serve only the claim of the prostitutes, then the public order, and the public health could be injured. If we chase the human traffickers, the pimps, then we do it so as the international legislation expects from us, but if we legalize the punishment of the prostitutes, we oppose international law to serve the claim of the citizens. If we punish the clients, then the phenomenon could be surrounded by a greater latency, because if we limit the steady factors - the demand, and the supply - then this could allow the phenomenon's irregular proliferation (Kovács, 2017c). The results of the scientific research evince too that we cannot accept any of these solutions. The myth of Ickarus can show us the right way: if we follow the thin path between two extremities, then we can reach by flying from rock to rock the neighbour's island's beach safely. The new model, IKARUSZ could take care of everything.

In this section I deal with the details of the new model, and I try to show the options of the new regulation. We have to imagine a column, which is standing on a safe base, and the pillar, which regulate the prostitution is able to withstand the legal violations. The model of IKARUSZ is shown on chart 1.

Chart 1. *The model of IKARUSZ*



Source: Author

According to the Basic Law of Hungary[2], the fundamental and inalienable rights of a person must be respected, the protection of which is the primary duty

2 The Fundamental Law of Hungary, 25 April 2011

of the state. Our state acknowledges constitutional the public, and the individual human rights (Finszter, 2018). The basic constitutional rights can be limited by the state when the defence of another fundamental right in proportion to the objective pursued, with the respect to the essential content of fundamental rights (The absolute limit creates the rule, that the right to life cannot be limited by anyone). Prostitution can be regulated only if the state guarantees human and constitutional rights to the participating parties of the prostitution, and does not offend and/or risk any other basic rights. The new regulation would be based on a pedestal, which guarantees the humanand constitutional rights, because this system is the base of the main regulation. This pedestal guarantees not only the practising of the rights, it guarantees the fulfilling of the obligations too, with this the system balances between the two categories. The most important rights and obligations that need to be respected when considering the alterations of the legislation regulation the issue of prostitution are enumerated in the following part of the paper.

5.1. The base of IKARUSZ: The practice of the indirect human-, and constitutional rights

5.1.1. All of us are born free and equal. All of us should be treated equally. There must be no discrimination.

This constitutional right warns us that there is no discrimination between people. None of us should be discriminated in positive or negative way by anyone. Given that there is no difference between people we are all equal. The practising and fulfilling this constitutional right can prohibit the discrimination, and stigmatization, which are the parties of the prohibitive model. Nobody can judge us because of the kind of activity we participate in. It is prohibited to judge someone due to his/her biological characteristics or occupation, i.e. because she or he is a prostitute. If we accept that all of us are free and equal, and all of us should be treated equally, than prostitutes cannot be discriminated either, they cannot be looked upon as „public shame" as „disease carriers" (Weininger, 2010). We have no right to judge anybody, we are not God. We are mortal, who are free and equal (Károli, 2010:867-868).

5.1.2 The right to safe and free life

There is no place for restriction of the right to life in any democratic state (Finszter, 2007). Human dignity is inviolable. Every person has the right to life and to human dignity, from conception to death. To our knowledge, many prostitutes become victims of a crime that seriously harms and / or endangers their physical integrity and, in some cases, extinguishes their lives. In most of the cases these crimes are connected to the violence of the client, the pimp, and the police abuse. In order to be able to live safely, the state must undertake to guarantee that the life and physical integrity of a person will not be compromised. And if we were to become a victim of a crime, the state also has a warranty obligation to investigate and prosecute the perpetrators (Szikinger, 1998). In other words, it is the duty of the police to comply with the statutory provisions, and in particular to provide protection against acts that directly threaten or offend life, bodily integrity, property security. My results confirmed earlier that this section of the law is not fulfilled in the context of prostitution, in some cases there are police violence and police overpower (Kovács, 2015a). I think that if the most important basic constitutional right – the right to free, and safe living - would be fulfilled, then the rights of the prostitutes could be ensured, and the police work could be done. Therefore, the creation of a new type of top police organisation is suggested as one of possible solutions to the problem.

5.1.3. The prohibition of slavery

No one has the right to hold us in slavery. Crimes based on sexual vulnerability and exploitation, forced prostitution, matchmaking and forcing someone to be a kept woman are treated as synonymous with white slavery. Satisfying the financial needs of the pimps, the violence, the sexual vulnerability, and exploitation based crimes are the main tool of repression. These circumstances lead to the situation where pimps are kings, prostitutes are slaves, and their basic constitutional rights are violated by the pimps. Girls belong to them, they are owned by the pimps, the pimps decide on their destiny. They can’t choose, they haven’t got any alternatives, they don’t get help, and aid from the police, their release isn’t expected. The prostitutes work to create a luxurious world to the pimps, which is based on the sexual vulnerability, and exploitation (Kovács, 2015b). The results of my scientific research showed that the pimps keep prostitutes in slavery to fulfil their financial needs. If the pimp networks are liquidated, we can enforce this fundamental right.

5.1.4. No one has the right to hurt, or torture us

Prostitutes are afraid of the violence and aggression of the client, the pimp and the police. It is our fundamental human right that no one has the right to violate or endanger our lives, our physical integrity. Torture, inhuman treatment destroys people physically and spiritually. It can lead to a traumatic chain-reaction with unforeseeable consequences. Special attention should be paid to the prevention of the above mentioned, and if we become the victim of such acts, we have to ask for help, which are given by experts. We have to try to help prostitutes out of the reach of the violence of pimps, of the pimp-network, and bring the crimesuspects to the justice. The ethical and lawful police work should be controlled by close surveillance to stop police abuses. The control of a supervisory body is indispensable. Victims should turn to the police if clients abuse them either psychically or mentally, so clients could be sanctioned according to the crime they committed. In general, this can be enforced against the subjects defined in the criminal, and infringement code and procedure, no specialization is required.

5.1.5 We have equal right to use the law. The law protects all of us.

Everyone has the right to exercise their legal rights and to fulfil their obligations. The result of the common social reality of prostitutes and the police proved that the discrimination of the prostitutes, the deficiencies in protection of the victims and in task completion laid down by the law makes impossible to exercise the rights also laid down by the law (Kovács, 2016). Ignorance is no excuse for breaking the law, but we have to create the opportunity for everyone to be able to know the law and act accordingly. As it is shown in my previous research prostitutes mostly do not know where to turn in case of violence and abuse (Kovács, 2016). Thus if because of the fear of rogue network or of the prosecution of official bodies crimes remain latent, the victim cannot receive the proper quality and amount of help. Exercise of the rights set out in the laws of Hungary and the fulfilment of obligations are intended to create the maximum enforceability of the fundamental and human rights of legal entities. If the police do what they have to do by the laws, then it defend the police against accusations, because if the enforcement is lawful there is nothing to fear of. If, for example a policeman is accused falsely, and he completed his task lawfully, according to the law, then he will be defended by the law, there is no place for prosecution. And if there something is missing, or something isn’t going lawfully, the there is a room to

start disciplinary-, misdemeanour-, and/or criminal proceedings (Kovács, 2018). The laws are laws from back to forth, the equality should ensure this. Law protect the basic constitutional rights, and create the opportunity to fulfil obligations In my view, the provision of legal information and quality information could ensure the exercise of this fundamental right.

5.1.6. Fair treatment, fair courts. Prohibition of unlawful arrest. Public trial and presumption of innocence

The practising of those basic constitutional rights will be ensured by non-discriminative, impartial justice. Nowadays prostitutes can be punished, and can be taken to court by the current laws. We need to stay alert, because the court has to get all possible means of proof in the scope of the discretion, before it judges someone. The police enforcements have to explore all circumstances of the act, because those could extent and/or discharge the suspect. As long as the court does not declare the guilt of the person, he or she has the presumption of innocence. In my research I found that the practising of this basic fundamental right was denied by the police discrimination. The police discrimination a priori rules out, the fair procedure against prostitutes. There is an interference with the right to be presumed innocent. If there are proceedings against prostitutes, the police collect only discharged proofs, which is one sided. The reason of the crime committed is not known (for example, how serious was a threat against which she acted). The court's objectivity will be injured, because not all of the proofs will be there to be judged, it can judge only from the specified circumstances. That is true in case of restricting personal freedom too. In my scientific research I proved that the police arrest and take prostitutes into custody in order to improve statistical data (Kovács, 2016). The practising of this basic constitutional right is blocked by the police's unlawful work, and the unlawful restricting of the personal freedom, and taking into custody. Such measures are in correlation with the fundamental right that prohibits slavery. The police work in accordance with the international law should focus on detecting pimps and rouge networks. The solution could be only a new regulation, which could guarantee practising of fundamental rights and fulfilling of the obligation.

5.1.7. The prohibition of restricting free movement

We know many ways of pimp-violence. Careless or unguarded girls are lured abroad by false, fuzzy job offerings, their personal papers are taken away, and they are forced into prostitution. In this way the free movement of these girls are restricted within the EU or anywhere else. Even in the Schengen territories they have to identify themselves, and they cannot move outside the Schengen area. They can't leave the state where they were lured, and their staying can also be against the law (that is, without official papers) (Montanes, Moyano, 2006). Taking of evidence and procedures may last for a long time, not to mention that in a foreign country orientation is not easy either. If pimp-network would be persecuted, and job agencies would give fair information to the prostitutes, then they could practice this fundamental right.

5.1.8. Freedom of thought, speech, and religion. The right of assembly

This fundamental right is explained here just theoretically. Since my scientific research did not deal with civil agencies, so the work of the charity organizations, trade unions won't be dealt with. This right shall include the freedom to choose or change one's religion or other belief, and the freedom of everyone to manifest, abstain from manifesting, practise or teach his or her religion or other belief through religious acts, rites or otherwise, either individually or jointly with others, either in public or in private life. Everyone shall have the right to peaceful assembly. Everyone shall have the right to freedom of speech.

5.1.9. Right to social security and learning.

Many sociological studies were analysed in my scientific research, they all said that most prostitutes are of lower education. My scientific results are correlated with this (Kovács, 2016). The police-reality also confirmed that prostitutes are of lower education. It is possible that this is due to some objective reasons besides subjective reasons. Education, self training is connected with creating social safety, which everyone needs. Most of the prostitutes working in the street grew up under difficult circumstances, they were institutionalized, and when they left the institution, they hadn't got opportunity to study in a high school, or at a university. They were seized by the „street”. Those girls are easily captured by fake emotional relationship with pimps. Light, shine glamour – tools of the pimp,

that is what they see and get from the pimps, can turn soon into darkness, and into hell. They have to experience on their skin that not all is gold which is shining, and they can get to the streets in minutes without qualification, and without the opportunity of social security. We need to introduce actions that follow prostitutes from resocialization to public reintegration,with this the socially marginalized groups could be useful members of the community. We have to prevent girls from getting into the streets, and getting into prostitution, we have to ensure their education. This would be a great task to the institutions. Those taking part in reintegration programs later can take part in adult education.

5.1.10. Ensuring medical care is connected with social security

I proved that prostitutes do their best to prevent spreading venereal diseases, and if it is needed, they visit doctors (Kovács, 2016). However, tests cost money, and most of the girls – due to their exploited situation - cannot afford it. Although the right to health is a fundamental right, the state doesn't guarantee free medical care in this sphere. However, if prostitutes have valid social security card, than like all other citizens, they have the right to use free medical treatment. Therefore if prostitutes pay tax, and have social security card, all the preventive medical care can be free for them, depending on the state's economical situation.

5.1.11. Right to work and rest

According to the regulation (36/2011. (XII 23.)) KIM decree on the introduction and application of the list of activities of self - employed persons in force today in Hungary prostitution is a service regarded as a job. In 2007, the uniform sectoral classification system for economic activities, is "TEÁOR", registered prostitution with code 96 as for other personal services, within this category it has number 9604, indicating improving physical well-being. Thus, after the replacement of an individual business card and registration of a tax number, the tax authority is obliged to grant the license to continue the service. Tax authorities allow prostitution services if entrepreneur card is given to the prostitute and tax number is registered. So we can see that the state supports prostitution as registered work, it let space to practise the basic constitutional right. The problem is the pimp networks. It is proven that pimps exploit prostitutes, so there is no respectful wage and work. The state cannot ensure this fundamental right as long as the prostitutes

are guided, forced, and exploited by pimp networks. These conditions can be considered relevant in practising the right to rest, too. The state has to provide a reasonable amount of time and quality for rest in accordance with the work done. Pimps exploit prostitutes so that they have to work almost 24 hours of the day, under inhuman conditions, without rest.

5.1.12. A free and fair world in which our rights can be exercised our responsibilities can be fulfilled

Human -, constitutional-, and freedom rights can only be practiced in a democratic society that is based on law. Legislation is the task of the state, it has to do everything to ensure, and fulfil the conditions. The state has to be able to create the order, we have to fulfil our obligation towards our fellow citizens, and we have to respect, and defend each others' rights, and freedom. No one can take away those rights and freedom from us.

In general, human and constitutional rights require not only the exercise of the above mentioned eleven entitlements, but from the point of view of prostitution, these are the most important. When I was mapping up, analysing and assessing the components of the common system of relations between prostitution and the culture of police measures, the subjective and objective reasons lying expressly behind those components, as well as the representations of motivational drives and goals those were the most important rights, which get hurt (Kovács, 2016). In this fact, the enforcement of these rights by the state is an indispensable task of laying the strategic foundation of the new model, and that the support pillar should not sway.

5.2. Centralised new police service regulations. The body of IKARUSZ: SZEXBEK, the centre against the sexual crimes

In this chapter the details of the new regulation, the pillar of the new, centralised police service regulation is presented. Not only my scientific research proved that the police work concerning prostitution is unlawful and unfit (Kovács, 2016). There are examples of corruption and police bribes (Forrai, 1998), violence against women (Forrai, 2007:65-87), and discrimination and exclusion of prostitutes from society too (Déri, 1957:72-75). Police abuse and violence are mixed with incomplete police work, with the lack of protection of victims, and with

the statistical view the service. Two decades after the last regulation proved that new regulations, norms and task-systems need to be built. We have to realize that there are threats all over the Earth that finally will destroy all of us. Terrorism, cyber-crime is our menace, just like prostitution and sexual exploitation that threatens mostly females and kids. Organised crime settled itself on sexual crimes, this is a central problem that can be solved only by well centralized regulations (Kovács, 2017d). To solve the problem I suggest that a top organisation with nationwide competence should be organized, which stands up to international comparison worldwide. Because sexual crimes need special process, the work of the present investigator teams and special forces are not satisfying any longer. Prostitution is a complex phenomenon, which needs complex involvement and action series of doctors, psychologists, lawyers, the intelligence, the police, they can't reach results separately (Segura, 2011)

The new centralised top agency is created by me is named SZEXBEK (Centre Against Sexual Crimes). An independent budgetary agency, which is controlled directly (without centre manager) by the Ministry of Interior, de budget is also controlled by the Ministry of Interior, according to the operating order of public finances rules. Due to the above mentioned government decree of the police agencies are not applicable, a new government decree should be created concerning this top agency. It can be established by the Government of the Hungarian Republic.

5.2.1. The SZEXBEK's law based basic activity consist of the following rules:

a) The agency investigates crimes which are specified in the laws, especially to the crimes in the chapter XIX of the Hungarian Criminal Code (Act C of 2012 on the Criminal Code). When investigating a crime it uses open, and secret human resources and tools which help to prevent, to stop, and to hinder crimes, and to recognize the suspects, and to catch them.
b) It has to give specific order to do a task or/and to replace an omission to the central-, or placed police agencies, connected with the crimes which are being in their basic activities purview, it can oblige the agencies to give a report, or/and an account.
c) The circumstances of sexual offences, threats are analysed and valued, data processing is made, and quarterly, semi-annual and full annual reports are arranged by the centre. The reports are sent to the Ministry of Interior, which help to create national strategies, and programs against such crimes. Threats action plans are created, the defend of the appointed

prostitution facilities, and the facilities' leaders connected with specially laws are supplied by the centre.

d) In the official licensing procedures related to the facilities it participates as an expert, it performs tasks of a specialist authority.

e) In connection with its tasks a special register is kept, the purchased and owned information (from the suspects, from the situations, from the victims) are sorted under the criminal proceedings, the register's continuous using of the criminal data treating (informative, registered) are taken care by the centre. It keeps a special register, it sorts out information, takes care of the criminal data keeping.

f) The activities of the central administration and its departments connected with warding off, and prevention against sexual offences are coordinated, and organized by the centre. The doing, and the preparing of the tasks are organized in performing their basic activities by the centre, the special police tasks are supplied in cooperation with another police agencies. Its basic task is to guide the preparation and implementation of the special police tasks in cooperation with other police agencies.

g) It cooperates with other police agencies at an international level too. It coordinates the investigator units dispatched abroad (experts, home liaison officers, in operation involved officers). Besides according to the specified national laws (law from the international cooperation of law enforcement agencies, and law from the international cooperation of law enforcement agencies in the European Union) it completes special missions, detects and prevents crimes, helps in criminal procedures.

h) Organizes quarterly, semi-annual and full annual workshops, where representatives of other states are invited, it ensures continuous work and consultation.

i) On international level it represents the Hungarian national interests against sexual offences shares information with foreign agencies, and uses them on regional national and international level.

j) The development of the police action culture will be supported by education, the fulfilling of the lawful actions will be helped by training. Training, and education strategy will be created that inspires normative enforcement, personnel is motivated to investigate, prevent crime, and arrest the offender.

5.2.2. The SZEXBEK's law based special activity consists of the rules bellow:

a) It helps to assert interest which contributes to the appropriated mode and level of public information, legal advice, and other assistance. In addition to give general information, the centre supports opportunities for re-starting, and/or the lawful process of reintegration. Legal advice helps prostitutes to understand what rights and obligations they have. Those consist of their rights and obligations in criminal and misdemeanour proceedings, the types of the available assistance, the conditions of the requests. It helps to find other support and assistance besides insurance possibilities, other available requests, which are besides from the insured requests (for example victim protection support, victim shelters, etc.), payments, opportunities of the interests redounding, availability of the state-organizations, local government organizations, civil organizations and religious communities, which take part in the protection of victims and in crime prevention.
b) Emotional and medical assistance means that a team of psychologists and doctors helps to deal with traumas and psychical injuries.
c) If the status of victim protection is needed, it is the Centre's responsibility to provide an official certificate to supporting agencies, organizations, either because the victim asks for it, or because the agencies ask for it.
d) The legal effect can provide the victim's defence status
e) Witness protection also victim protection, which means of the guarantees of the victim's caring's police tasks. Ensuring continuous control.
f) Facility management, which consists of the tasks of social reintegration and the maintenance tasks related to protected accommodation. This has got double aim: actions in education, and in rehabilitation. All of these ensure the process of social reintegration.
g) The advantage of the new system is it complexity, and because of the budget of the organization, it is cost efficient or in some cases it is free for the victims.
h) Compensation can be given to those who are victims of violent intentional crime and therefore their physical and mental health is seriously impaired.
i) Assisting international police agencies to give adequate support to Hungarian citizens who are victims of a crime in abroad. Cooperation and dialogue.
j) Supporting the activities of the victim protection back offices, agencies, ensuring the endeavour of the cooperation.

k) Keeping a special register, continuously refreshing it, and controlling it. The register contains results of resocialization and reintegration, with which we can model the performance of the new system.
l) The personnel of SZEXBEK consists of official police officers, civil servants, government officials, public servants, and employees as of the Work Code. It acts as a budgetary entity, its financial-economical tasks are fixed in an agreement approved by the governing body, supplied by the Ministry of Interior. It is a hierarchical agency, a director on top, who is be appointed and/or released by the minister. The agency consists of directorates, of departments, and of subclasses. Operational arrangements and connections could be defined by their organizational and operational rules. In the next chapter the elements of the new regulation will be shown.

5.3. The top of IKARUSZ: the regulation, and handling of the prostitution phenomenon in Hungary

The main problem concerning the regulation of prostitution in Hungary is its ambivalent relation to international regulations. For 30 years there has been debates for and against new regulations, modifying the old one absorbing international regulations as a whole, ignoring international laws and regulations, staying in leaving it is the solution. In my opinion Hungary used all of the 3+2 models of prostitution, and by themselves they proved to be inefficient, so we need to rethink the project, if they are useful or not.

In my scientific research I proved not only theoretically but also practically what are the dangers and threats of the earlier and the present regulations, how idle their strengths and opportunities are, and to what extent they can be executed (Kovács, 2016). With the scientific research, methods and results I suggested a way to solve the prostitution problem in Hungary: I created a new model, named IKARUSZ, and worked out a new regulation of the phenomena.

With the use of IKARUSZ there will not be no need to sanction prostitutes with criminal- or/and misdemeanour behaviour. IKARUSZ creates the place where prostitution can be practised and controlled, the practise is economically solved. It’s evident that their entity can be the subject of criminal or misdemeanour proceedings, but those do not have to be connected to prostitution. Given that prostitution is a registered economic activity, any sanction can only be economic sanction. For example: if someone doesn’t pay taxes the competent authority will impose punishment. The punishment may be enforced by execution. This is different from penalties executed by the police, like a spot fine, which the prostitute

cannot pay, since there is no place where she can practice her job, because the local government does not designate a lawful place, and on top of it her pimp takes the money. IKARUSZ can establish the place, and if the work isn't legal there is indeed a room for an economic punishment, and there is objective possibility for the prostitute to earn the money that she has to pay as a fine. Many people think that dismissing the New York Convention will lead to chaotic state (Borai, 2003). But it is unnecessary to totally dismiss the New York Convention. In my opinion introducing of the institutional system would be able to stop pimps and pimp network exploiting prostitutes, it would help to form prostitution as a service, and it would solve the problem that is between international and national legislation. National legislation should be changed only partly.

The operation of a central, state law enforcement agency that deals exclusively with prostitution would be the rule. This is what the SZEXBEK institution serves. For example: assisting prostitution is a crime prohibited the institutional system. At the same time if we give the „state" word to the institutional system, only assisting prostitution outside institutions that jurisdiction would sanction. So we can ensure that there are no loopholes for pimps and pimp networks, we can take the actions to catch pimps, and we can make a room to practise the prostitution. The criminal sanctions will remain, chasing exploited activities won't change, it isn't necessary to dismiss the Convention's further points. The problem of the register will be solved, because there won't be registers like the Misdemeanour Register System, which threats the basic constitutional rights. So the state could take action parallel to the international legislation. With the institutional system there will not be any opportunities like in Germany, that the underworld exploits prostitution, because the institutes could be operated only by the state, it couldn't be issued to private individuals and/or legal persons. The chasing of pimps is ensured by the SZEXBEK's social purpose, so criminal laws would be implemented against them.

IKARUSZ makes Misdemeanour Law[3] useless. If we look closer at the situation of prostitution in the capital, and we take into consideration that local governments are obliged to designate a place where the prostitution can be practiced, there is only one place in Budapest which fits in the conditions, complies to present misdemeanour regulation, and it is the Óbudai or another name the Hajógyári-Island. It is shown on the chart 2.

3 Act II of 2012 on the Misdemeanor, the Misdemeanor Process, and the Misdemeanor Register System

Chart 2. *The Hajógyári Island*

Source: Author

The island with the norm of the demeanour regulation. There we have an opportunity to create a place which is far from defended places, which lies 100 meter outside from the motorway, from the residential area, from the one or two-digit main roads, which lies 50 meter outside from the living area's main road, which lies 300 meter outside from the public courts, from the attorney's offices, from the diplomatic, and consular services, from the buildings for affiliated international organizations and their members, from the buildings for public, and higher educations, from the buildings for child defend, from the buildings for social, and public educations, from the terminals for passenger traffics (airport, train station, ship station), from the registered buildings for religion's institutes, from the bases of the military forces, from the places for funeral and other places of worships. Such a place where there are no sidewalks, there are no buildings in which under aged pupils are educated, cured or otherwise treated, and there are no child care institutions.

If the realization of an institutional system is considered there is no objective danger of disturbing public peace. The institutional seat of the SZEXBEK would lie here too. The Hajógyári-Island has given place to music clubs and events, but

now, without those activities, it stands empty and idle. It's worth to think, that how we could regulate prostitution with the termination of the systems that do not work, with introducing a new system, and with the small changing of the law. During pre- and after effect surveys weaknesses and threats of the system could be eliminated. The application of IKARUSZ, and SZEXBEK can open new dimensions, and gates in the regulation of the prostitution. It depends on us whether we make room for the new, or we live in the abused, violent and exploited world forth.

6. Recommendations and Applicability of the Results in Practice

In my research I showed the components of the system of relations between prostitution and the culture of police measures in relation to that, with particular attention to the representations of motivational drives and goals of the examined groups, as well as the underlying subjective and objective reasons (Kovács, 2016).

In those I proved that the weaknesses and threats of the models meant to control prostitution do prevail in the current legal regulations and their implementation. The weaknesses and the dangers of the prohibition model revealed by the SWOT analysis, which was supported by the empirical research without an exception. Like the prohibition model, the weaknesses and the dangers of the abolition, and reglementation model were supported by the research. Considering that the strengths and opportunities of the models are unutilized, the regulations and their implementation alone are not suitable for controlling prostitution. I showed that the approach taken by the Hungarian police is predominantly 'prohibitionist', and is also characterized by abuse of power, in particular, stigmatization, aggression, misuse of authority, corruption and a lack of victim protection. I verified that the vast majority of Hungarian police officers take prostitutes for criminal offenders despite the international regulations, and do not take actions against pimps, and the unlawful conduct of pimps does not constitute a component of the social reality perceived about prostitution. I confirmed that the effective legislation, as well as its implementation by the police ignore certain provisions of the New York City Convention, in relation to victim protection and sanctioning of pimps in particular, and therefore the exercise of constitutional and human rights by prostitutes is jeopardized. I proved that thus, the withdrawal from the Convention, a new regulation, or cancellation of certain Articles may eliminate the above-mentioned problem. Based on these, I introduced a new regulation and model that can handle this phenomenon.

On the basis of the results generated, it has been confirmed that the models meant for the control of prostitution alone are not suitable to deal with the phenomenon. However, considering the fact that the decade having elapsed since the adoption of the latest regulation has not resulted in any significant change, it would seem reasonable to reflect upon how and to what extent a new regulation could change the way this phenomenon is controlled. If some space were provided for the development of a new model based on the provision and exercise of human and constitutional rights with pillars being the strengths and opportunities of the previous models, it would become possible to eliminate the weaknesses and threats of the previous models. In my opinion, the basis for the new model would be the exercise of human and constitutional rights, and the pillars would be made of victim protection, legal regulations, law enforcement efforts and a series of re-socialisation measures.

The results may contribute to the consistent interpretation of the phenomenon of prostitution, and further, may provide a basis for the harmonization of the regulations related to misdemeanours, as well as penal and international laws. They may support the implementation of victim protection and re-socialisation measures by the police, and may promote urgent actions against the abuse of power. They may also create a possibility to ensure that the exercise of prostitutes' rights is not harmed.

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Ljupcho SHOSHOLOVSKI, MA [*]
Military Academy, Skopje,
Republic of North Macedonia
PhD student

Zoran JOVANOVSKI, PhD [**]
Military Academy, Skopje,
Republic of North Macedonia
Associate Professor

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STRATEGY AND CONCEPT ON URBAN CRIME PREVENTION

For running a successful crime prevention program it is especially important to have a multidisciplinary approach and involvement of different stakeholders of society in crime prevention. Adopting the strategy, as well as (short and long term) programs of crime prevention at the local level is the first step that the local government needs to undertake. These documents should be in line with the national strategy for crime prevention and international norms. They represent the framework for defining the objectives that the local government wants to achieve, indicators of crime and deviant behaviour at the local level, the sectors that will be involved in prevention and their role. Good management and leadership in coordinating body (local government council for crime prevention) composed of representatives of various entities, assessment and evaluation of the measures and activities undertaken for a certain period, and rewarding based on the results achieved, represent activities which should be seen as a cycle.

[*] e-mail: ljupco_sosolovski@yahoo.com
[**] e-mail: zoranjovanovski43@gmail.com

In the crime prevention council at the local level all relevant stakeholders that can contribute to more effective crime prevention should take part, including police, health care, educational institutions, judiciary, NGOs, religious groups, business sector, etc. Through cross sectoral approach, the council should reduce the overlapping of competencies in specific activities and programs that would consequentially direct human and material resources to crime prevention, but also unify the individual actions of „heterogeneous” subjects in homogeneous team that would be capable to cope with challenges.

Keywords: local government, multidisciplinary approach, crime prevention

„*Prevention is the first imperative of justice*”
(United Nations 2004).

1. Introduction

When we understand the causes of criminal activities, then we can proceed to creating an effective crime prevention strategies. For better understanding of the research problem, first we need to define the terms that are used in the paper. There are many definitions of prevention. According to the European Union decision for establishing an European Crime Prevention Network “crime prevention shall cover all measures that are intended to reduce or otherwise contribute to reducing crime and citizens’ feeling of insecurity, both quantitatively and qualitatively, either through directly deterring criminal activities or through policies and actions designed to reduce the potential for crime and the causes of crime” (European Union, 2009: 45). This includes the activities of government, competent authorities, the criminal justice system, local authorities and specialized associations, private and voluntary sector, researchers, and the public, supported by the media.

Prevention could be understood as the implementation of all the measures and means of mobilizing the individuals, civic groups, organizations or institutions that are aimed at enabling the phenomena that do not comply with the criminal law and which by their very nature cause harm to the individuals, civil groups or the society as a whole (Стефаноска, 2011). For example, in the Czech crime prevention strategy prevention is defined as an offensive strategy for fight against crime.

The word crime is derived from the Latin word *crimen,* and in the substantive sense it usually refers to a conduct punishable by the law or behaviour for which punishment is provided. Crime is a mass phenomenon, meaning that it is a

phenomenon with a broad social meaning and its manifestations, wide scale and consequences. We could argue that crime is a reaction to unfavourable social and economic position and that its inner structure is impacted by the class and/or social division. The overall relationships in the society are also set on the basis that puts a large number of people in a difficult and unequal position when meeting existential needs. This brings us to the conclusion that crime, as a general and mass phenomenon, is a result of the existing political, economic and social relations, and is embedded in the structure of the society. Emphasized dynamism in structural changes in the society is unfavourably reflected in relation to this problem (Арнаудовски, 2007:69). According to additional sources crime is perceived as a social phenomenon which is understood as a criminal behaviour which occurred in a defined place and time.

2. Impact of urbanization on crime

In 2007, for the first time in human history, urban centres became the home to more than a half of the world's population, and this number is expected grow substantially over the next 25 years (UN HABITTAT, 2007). Urbanization brings many challenges, among which are the increasing number of assaults and murders in the urban environment. As a result, reduction of the levels of urban violence and its prevention is one of the key priorities of every government.

Population movements from one socio-cultural environment to another, from one country to another, from rural to urban areas can result in criminal behaviour. In other words, a person leaves one environment where he adapted moral and cultural standards, to another environment with different social norms.

Urbanization, together with unemployment, inflation, unequal rights of the individuals in the community, and low levels of education are main socio-economic factors contributing to the growth of crime in the community (Spalević, Jovanović, 2013:303). It is claimed that as urbanization and number of urban areas increase, crime rates rise as well (Galvin, 2002:130). Therefore, we need a clearer and substantial understanding of urbanization and its connection to crime.

Urbanization is the process where an increasing percentage of a population lives in the cities and suburbs. It also encompasses transformation of rural settlements into urban, that is, expanding urban lifestyles in rural areas.[1] This leads to land transformation for residential, commercial, industrial and transportation

1 Check http://www.chegg.com/homework-help/definitions/urbanization-47

purposes.[2] This process became a mass phenomenon in the twentieth century due to the industrialization, internationalization and globalization. The process of urbanization has been brought to an end in developed countries, while it is a prevalent trend in Asia and Africa.

Globally, more people live in urban than in rural areas. According to the United Nations, about 54% of the world's population in 2014 resided in urban environment. In 1950, urban dwellers comprised 30% of the world's population; this percentage raised to 47% in 2000; and projections are that in 2050, 67,2% of the world's population will live in urban areas.

Table 1 *Urban Population and Percentage of Urbanization*[3]

Region	Urban Population (millions)					Percentage (%)				
	1950	2000	2011	2025	2050	1950	2000	2011	2025	2050
World	750	2860	3632	4643	6252	29,8	47,2	52,1	58	67,2
More Developed Regions	450	900	964	1043	1127	54,9	75,4	77,7	81,1	85,9
Less Developed Regions	200	1960	2668	3600	5125	17,8	40,4	46,5	53,6	64,1
Northern America	110	243	286	330	395	63,9	77,4	82,2	85,0	88,6
Latin America	70	391	472	560	650	41,9	75,4	79,1	82,5	86,6
Oceania	8	23	26	32	40	61,6	74,1	70,7	71,1	73
Europe	287	534	539	566	591	52,4	73,4	72,9	76,1	82,2
Asia	244	1376	1895	2512	3310	17,4	37,5	45	53,1	64,4
Africa	32	295	414	642	1265	14,7	37,2	39,6	45,3	57,7
Macedonia			1,223	1,29	1,35			59,3	62,5	71,8

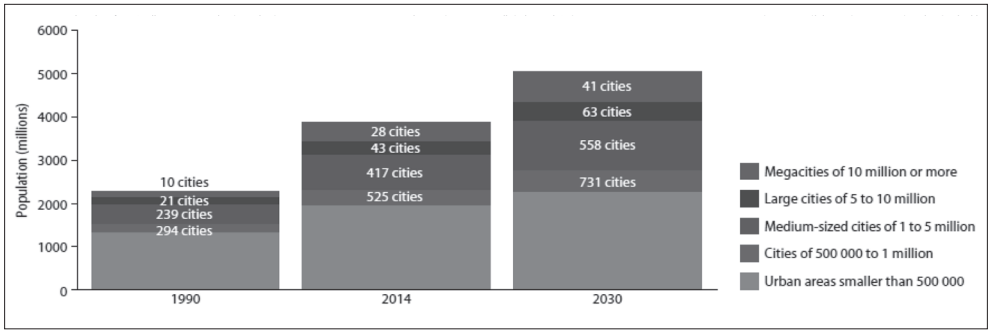
Megapolises, or as they are called, the Supercities, are distinguished by their size and concentration of economic power, but by the number of households they comprise only one-eighth of the population living in urban areas. In 1990, there were 10 cities with more than 10 million inhabitants (Table 2), home to 153 million inhabitants, representing less than 7% of the world's urban population. Today, the number of megapolises is almost three times higher, (28), and the population living in them has increased to 453 million, representing 12% of the world's urban population.

Tokyo is the largest city in the world with 38 million inhabitants, followed by Delhi with 25 million, then Shanghai with 23 million, Mexico City, Mumbai and São Paulo with 21 million each.

2 Check http://www.epa.gov/caddis/ssr_urb_urb1.html

3 *Source*: World Urban Prospectus, 2011. Revision

Graph 1 *Global urban population growth is driven by urban growth of the cities*



Source: World Urban Prospectus, 2014. Revision

Decades ago, most of the world's urban agglomerates were located in developed regions, but today, large cities are mostly concentrated in south of China and India. The fastest growing urban agglomerates are medium-sized cities and cities with less than one million inhabitants in Asia and Africa.

The percentage of the world's population living in an urban environment is steadily increasing, as can be seen in Table 1. This means that crime and crime prevention in urban areas are becoming increasingly important. It is therefore essential to understand the relations between crime and the urban environment.

3. Strategies and concepts of crime prevention

There is clear evidence that well-planned crime prevention strategies not only reduce crime and abuse, but also promote community (municipality, city) security and contribute to the sustainable development of states (UNODC, 2006: 294). Effective and responsible crime prevention programs improve the quality of life of all citizens. This has long-term benefits in the sense it reduces the costs associated with the formal criminal justice system as well as other social costs of crime. Crime prevention provides opportunities for an effective approach for solving the problems related to crime.

According to the available literature, it has long been considered that the state authorities are the most capable in creating prevention plans. Planning should be at the level of the working organizations, at the level of the local communities, urban regions and cities and cover various areas of social life.

There is a centralized and spatial planning that should reflect the real state of society. Its main objective is to preserve the integrity of a greater number of

subjects as well as their unity and systematic functioning. It is the responsibility of all levels of government to create, maintain and promote the concept based on relevant government institutions and all segments of civil society that can play significant role in the field of crime prevention.

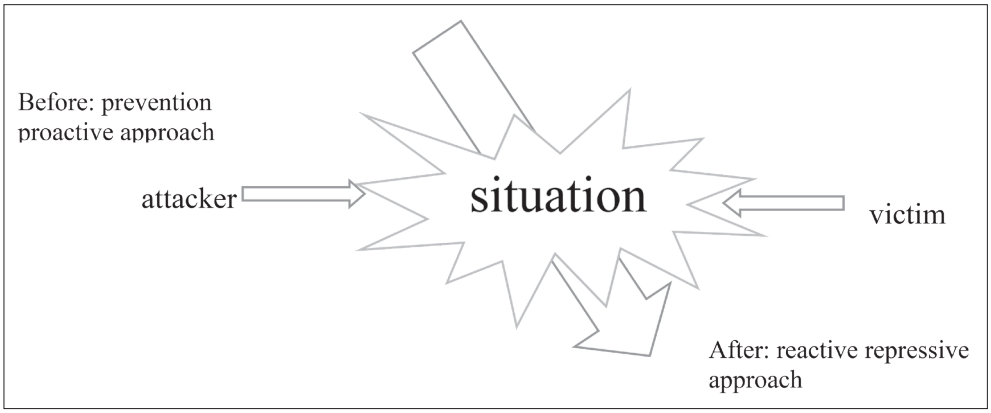
Crime prevention consists of strategies and measures that seek to reduce the risk of crime and the potential negative effects on individuals and society, including the fear of crime. An effective urban crime prevention strategy requires: strong leadership from the government and local authorities, strategic planning based on problem and cause analysis, comprehensive strategies that include a complete range of services and institutions that affect people's daily lives, maintain order and solve community problems, as well as strong partnership between policymakers, service providers and civil society. It also involves governments to respect the human rights of citizens and work against the exclusion of vulnerable groups, including the poor, young people, women and minorities (Shaw, Travers, 2007: 4).[4]

3.1. Concept of opportunity – Urban planning and design

The concept of opportunity emphasizes the importance of the attacker-situation-victim relationship. A criminal act occurs if all three factors are present. This approach focuses on the situation of the attacker or if he is in search for a victim (Example: bank robbery, house burglary, assault). In this approach, the focus is on the reactive point, i.e. taking action when a criminal act occurs, taking a proactive course of action, taking action before a criminal act and preventing an attack to occur.

4 These principles are embedded in many crime prevention projects and strategies in urban areas. A workshop on crime prevention was presented at the 11th United Nations Congress held in Bangkok in 2005. The workshop presented the strategies of 15 different countries from all over the world, as well as a collection of 64 promising case strategies and programs. It is important to highlight as a successful example of Colombia's capital, Bogotá, with strong local leadership that, combined with a comprehensive strategy, can reduce the impact of crime and urban violence (Harvard Gazette, 2004).

Figure 1 *Schematic representation of the concept of opportunity*



One of the most productive areas where opportunity concept has shown its value is urban planning and design. A large number of experiments have revealed that certain types of crime can be reduced by changing the opportunity of crime to happen in the built environment. Shortening the night-time hours of bars and restaurants will inevitably reduce the number of breaking windows of shops and incidents and vandalism in stores. Controlling an entry and parking increases the ability to spot and capture criminals. This method can, in the long run, reduce the number of attacks and car thefts in the parking lots.

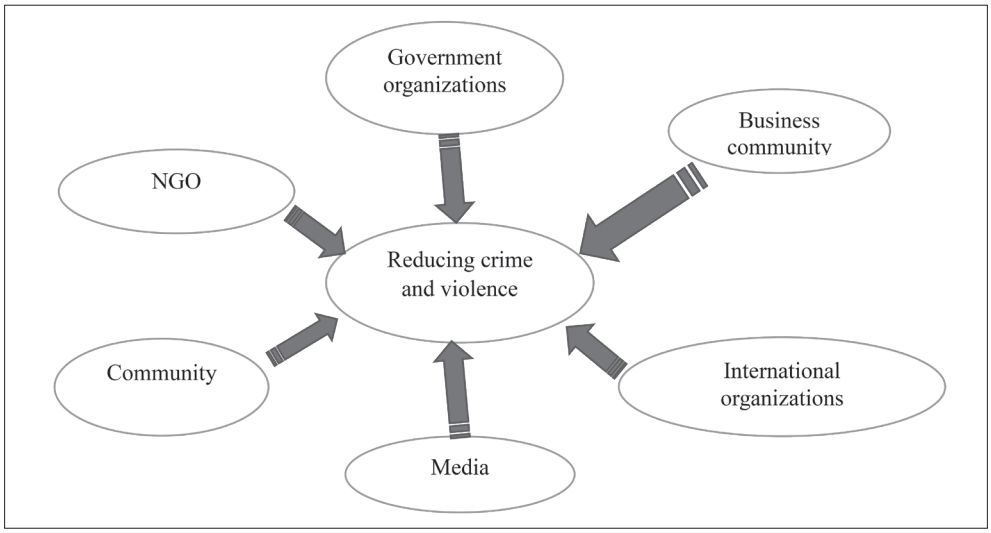
The list of successful examples where the concept of opportunity has achieved positive effects is a long one. This concept in North America is best known for preventing crime through environmental design, and the reduction of crime and fear of crime in Europe is usually realized through urban planning, as well as crime-free design.

3.2. A multisectoral approach to urban crime reduction (Trinidad and Tobago case study)

Following the dramatic increase in homicides and criminal activity in Trinidad and Tobago, the Citizen Security Program (CSP) is being implemented. The objective of this program, which is being implemented in 22 communities in Trinidad and Tobago, is to reduce crime and violence and raise citizens' awareness of security. One of the components of this program is the introduction of a multisectoral approach and bringing together the relevant partners from government and international agencies, partner communities, business communities, media

and non-governmental organizations (Sloane-Seale, 2011). This approach creates a dialogue between partners in the local community.

Figure 2 *Multisectoral approach in crime prevention*



Community involvement and cooperation is an important element in the concept of crime prevention. Also essential to this concept is the involvement of civil society at the local level as an important link in order to achieve the expected effect.

Crime prevention includes a wide range of approaches (ECOSOC Resolution, 2002/13):

1. *Prevention through social development or prevention of social crime.* Promotes well-being and fosters social behaviour through social, economic, health and educational measures, with a particular focus on children and young people, and emphases on the risk and protective factors associated with crime and bullying;
2. *Crime prevention at local level.* Changing conditions in violent and unsafe neighbourhoods, resulting from the reaction to the crime, expertise and commitment of the members;
3. *Situational crime prevention.* Preventing the occurrence of crime by reducing the opportunities for crime. It increases the risk for offenders to be detected, and consequentially the benefits of committing a crime are reduced;
4. *Reintegration program.* Prevention of recidivism (repetition of offenses) by assisting in the social reintegration of offenders and preventive mechanisms.

The CSP program covers the “Seven Steps of Social Change” that help guide the process of social transformation, including: knowledge, desire, skills, optimism, opportunities, stimulation and strengthening. Step 1 “knowledge” refers to identifying risk factors associated with crime and violence, as well as detecting existing issues that require community attention and support. Step 2 “desire” involves maintaining communication with community members on their vision of a desired, healthy, attractive and secure future. At this stage, like-minded people meet to discuss activities to create a homogeneous community. Step 3 “Skills” means that partners are trained in specific skills to start working together. The workshops help in building organizational and community leadership skills, proposing and writing reports, understanding and highlighting issues such as domestic violence, child abuse, mediation, etc. Step 4 “optimism” (*worth a try*) creates the basis for future initiatives and brings together the key players. This step involves identifying and helping to develop progressive leaders, engaging young people and cultivating community projects, as well as connecting with government officials and local councillors. Step 5 “Opportunities” is a phase which connects partners with relevant governmental and non-governmental organizations to achieve a community vision. In Step 6 of the “stimulation” (*I join*) community and its partners implement projects that have an impact on citizens` safety and wellbeing. The last step 7, “strengthening” (*that is, success*) ensures the sustainability of initiatives through public outreach, public recognition, positive reinforcement and work extension.[5]

According to the available literature, it has taken a long time to realize that crime prevention is a shared responsibility in many sectors of society. Crime prevention is not the activity that should be approached through one area (police, organizations, researchers, etc.). What is necessary is a multisectoral approach of structural partnership between local authorities, police, NGOs, citizens, etc.

4. Conclusion

In the end, we will present some basic and important concluding marks. First, crime prevention and security strategies should be based on “trust”. Therefore, it is very significant to clearly define the responsibilities of the various functions. This should be the first step to be taken when Parliament deals with security policy.

Second, crime prevention and security strategies should be based on the needs of local communities. The main precondition for achieving the safer urban

5 Several initiatives are funded through the fund CSP s ICON (Inspiring Confidence in our Community)

environments is active citizen participation. It is the community that will decide what form of prevention and security is needed. Also, these functions should be integrated into the global strategy for a specific legal framework, which clearly defines the responsibilities and functions of the various participants.

There are possible risks related to the implementation of a new security and prevention policy where there is a possibility that the police may lose jurisdiction, where the local self-government could intervene, or take over police tasks, when all responsibilities are not clearly defined. It is necessary to give a brief overview of existing crime prevention strategies in the future. The review should include a description of the functions, the initial background, responsibilities of each type of function, their tasks, training instructions, etc. Also, best practices should be centralized and shared between different states, municipalities, other organizations and institutions in order to reduce crime. In this way, local authorities can learn from each other and strengthen their fight against crime. In the end, it can be concluded that urban crime prevention requires approach which is multisectoral, multidisciplinary and integrated.

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CONCLUSIONS

ANNUAL CONFERENCE OF THE SERBIAN ASSOCIATION
OF CRIMINAL LAW THEORY AND PRACTICE HELD
ON ZLATIBOR (SEPTEMBER 19-21st 2019)

"CHANGES OF SERBIAN CRIMINAL LEGISLATION AND
STATUS OF JUDICIAL OFFICIALS - ADEQUACY OF THE
STATE REACTION ON CRIME (INTERNATIONAL STANDARDS
AND THE CURRENT SITUATION IN SERBIA)"

1. Participants of the Conference support all measures aimed at an adequate State reaction on crime and crime prevention, emphasizing that criminal-policy based assessment of the newly adopted legislation could be given exclusively after initial track record is established.

2. Bearing in mind that level of certainty that offender will be punished plays an important role in crime prevention, the participants of the Conference consider as important further legislative and practical measures to increase level of this certainty.

3. Considering experiences of relevant states as well as criminal policy reasons to regulate use of fine, the participants of Conference concluded that fine deserves a much more attention in Serbian court practice.

Zlatibor,
September 21st 2019

З А К Љ У Ч Ц И

LIX РЕДОВНОГ ГОДИШЊЕГ САВЕТОВАЊА СРПСКОГ УДРУЖЕЊА ЗА КРИВИЧНОПРАВНУ ТЕОРИЈУ И ПРАКСУ ОДРЖАНОМ НА ЗЛАТИБОРУ 19-21. СЕПТЕМБРА 2019. ГОД. НА ТЕМУ

"ИЗМЕНЕ У КРИВИЧНОМ ЗАКОНОДАВСТВУ И СТАТУСУ НОСИЛАЦА ПРАВОСУДНИХ ФУНКЦИЈА И АДЕКВАТНОСТ ДРЖАВНЕ РЕАКЦИЈЕ НА КРИМИНАЛИТЕТ (МЕЂУНАРОДНИ ПРАВНИ СТАНДАРДИ И СТАЊЕ У СРБИЈИ)"

1. Учесници саветовања подржавају све мере које су у функцији адекватности државне реакције на криминалитет и превенције криминалитета и сматрају да се оцена криминално-политичке оправданости нових решења у КЗ РС може дати тек након првих резултата њихове примене.

2. Имајући у виду значај фактора степена извесности кажњавања на превенцију криминалитета учесници саветовања су става да је неопходно предузети додатне активности на нормативном и практичном пољу, у циљу повећања степена извесности кажњавања потенцијалних учинилаца кривичних дела.

3. Ценећи искуства казнене политике релевантних држава и криминално- политичке разлоге оправданости нормирања новчане казне учесници саветовања су става да новчаној казни треба посветити знатно већу пажњу у пракси судова Републике Србије.

На Златибору,
21.септембра 2019. год.

About the Journal

The Journal of Criminology and Criminal Law is triannual, peer reviewed scientific journal with a 56-year long tradition, co-published by the Institute of Criminological and Sociological Research and the Serbian Association for Criminal Law Theory and Practice. The Journal includes articles in the field of criminal law, criminology, penology, victimology, juvenile delinquency and other sciences that study etiology, phenomenology, prevention and repression of crime.

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1. The article should be up to 20 pages-long with double space. The authors should use Times New Roman font size 12.
2. The first page should include: **the title of the paper**, **the name and surname of the author**, **abstract** (up to 150 words) and **4-5 keywords**.
   2.1 Right after the surname of the author (on the first page) there should be a footnote with the name of the institution the author is employed

at, the title of the author and E-mail address. In the event that the paper is written in collaboration with other authors, these data should be provided for each of the authors.
Example: Jovan JOVANOVIĆ[1]

2.2 The abstract should include a clearly stated subject, research goals and the main topics which will be covered in the paper.

3. Headings should be written in the following style:
   1. The title of the chapter (Times New Roman, 12, Bold)
   1.1. Subtitle 1 (Times New Roman, 12, Italic)
   1.1.1. Subtitle 2 (Times New Roman, 12, Regular)

Example: 1. **Services Supporting Victims**
1.1. *Categories of Users*
1.1.1. Women and Children

4. Authors should use the **Harvard Citation Style**. The quotation should be followed by the reference in the brackets containing author's surname, the year of publication and the page number.
   Example: (Stevanović, 2009: 152).
   If there are two or three authors, the surnames should be divided with a comma (example: Knežić, Savić, 2012).
   If there are more than three authors, there should be only first author's surname followed by the "et. al" (example: Hawley i dr., 2013).
   If two authors have the same surname, name initials should also be included (example: I. Stevanović, Z. Stevanović, 2015).
   When referencing a secondary source, the reference should include "according to" (example: Ćopić according to Nikolić-Ristanović, 2011).
   If a single reference contains several books or papers, they should be separated with a point comma. (example: Hannah-Moffat, 2005; Kemshall, 2002). In this case surnames of different authors should be in alphabetical order.
   4.1. Footnotes should include only following comments, articles of laws and official gazettes.
   4.2. Foreign names should be written with original spelling.

5. If the paper includes images or charts, they should also be referenced. For example (Chart 2).

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1 Dr Jovan Jovanović is assistant professor at the University in Belgrade. E-mail: jovan@primer.net

Captions should be written above the images or charts.
Example: **Chart 1.** Gender structure of victimisation

6. It is obligatory to supply a list of references or **bibliography** at the end of the paper. It should include all the quoted references in the alphabetical order of surnames. A bibliography unit should include:
For books: author's surname, the name initial, the year of publication in the brackets, the title of the book (in italics), the location of publishing, the name of the publisher.
Example: Milutinović, M. (1977) *Penology.* Belgrade: Savremena administracija.

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