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RISK ANALYSIS OF COUNTERFEITING MONEY IN HUNGARY AND IN THE EU

The article aims to analyze the risks of counterfeiting money. In the first part of the study we are going to analyze the theoretical and practical (statistical) side of counterfeiting money. We will look at the costs of combatting the crime, how fake money can effect the economy, the individual undertakers, and the monetary system. In a statistical standpoint how much financial damage is caused by the Forint and Euro currency counterfeiting in Hungary and in the area of the European Union. The second part of the contribution explores the possible solutions. What kind of legal and non-legal means can be used in combatting counterfeiting money? How effective, proportional and dissuasive is the current Hungarian regulation of the Criminal Code.

Key words: counterfeiting money, national security, risk analysis

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1. Introduction

Counterfeiting money is one of the oldest crimes that exist today. It is probably as old as the use of money. Karl Binding, German legal scholar stated that "the inventor of money invented counterfeiting money as well" (Binding, 1904: 306). The crime in every age breached the king and the state monopoly of issuing money and these conducts were always punished with strict sanctions. From the Principate period of the Ancient Rome counterfeiting money was valued as a crime against the Caesar, a treason crime. Nowadays counterfeiting money is considered as a crime against property or a crime against the economy. Franz von Liszt legal scholar summed up this in his work by stating: "counterfeiting money is a mixed crime, it breaches multiple legal objects. On one hand it breaches the financial interest of the individuals, on the other hand it attacks the security of legal tender" (Angyal, 1940: 36).

In the first part of the study we are going to analyze the theoretical and practical (statistical) side of counterfeiting money. We will look at the costs of combatting the crime, how fake money can effect the economy, the individual undertakers, and the monetary system. In a statistical standpoint how much financial damage is caused by the Forint and Euro currency counterfeiting in Hungary and in the area of the European Union.

The second part of the contribution explores the possible solutions. What kind of legal and non-legal means can be used in combatting counterfeiting money. How effective, proportional and dissuasive is the current Hungarian regulation of the Criminal Code.

2. The dangers of counterfeiting money

Counterfeiting money breaches the state monopoly of issuing money, the security of cash-flow and finally the trust in money as a legal currency. Large amount of counterfeit money in the circulation can endanger the order of economy of the state and the balance of funds and community funds.

John F. Chant (Chant, 2004: 42-54) in his article showed that we pay the costs of counterfeiting in three ways:

- there is the so called redistribution cost of counterfeiting,
- the prevention costs.
- and finally the confidence costs.

The redistribution cost refers to the decrease in the purchasing power. The person who first accepts a counterfeit banknote from the counterfeit is not necessarily the one who bears the loss. The actual victim is the person who is holding the note when it is detected. Until then the money circulates quasi as real money.

There is another redistribution cost from the fact that fake notes can crowd out the real money from the circulation. Lastly the National Bank of the state can lose the so called seignior age which is the difference between the value of money and the cost to produce and distribute it. The redistribution costs are mainly causing damage to the economy in an individual level and not on a national level.

The prevention costs come from the efforts of trying to reduce and stop counterfeiting money in the practice. There are two types of subjects:

– the individuals and the companies,
– the government and the national Bank.

The undertakes have to buy certain means and tools to detect fake money when it's received. They can buy UV lamps and counterfeit detectors. Furthermore they can and often have to participate in prevention trainings as well. The government and the national bank directly try to stop counterfeiting. From the government side, these costs include law enforcement and court expenses. The national banks have spent on developing the security of the cash and removing dated money from the circulation. A multi-author study (Viles, Rush, Rohling, 2015: 8) pointed out that the new issuing of the new banknotes can cause a lot of financial expenses. For example in the USA between 2003 and 2013 the government spent 11 million dollars on the security development on the dollar currency. The prevention costs are causing damage to the whole society in a national level. These costs are usually much higher than the redistribution costs. Brantingham and Easton evinced that the financial crimes in Canada in 1996 caused 12.5 million dollars while the prevention costs were two and a half times higher (Brantingham – Easton, 1998:9).

The confidence costs of counterfeiting are a resultant of the characteristics of money. Just as the telephone the money is not worth much if there are only a few person using it. Some people's decision to switch money over to their other payment methods (e.g. barter) will cost money to the money users because they have fewer transaction partners. Money would lose its value if a critical mass of people would stop using it (Nosala, Wallace, 2007: 994-1001).

This can be confirmed by the practice from Hungary. In 1999 the 5000 Forint banknotes had to be withdrawn from the circulation because there were so high quality counterfeit banknotes in the circulation that the trust in the money wavered.

The Committee (Committee, 2015: 13-15) on Technologies to Deter Currency Counterfeiting in the USA stated this as the psychological effect of counterfeiting money. The national states have recognized that, because of the psychological impact of counterfeiting, it poses a national security risk it can become a weapon of warfare as well. A good example of this is when the British government aimed to destabilize the American Continental Government during the war of independence with counterfeit money (Cooley, 2008:69). It was a similar case in the American Civil War when the North sent fake dollars to the South (Smith, 1944:82).

Fake money can cause inflation as well. The reason of this is that suddenly big amounts of money are in the economy (there are more in circulation than ideally should have). The Purchasing power increases. Furthermore the demand for goods and services also increases. The supply cannot meet demand, the goods become scarce and naturally the prices will increase. After this, the consumers have to pay more for the same amount of goods. The higher the inflation, the less value a single banknote has. Money will become gradually worthless. The supply scarcity caused by large amounts of counterfeit money may also have another negative impact on the economy. It can divert the consumption to the black or gray economy. The devaluation of money and the spread of the black economy together can cause serious damage to the economy. It can further aggravate the adverse effects of inflation if other countries are dumping goods at a lower price to the county. The security of economy will be destabilized. According to Monnet (Cyril, 2005:5) there may be a serious inflationary impact of counterfeiting if the costs of producing counterfeit money are significantly reduced.

3. Actual damage caused by counterfeiters in Hungary

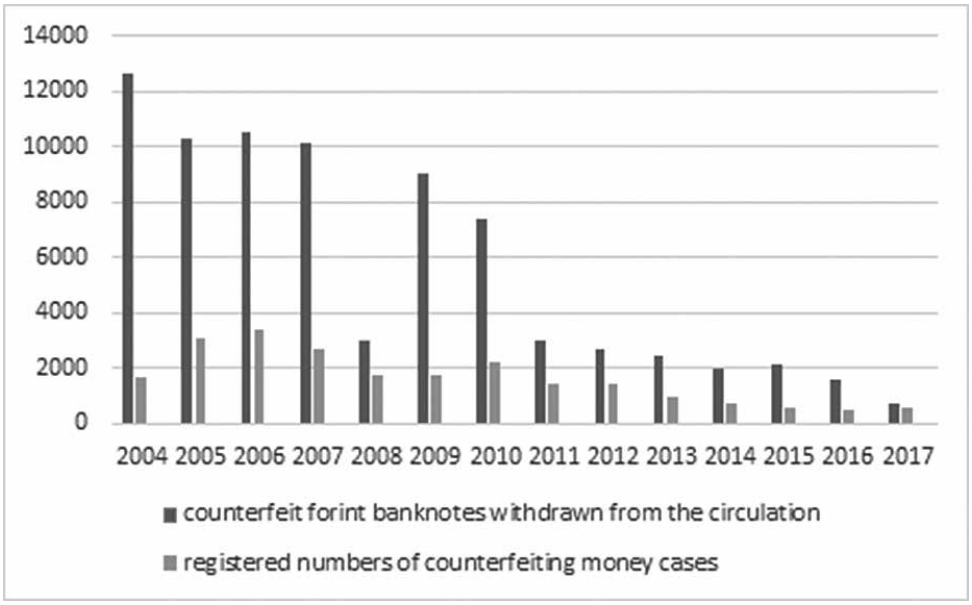
The following table 1 and diagram 1 show that how many counterfeit Forint banknotes were withdrawn from the circulation and how many counterfeiting currency cases were registered by the authorities yearly.

Table No. 1. *The numbers of Counterfeit Forint banknotes withdrawn from the circulation and the number of registered counterfeiting currencies yearly in Hungary.1*

year	counterfeit Forint withdrawn from the circulation	registered numbers of counterfeiting currency
2004	12638	1640
2005	10257	3097
2006	10507	3413
2007	10139	2676
2008	2986	1767
2009	9041	1748
2010	2972	2211
2011	7375	1390
2012	2655	1429
2013	2448	920
2014	1935	695
2015	2149	584
2016	1549	497
2017	716	540

1 Sources: https://www.mnb.hu/kiadvanyok/jelentesek/eves-jelentesek and https://bsr.bm.hu/ accessed on 06.10.2018.

Diagram No. 1. *The numbers of Counterfeit Forint banknotes withdrawn from the circulation and the number of registered counterfeiting currencies yearly in Hungary.*[2]



Since 2012 the number of counterfeit banknotes withdrawn from the circulation in Hungary is low. Both the registered numbers of crimes and the registered counterfeits have a decreasing tendency. Generally speaking if the number of counterfeiting currency cases were higher the numbers of counterfeit banknotes were also higher. There are a few exceptional years. These can explain by the fact that every case is different and there can be significant differences between them. One case is registered if a casual perpetrator wants to sell a few fake counterfeits and one case is registered when a criminal organization generates a huge amount of high quality counterfeit money.

In the most recent year (2017) 716 Forint counterfeits were seized by the authorities. Every year the higher denomination banknotes (mostly 10 and 20 thousand Forints) are counterfeited in a higher percentage. These are the most rewarding for the criminals.

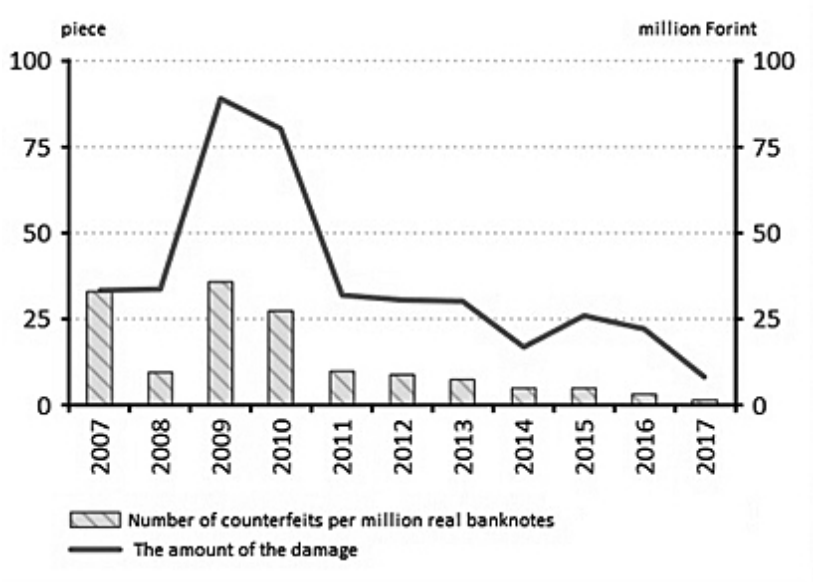
2 Sources: https://www.mnb.hu/kiadvanyok/jelentesek/eves-jelentesek and https://bsr.bm.hu/ accessed on 06.10.2018.

Table No. 2. *The numbers of counterfeit Forint banknotes withdrawn from the circulation in 2017 detailed in denomination.*[3]

Denomination	500 Forint	1000 Forint	2000 Forint	5000 Forint	10000 Forint	20000 Forint
numbers	26	22	20	53	401	194
Percentage	3,5%	2,9 %	2,8%	7,5%	56%	27,2%

According to the report of the National Central Bank of Hungary from 2017[4], the falsification methods did not change considerably, which are mainly committed with office duplicators (colour copiers, printers). Counterfeits can be traced by checking with the help of simple tests e.g. with UV lamps.

Diagram No. 2. *The number of counterfeits in comparison with the numbers or real banknotes and the amount of damage caused by the counterfeit yearly in Hungary.*[5]



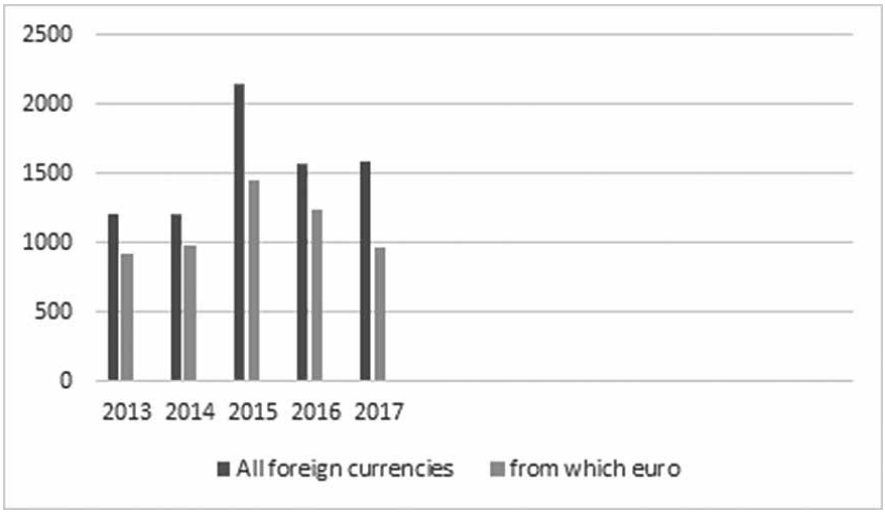
The damage caused by counterfeiters is decreasing in Hungary since 2015. After Hungary joined the European Union euro and foreign currency counterfeiting has slightly increased in the beginning but in recent years it stays relatively low.

3 Source: https://www.mnb.hu/letoltes/mnb-eves-jelentes-2017-hun-digitalis-vegleges.pdf accessed on 06.10.2018.

4 https://www.mnb.hu/letoltes/mnb-eves-jelentes-2017-hun-digitalis-vegleges.pdf accessed on 06.10.2018.

5 Source: https://www.mnb.hu/letoltes/mnb-eves-jelentes-2017-hun-digitalis-vegleges.pdf accessed on 06.10.2018.

Diagram No. 3. *Foreign and euro currency counterfeits withdrawn from the circulation in Hungary*[6]



The number of counterfeit euros in 2017 was only 970 (see Diagram No. 3).

4. Actual damage caused by counterfeiters in the European Union

In the world there are around €913 billion worth of euro notes and €16 billion worth of euro coins are in circulation. The euro is one of most important currency in the world. This currency is continued to be targeted by organized criminals active in money forgery. Since the introduction of the euro (2002) counterfeiting has led to financial damage amounting to at least €500 million. This is confirmed by the seizure of large amounts of counterfeit euro notes and coins and the continuous dismantling of illegal print shops and mints each year inside and outside the EU.[7]

According to the latest figures of the European Central Bank the numbers of counterfeit euro banknotes withdrawn from circulation is moreover decreasing since 2015.[8]

6 Source: https://www.mnb.hu/kiadvanyok/jelentesek/eves-jelentesek accessed on 06.10.2018.

7 http://europa.eu/rapid/press-release_IP-13-88_hu.htm accessed on 06.10.2018.

8 https://www.ecb.europa.eu/press/pr/date/2018/html/ecb.pr180727.en.html accessed on 06. 10. 2018.

Table No. 3. *Numbers of counterfeit euro banknotes withdrawn from the circulation in the EU*[9]

Year	numbers of counterfeit euro banknotes withdrawn from the circulation in the EU
2010	751 000
2011	606 000
2012	531 000
2013	670 000
2014	838 000
2015	889 000
2016	684 000
2017	694 000
2018 first half of the year	301 000

Table No. 4. *Denomination breakdown of counterfeit euro banknotes in 2018*[10]

Denomination	€5	€10	€20	€50	€100	€200	€500
Percentage breakdown	1.2%	1.9%	23.8%	59.3%	10.9%	0.8%	2.1%

Counterfeiters preferably falsify 20 and 50 euro denominated banknotes. These denominated banknotes are widely used and easier to counterfeit than higher denominated banknotes. Lastly higher denominated banknotes are more often controlled.

Most of the counterfeit euros (88.8%) were found in euro area countries, around 10.3% were found in EU Member States outside the euro area and 0.9% were found in other parts of the world.[11]

5. Combatting counterfeiters

5.1. Possible tools: Criminal law

In the fight against counterfeiting criminal law has a vital role. This legal area has the function of general and special prevention by prescribing a criminal law sanction for offender. The Hungarian criminal law has to comply with the international and EU directives as well. Lastly there are formal and content requirement against the statutory provisions. Namely they have to precise, clear and obvious (Kőhalmi, 2012: 37).

9 Source: https://www.ecb.europa.eu/press/pr/date/2018/html/ecb.pr180727.en.html accessed on 06.10.2018.

10 Source: https://www.ecb.europa.eu/press/pr/date/2018/html/ecb.pr180727.en.html accessed on 06.10.2018.

11 https://www.ecb.europa.eu/press/pr/date/2018/html/ecb.pr180727.en.html accessed on 06.10.2018.

Counterfeiting money has become an international phenomenon since the 20th century. After the Great scandal of the counterfeiting of the French currency (franc) the 1920s where around 30thousand counterfeit banknotes were withdrawn from the circulation and the place of perpetration was in several countries it was clear that the criminals have no boundaries. The scandal had a positive outcome, that they adopted the International Convention for the Suppression of Counterfeiting Currency in 1929. This was drafted by the League of Nations whereby states agree to criminalize acts of currency counterfeiting. Even today it is the primal international agreement on currency counterfeiting. This was adopted in Hungary as well with the Act XI of 1933. It was a problem before that foreign currencies weren't as well protected as national currencies in some states (Fritz-Maurice, 1932: 533).

The EU has adopted a Directive in 2014.[12] Before the adoption of the Directive there were 3 main weaknesses in the legal framework on the protection by criminal law measures of the European single currency against counterfeiting:

1. Insufficient sanctions
2. Cross-border investigations hampered and
3. Insufficient prevention

The level of penalties for currency counterfeiting was not sufficiently dissuasive and effective.

There were important differences between the sanctions foreseen in Member States, which was one of the reasons for insufficient deterrence and uneven protection of the euro and other currencies across the European Union. Criminals intend to counterfeit euros in countries where the sanctions are not as strict as in other Member States. (so called „Forum Shopping"). Cross-border investigations and prosecutions were unsuccessful due to cooperation problems resulting from differences in availability of efficient investigative tools, (such as interception of communications, the monitoring of bank accounts and other financial investigations).

There are three punishable conduct groups in the Directive:

1. Productive type of conducts:
– any fraudulent making or altering of currency, whatever means are employed;

12 The EU Directive 2014/62/EU.

2. Distributive and transit type of conducts:

– the fraudulent uttering of counterfeit currency;

– the import, export, transport, receiving or obtaining of counterfeit currency with a view to uttering the same and with knowledge that it is counterfeit;

3. Preparatory type of conducts

– the fraudulent making, receiving, obtaining or possession of

– instruments, articles, computer programs and data, and any other means peculiarly adapted for the counterfeiting or altering of currency; or

– security features, such as holograms, watermarks or other components of currency which serve to protect against counterfeiting.

The sanctions are differentiated by these conduct groups:

– the productive type of conducts should have maximum penalty at least 8 years imprisonment.

– the distributive and transit type of conducts should have 5 years imprisonment.

– There is an exception from the above rule. If a citizen receives counterfeit currency without the knowledge that it is counterfeit, but passes it on with the knowledge, this is clearly criminalized, but Member States may decide to set, as the maximum penalty, a penalty of less than 5 years of imprisonment or a fine.

– The preparatory type of conducts should be punishable by a maximum sanction which provides for imprisonment.

Member States shall take the necessary measures to ensure that legal persons can be held liable for the offences:

– committed for their benefit by any person acting either individually or

– as part of an organ of the legal person who has a leading position within the legal person based on

- a power of representation of the legal person;
- an authority to take decisions on behalf of the legal person; or
- an authority to exercise control within the legal person.

If we look at the comparison between the Hungarian and the EU legislation the Criminal Code of Hungary complies with every aspect of the Directive.

Table No. 5. *Comparison of the Directive and the Hungarian Criminal Code*[13]

The Directive	The Hungarian Criminal Code
Productive type of conducts: the maximum penalty shall be at least 8 years imprisonment	ay person who: imitates or counterfeits currency with the purpose of distribution is guilty of a felony punishable by imprisonment between 2 to 8 years.
Distribution conducts: maximum penalty shall be at least 5 years imprisonment	Who imitates or counterfeits currency with the purpose of distribution; obtains counterfeit or falsified currency with the purpose of distribution, exports or imports such currency or transports it in transit through the territory of Hungary; is guilty of a felony punishable by imprisonment between 2 to 8 years
Preparatory acts: the maximum penalty shall contain imprisonment	Preparation of counterfeiting maximum 3 years imprisonment Aiding in counterfeiting max. 2 years

The Directive and the Hungarian criminal law (specifically in the Act CIV of 2001 on the Criminal law measures against legal persons) have sanctions against legal entities.

Table No. 6. *Comparison of the Directive and the Hungarian Criminal Code*[14]

The Directive	Act CIV of 2001
shall include criminal or non-criminal fines (compulsory)	1. imposing a fine.
May include judicial winding-up (facultative)	2.winding up the legal entity,
temporary or permanent disqualification from the practice of commercial activities (facultative)	3. limiting the activity of the legal entity,
Other facultative sanctions: exclusion from entitlement to public benefits or aid placing under judicial supervision; temporary or permanent closure of establishments which have been used for committing the offence.	

13 Sources: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0062 and https://net.jogtar.hu/jogszabaly?docid=A1200100.TV accessed on 06.10.2018.

14 Sources: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0062 and https://net.jogtar.hu/jogszabaly?docid=A0100104.TV accessed on 06.10.2018.

The Directive contains only one compulsory sanction (fine) for the Member States which is in the Hungarian regulation. There are other facultative sanctions as well.

Overall the Hungarian regulation complies with the Directive. Under this rule there is no need to modify the Criminal Code.

The Hungarian Criminal Code also punishes the aiding in counterfeiting money in a separate statutory provision though the preparation of the crime is already punishable. Under our opinion this is unnecessary and we recommend that the aiding in counterfeiting should be abolished. The only difference between aiding and preparation is that the offender has concrete aim in the first to use the tools for counterfeiting which is problematic. Furthermore in the practice the aiding statutory provision is rarely used there are usually between zero and three registered crimes per year.

Otherwise the statutory provisions are all together clear and well rounded.

5.2. Possible tools: Non-legal means

There are two groups concerning the tools for combatting counterfeiting money.

- The passive tools can be found in the technology of production of the coins and banknotes by the National Banks.
- The active measures can be explored in the financial professionals working with banknotes, training and information of citizens and other crime prevention toolkits.

In the passive tools we can highlight the minimal requirement that the original banknote should have a different material than the regular office paper. They should weigh more, be more durable. There is a new technology that money can be made from polymer (plastic like material). Today many countries like England and Romania are adopting these technologies to defend their currencies. Polymer banknotes can be harder to counterfeit than regular banknotes.

In Hungary the National Central Bank did not use the new technology but they introduced new banknotes with more security features. This progress started in 2014. Recently the 1000, 2000, 5000, 10000, and 20000 Forint denominated banknotes were changed in the circulation.[15]

Just to illustrate on one banknote the 20 000 Forint has the following new security features:

15 https://www.mnb.hu/en/banknotes-and-coins/news accessed on 06.10.2018.

– The banknote has a holographic foil. On the front of the banknote a person can see an articulated holographic foil strip to the right of the watermark area. On the surface, the repeating elements are the coat of arms of Hungary.

– There is a hidden image in the banknote. If the banknote is held near eye level and rotated in plane an inscription appears in ornamental motif.

– The 20 000 Forint has a security thread. Under a magnifying glass, the inscription "MNB" (the abbreviation of the Hungarian Central bank) and the number' "20000"appear repeatedly which is visible from both sides.

– The banknote has a watermark. If you hold up the banknote to the light, you can see the mirror image of a multi-toned watermark of the portrait of Ferenc Deák.

– Also it has a UV motif. If you someone looks at the watermark area under UV-A and IIV-C light on the front, the image of a man and a woman walking in period historic clothing and the number 20 000 appear. The clothing of the walking people and the upper number fluoresce green under UV-A light and red under UV-C light. The lower number and a few elements of the walking people are of orange and brown colour under UV-A and UV-C light, respectively.

– It has a variable ink. When tilted the central motif of the front side of the money changes from gold to green.
– It has an iridescent printing, on the back of the banknote, there is a golden stripe to the left of the watermark area, in which the number 20000 and the inscription '"MNB" appear when the banknote is tilted.
– The banknote has fibres embedded in the banknote paper fluoresce under UV-light in blue and green, and randomly spread red dots are also visible.
– Lastly every single banknote has a unique serial number. Under UV A light, the horizontal serial number on the left and the vertical serial number on the right fluoresce green.[16]

After the production of the banknotes the citizens should detect and identify the differences between the real and fake money. This is the active measure in the fight against counterfeiting money. The citizens, financial workers, shop assistant should be educated to prevent the crime. The media has a vital role as well to give attention of the recent counterfeits in the circulation. There is a positive example in the European Union for the active measures it is called the Pericles Programme 2020.

The Pericles Programme 2020 spends on staff exchanges, seminars, trainings and studies for law enforcement and judicial authorities, banks and others

16 https://www.mnb.hu/letoltes/2017-forint-fuzet-eng.pdf accessed on 06.10.2018.

involved in combating euro-counterfeiting. According to the programme the actions can take place not just in the EU but in the euro area as well (e.g. in Montenegro). Since 2015 applications by all the EU Member States' competent authorities can be introduced to receive co-financing. The Pericles 2020 programme dedicates around 7,3 million euros for the implementation of the programme, for the period between 1 January 2014 and 31 December 2020. The goal of the action programme is to prevent and combat counterfeiting and related fraud. With these actions the competitiveness of the Union's economy and securing the sustainability of public finances will be enhanced. The Programme especially protects the euro banknotes and coins against counterfeiting and related fraud, by supporting and supplementing the measures undertaken by the Member States. Currently there are two forms of the technical, scientific and operational support:

– grants – co-financing for specific projects proposed by the relevant national authorities in response to its calls for proposals. This includes:

– exchange and dissemination of information, in particular through organising workshops, meetings and seminars, including training, targeted placements and exchanges of staff of competent national authorities and other similar actions.

This programme especially provides assistance to:

– national law enforcement agencies, national central banks and issuing institutions and judicial authorities in the public sector and

– commercial banks, money exchange offices and the cash-operated industry in the private sector.[17]

6. Summary

In conclusion counterfeiting is not primarily a quantity but a quality problem of crime. The real threat of this crime is the damage it can cause to the economy. High numbers of fake money in the circulation can destabilize the economics relations, and the trust in a country's money.

The EU Directive obliges the Member States to protect the euro and other currencies with efficient investigational tools like in the organized crime cases.

The comply with the Directive we suggest that in the case of the more serious counterfeiting the competence of the investigation of counterfeiting money should be delegated to the Counterterrorism Centre (Terrorelhárítási Központ: TEK). In our opinion this would enhance the investigation tools in the Hungarian

17 https://ec.europa.eu/info/business-economy-euro/euro-area/euro/anti-counterfeiting/pericles-2020-programme-exchanges-assistance-training_en accessed on 06.10.2018.

investigative system. Under the actual statistics the registered numbers counterfeiting currency and the fake money withdrawn from the circulation has a decreasing tendency. We also expect that this trend continues but the lawmaker and the law enforcement should prepare for newer counterfeiting waves in the future.

According to Article 10 of the Directive Member States have to ensure that during criminal proceedings the examination by the National Analysis Centre and Coin National Analysis Centre of suspected counterfeit euro notes and coins for analysis, identification and detection of further counterfeits is permitted without delay. The authorities have to transmit the necessary samples without any delay, and at the latest once a final decision concerning the criminal proceedings has been reached.

In our view the Hungarian National Bank fulfills this function correctly and should keep this in the future. In a preventive point of view, it is important that the normative regulation is comprehensive and adequate. Under our opinion the statutory provision of aiding of counterfeiting money is unnecessary and we recommend that the aiding in counterfeiting should be abolished.

Alongside the law it is important to have active and passive measures against counterfeiters. There are positive examples for both are like renewal of the Hungarian Forint and the Pericles Programme in the EU.

The fight against counterfeiting can only be successful if the state keeps pace with technical modernization.

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EFFICIENCY OF CRIMINAL PROCEEDINGS – BETWEEN EXPECTATIONS AND REALITY

In the light of current debates on modern criminal proceedings, the question of its efficiency has a special place. This is quite realistic, as the modern criminal procedure is expected to be efficient, i.e., to resolve a criminal matter in an optimal timeframe, in a legal manner. This is not just a matter of public opinion, but also a general one, because citizens rightfully expect efficient criminal justice. In this sense, the legislator makes appropriate solutions (e.g. prescribes criminal procedural standards, introduces new, shortened procedures, approaches to organization of judiciary, and regulates interrelated relations between criminal prosecution subjects, etc.). So the legislator in Bosnia and Herzegovina tried to create conditions for the criminal proceedings to be efficient. A new investigation concept (prosecution investigation) was introduced, new criminal proceedings instruments were introduced (for example, guilty plea agreement, special investigative actions, etc.), specialization of some judicial bodies was carried out in the fight against certain forms of crime (for example, the Special Department for Combating Corruption, Organized and the Most Difficult Forms of Economic Crimes established by the Anti-Corruption Law, Organized and the Most Difficult Forms of Economic Crime in the Republika Srpska), improved

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mutual relations between criminal proceedings subjects, especially Prosecutor's Office and Police, etc. The second question is the question of their adequacy and efficiency.

Here we face the reality. Not only that the long-term duration of criminal proceedings is inadequate to the criminal reaction, but it also brings into question fundamental rights such as the right to a fair trial within a reasonable time. In addition, criminal proceedings often end with acquitting verdicts, but not because of the established truth, but because such violations of regulations that lead to such violations have been committed. Likewise, the question arises of the achieving of the purpose of punishment in cases of termination of criminal proceedings by pleading guilty, guilty plea agreement or by a criminal warrant. Although the abovementioned shortened proceedings are characterized by conduct efficiency, they are very often in disagreement with their purpose, especially in terms of determining of criminal sanctions.

Key words: criminal proceedings, court, prosecutor, suspect, accused, efficiency, adequacy.

1. Introduction

Criminal proceedings are proceedings in which the state, through its state organs and some other persons, takes a whole line of activities in an appropriate manner to change provisions of substantive criminal law if there is doubt a criminal offence has been committed in a concrete case (Simović, Simović, 2016: 25). Accordingly, this is a set of criminal proceedings conducts of procedural subjects: the court and the parties (the prosecutor and the suspect or the accused), regulated by the procedural rules and directed to obtain a judicial decision after having known about the criminal offense or decisions on other procedural relations related to the criminal offense, and which require the participation and decision of the court (Vasiljević, 1981: 5). As such, the criminal proceedings go through several stages, from investigation and confirmation of the indictment (preliminary hearing), to the final hearing of the criminal matter at the main proceedings (the main hearing, issuance and publication of the judgment, proceedings following legal remedies) (Simović, Simović, 2016: 27).

The separation of the preliminary and the main proceedings is not an obstacle to the uniqueness of the criminal proceedings, so the case files of the preliminary hearing may also be used in the main hearing (Simović, Simović, 2014: 17). It is also in line with legal standards of the European Court of Human Rights (hereinafter: the European Court) which may examine the completeness and efficiency

of the investigation in the context of control of the compliance with the state's procedural obligation to efficiently prosecute and ensure the detection and punishment of offenders, under Articles 2 and 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms1 (hereinafter: the European Convention) (Simović, Simović, 2014: 21). For this reason, the criminal proceeding is understood as the totality of all the activities undertaken by authorized entities, from the moment of finding out about the criminal offense (investigation) until the adoption of a final judicial verdict.

Criminal proceedings has to organized to ensure a fair trial, which means that the proceedings have to be fair, i.e. to be conducted within „a reasonable time limit" and comply with specific requirements referring to consideration of dispute and release of judgment. This right is directly connected with efficiency of criminal proceedings. Efficiency of criminal proceedings, as such, understands its qualitative component (legality of conduct of criminal proceedings and making of a just and lawful court decision) and quantitative component (elaps of time from initiation of criminal proceedings until a valid court decision) (Bejatović, 2010: 189). Realization of planned activities and planned results should also be added to this relation, which would correspond to the concept of efficiency of criminal proceedings. Actually, determination of efficiency would not have sense without determination of effectiveness, because it point to rationality of use of resouces for achievement of a goal (Radlovački, Kamberović, Radaković, 2008: 7-12.; Jager, Šugman Stubbs, 2017: 355-370)[2]. Therefore, as efficient criminal proceedings may only be considered a proceeding in which, in a realistically short time elaps from its intitation until its completion and with lots of respect for legality of its conduct, just and lawful final court decision is issued (Bejatović, 2015a: 28). Those are the cases in which criminal proceedings have not been prolonged without justification, in which the parties has a realistic possibility to achieve their rights, where a specific significance has a right to defense of accused, but also duties when the case is about official participants of criminal proceedings (Škulić, 2015: 41-75). In a close relationship is also the principle of a process economy that consists of imposing of criminal procedure so that with the shortest possible loss of time, with as little work as possible and with as little

1 The Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, Rome, Counicil of Europe. Available at internet6 web site https://www.echr.coe.int/Documents/Convention_ENG.pdf, accessed on 3 October 2018.

2 Otherwise, it is commonly known that the concepts of efficiency and effectiveness are economic terms and are used primarily as indicators in economic processes. It is therefore necessary to consider how efficiency assessment models (determining the amount of resources spent to achieve the goals) and effectiveness (determining the level to which the process goals are achieved) can be applied in criminal and legal sciences.

expense as possible, the immediate goal of each process is achieved, as well as the ultimate goal of obtaining a fair and just verdict (Vasiljević, 1981: 253). Thus, the efficiency of criminal proceedings is also the expression of the right to a fair trial, according to which anyone charged with a criminal offense has the right to have his case examined within a reasonable time by a court. This is a standard that is an important feature at all stages of criminal proceedings, such as modern science of criminal procedural law, as well as criminal procedural legislation, i.e. criminal policy in general (Bejatović, 2008: 3–40.; Đurić, 2008: 9–39; Radulović, 2011: 125-137).

The efficiency of the criminal proceedings has been regulated by the legislator in Bosnia and Herzegovina by prescribing the situations in which the proceedings can be completed at a certain stage, as well as by introducing new forms of shortened procedure (Simović, 2009: 195-223). Simplified forms of the way of dealing with criminal matters are one of the most important instruments of the efficiency of criminal proceedings (Bejatović, 2009a: 77-105). The justification for the parallel existence of several types of criminal proceedings in the specific criminal legislation is based upon the heterogeneous structure of crime - the heterogeneous structure of criminal offenses and their perpetrators (Bejatović, 2013: 11-31). As such, they are intended, as a rule, to the trial for more simple criminal cases (less severe and more severe criminal offenses). If this is added to the fact that this group of criminal offenses in the overall structure of crime occupies a significant place, then the importance of these proceedings becomes even more intensive. Additionally, when it comes to the criminal-political justification of these proceedings, it is necessary to have another fact in mind, and that is that these proceedings, by virtue of their practical application, by unburdening of the courts, also give a direct contribution to increase of the quality of trials for more severe criminal cases, since the courts have more space for more severe and more complicated criminal cases (Bejatović, 2013: 12).

The second question is the applicability of the aforementioned norms in the court case-law. A question arises here, quite justifiably, when a fair trial within a reasonable time has been violated. On the other hand, this is not formal question, but it is a factual question that is solved in each particular case depending on the gravity of the criminal offense and other features of the particular criminal case and of taking into account the positions of the European Court of Human Rights regarding this matter (See: Simović, 2012: 37–68). In addition, it is indisputable that shortened forms of proceedings, particularly for less severe criminal offenses, criminal proceedings would have more dynamic character with a shortened deadline for their finalization. This would, theoretically, enable the preparation and conduct of the main proceedings for more severe criminal offenses,

which cannot be completed in the aforementioned manner, but require the conduct of all stages of the main proceedings. Here too, we can ask the question of the practical applicability of shortened procedures, i.e. the realization of complete and clear purpose of punishment in this way, with the simultaneous full guarantee of human rights and freedoms.

2. The right to a fair trial within a reasonable time

The right of participants in criminal proceedings to have the court decided on his rights and obligations within the shortest period of time without unnecessary stalling, bring the efficiency of the criminal proceedings and the right to a fair trial within a reasonable time into direct connection. This even more, since the matter is about two mutually and tightly connected components: the promptness of conducts and lawful solution of criminal matter (Bejatović, 2000: 145-155). In doing so, we do not look at efficiency in the simplified form of the promptness of criminal proceedings, but we take into account its qualitative and quantitative component. On the other hand, the right to a trial within a reasonable time is included in the fundamental human rights (Đurđić, 2013: 56-66) as one of the aspects of the right to a fair trial prescribed under the European Convention. It is explicitly listed (Omejec, 2008) in Article 6 of the European Convention as such. The European Court of Human Rights, in that regard, took the position by establishing that any unjustified delay was contrary to the right to a fair trial[3], whereby the States are obliged to ensure that the accused does not have to be under charges for a long time and that the charge is specific[4]. Conduct of the proceedings within a reasonable time is of fundamental importance for the entire legal system, because any unnecessary delay often leads, *de facto*, to the deprivation of the individual's rights and to the loss of efficiency and trust in the legal system (Simović, 2015: 9-33).

The Constitution of Bosnia and Herzegovina in Article II/3(e) prescribes the right to a fair trial, i.e. the right to a fair hearing in civil or criminal matters, and other rights relating to criminal proceedings. Stated provision is elaborated in the Criminal Procedure Code of Bosnia and Herzegovina[5] (hereinafter: the Criminal Procedure Code) and presents the content of the right to a trial without any delay (Article 13) (Simović, Simović, 2016: 30).

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3 *Cazanovas v. France*, No. 441/1990, 7 July 1993.

4 *Wemhoff v. Germany*, No. 2122/64, 27 June 1968.

5 Criminal Procedure Law of Bosnia and Herzegovina, "Official Gazette of Bosnia and Herzegovina", Nos. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07,

This right is also provided by prescribing deadlines in which a court has to make a decision or perform another procedural action, most often in cases where the suspect, or the accused is in custody (e.g., Articles 134-138), and sometimes in general (Article 225, Article 233 paragraph 2, Article 367, etc.). In this regard, it is stipulated that: „If the investigation is not completed within six months of the issuance of an investigation order, the necessary measures shall be taken to complete the investigation by the Collegiate Body of Prosecution" (Article 225 paragraph 3).

When deciding on the indictment, the preliminary hearing judge is obliged to „examine immediately upon receipt of the indictment whether the court is competent, whether there are any circumstances under Article 224 paragraph (1) t. d) of this Law, and whether the indictment is duly made in accordance with Article 227 of this Law)" (Article 228 paragraph 1). The preliminary hearing judge can either confirm or reject all or some counts of the indictment within eight days, and in complex cases within 15 days of receipt of the indictment (Article 228 paragraph 2). The deadline for submitting an indictment to the accused who is at liberty is - immediately, without delay, and if he is detained, within 24 hours upon confirmation of the indictment. (Article 228 paragraph 5). The main hearing shall be scheduled within 30 days from the date of the plea. This deadline may be extended for another 30 days (Article 229 paragraph 4). The deadlines are specified in the case of a plea agreement as well, so if the Court rejects a plea agreement, the main hearing must be scheduled within 30 days (Article 231 paragraph 8) (Compare: Sijerčić-Čolić, Hadžiomeragić, Jurčević, Kaurinović, Simović, 2005: 72-73). The applicability of these provisions shall be elaborated in the below text.

In several decisions the Constitutional Court of Bosnia and Herzegovina found violation of the right to a fair trial under Article II/3e) of the Constitution of BiH and Article 6 of the European Court of Human Rights, and fundamental freedoms referring to the right to a decision within a reasonable time. In relation to this, and on the basis of the Rules of the Constitutional Court[6], the competent court was ordered to promptly complete the proceedings, and to inform the Constitutional Court, within 90 days from the date of submission of the decision, of the measures taken to enforce this decision (Radolović, 2008: 277−315). Therefore, the right to a trial within a reasonable time exists both in the interest of persons whose rights and obligations are deliberated upon, or against whom a certain proceedings are conducted against (subjective component), and in the interest of legal security and the rule of law in general (objective component)

15/08, 58/08, 12/09, 16/09, 93/09 and 72/13.

6 Rules of the Constitutional Court – Revised text, "Official Gazette of Bosnia and Herzegovina", No. 94/14.

(Bejatović, 2015b: 9-33). Accordingly, it is in the interest of all the participants to the proceedings, including the accused[7].

When assessing the violation of this right, it is necessary previously to determine the beginning of relevant period, its end, as well as to assess the length of time. The easiest way to determine whether the proceedings were concluded within reasonable time is to establish exact period of time (Simović, 2015: 67). In criminal matters, deadline for assessment of reasonableness of the length of proceedings, in principle, starts running from the moment the accused was subjected to "accusation", and ends upon valid termination of the proceedings (Carić, 2015: 34-48). Anyways, it is necessary that each case is assessed based on its own circumstances, and some general instructions are very difficult to establish. The European Court of Human Rights generally uses standard formula to define its approach to assessment of duration of criminal proceedings. Reasonable duration of the proceedings should be assessed in the light of a particular circumstances of a case, taking into account criteria presented in the case-law of the Court, and especially the complexity of a case, behavior of the plaintiff, and behavior of competent authorities[8]. In addition, it is also important to take into account what the applicant risks in that dispute[9]. Accordingly, factors for assessment of efficiency of criminal proceedings include assessment of legal and factual issues of a particular case, behavior of the plaintiff, behavior of court and administrative organs of the defendant state and significance the issue discussed before a court has for the plaintiff (Carić, 2015: 35).

3. Assessment of efficiency of criminal proceedings

To speak about the assessment of efficiency of social phenomenon like criminal proceedings, its goals should first be defined, and they have to be clear and measurable (Jager, Šugman Stubbs, 2017: 359). So, the general goal would be to enable application of substantive criminal law to a concrete case, i.e. to establish

7 Although the accused cannot be expected to contribute to accelerate the proceedings that could result in his conviction, it could be in his interest to remove the uncertainty of conviction. Bejatović, S. (2015b). *op.cit*., pg. 14.

8 For example, see case-law of the European Court of Human Rights: *Buchholz v. Germany*, No. 7759/77, 6 May 1981.; *König v. Germany*, No. 6232/73, 28 June 1978.; *Zimmermann & Steiner v. Switzerland*, No. 8737/79, 13 July 1983.; *Mikulić v. Croatia*, No. 53176/99, 7 Febrary 2002.; *Mamič v. Slovenia*, No. 75778/02, 27 June 2006.; *Pelissier and Sassi v. France* (GC), No. 25444/94, 999−II.; *Yağ ci and Sargin v. Turkey, No. 16419/90 and 16426/90, 8 June 1995.; Gelli v. Italy, No. 37752/97, 19 October 1999.; Vachev v. Bulgaria*, No. 42987/98, 8 July 2004.; *De Clerck v. Belgium*, No. 34316/02, 25 September 2007.

9 *Philis v. Greece*, No. 2, 27 June 1997.

by a court decision a criminal offense was commited, whther it was committed by the accused, whether the accused may be imposed a criminal sanction (Simović, Simović, 2016: 35), while special goals refer to individual states and phases of the proceedings, which fit into a general goal (Simović, Simović, 2016: 35). Accordingly, the goal is to achieve principles of legality, so that noone innocent would be convicted, and to impose on the perpetrator of the criminal offense criminal sanction under conditions prescribed in the Criminal Code of Bosnia and Herzegovina[10] (hereinafter: the Criminal Code) and other laws of Bosnia and Herzegovina prescribing criminal offenses, in a legally prescribed proceedings (Article 2 paragraph 2). In that sense, it is important that criminal proceedings do not last more than it is objectively needed, and that its duration in each concrete case is a matter of factual and unique circumstances (Škulić, Ilić, 2012: 23). Accordingly, a quality court decision and impartial consideration of all the issues (factual and legal) are integral parts of such understood efficiency (Filipović, 2017: 6).

Factors of the effectiveness of criminal proceedings, such as the facts on which the termination of a criminal matter within specific time depends, on one hand, in a legitimate and just manner, on the other hand, are the equivalent factors of both components (Bejatović, 2015a: 32). Nevertheless, it would be superficial to relate the efficiency of the criminal proceedings with the speed of its termination, only by taking into account criterion of trial within a reasonable time. Actually, the speed by itself is a relative category and should not be simplified identified with the efficiency of the criminal proceedings (Škulić, Ilić, 2012: 23). It is perfectly clear that prompt and efficient criminal proceedings are not the same (Škulić, Ilić, 2012: 23). In these cases, it seems that the right of the suspect is excessively emphasized, and neglects the obligation of the state or the judiciary as a whole to complete the criminal matter within a certain time, without unnecessary delay. In fact, disturbance of balance between these principles leads to either the authoritarianism of rights (giving advantages to efficiency) or to protection of the society from crime (giving advantage to human rights and freedoms) (Radulović, 1997: 155-215). It is therefore justifiable to set up a request for respect for the rights and freedoms of the defendant, on the one hand, and for the completion of the criminal proceedings within a reasonable time, on the other (Kolaković-Bojović, 2013: 373-384).

Another important issue for assessing the efficiency of the criminal proceedings refers to the parties participating in it, as well as the time of action, in which it is possible to estimate their individual efficiency and the efficiency of

10 Criminal Code of Bosnia and Herzegovina, "Official Gazette of Bosnia and Herzegovina", Nos. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15 and 40/15.

the proceedgins as a whole. Namely, as criminal proceedings involve more than one parties undertaking various activities (each from their jurisdiction), these issues become relevant. In this respect, the actions of prosecution and the police are very important in the investigation, while the court has the primacy in the course of the main proceedings. At the same time, this is the question referring to the moment from which the criminal proceedings are considered to be initiated. Although there are different opinions here11, as criminal proceedings are composed of two stages (preliminary and main proceedings (Simović, Simović, 2016: 29)) in the criminal procedural legislation, taking of first activities in the previous stage is considered as the moment of initiation of the criminal proceedings.

Taking into account the above stated, in the most general sense, the assessment of the efficiency of the criminal proceedings can be observed through efficient legal norm and the efficiency of the criminal proceedings.

An efficient legal norm implies such a norm that enables its full applicability in practice, so the criminal matter would be resolved lawfully within an optimal timeframe. At the same time, the legal norm is legally efficient if, at the final instance, all its provisions are applied and enforced in a legally prescribed manner (Jager, Šugman Stubbs, 2017: 373). Only in situations when we have an adequate legal norm and its adequate application - we can speak about simultaneous preconditions of efficiency of a state reaction to crime (Bejatović, 2017a: 291-315). Assumptions for the realization of a process economy are ensured, firstly, by the law itself, by avoiding of unnecessary procedural forms, which slow down the proceedings and increase the costs. In addition to this, the legal norm, to have this function following its content, would have to be characterized by a high level of precision in the definition of certain legal terms and prescribing of precise requirements for the application of certain measures and institutes (Bejatović, 2017b: 450). Likewise, the efficiency of criminal proceedings, when it comes to legal norms, is characterized by stipulation of simplified forms of action12 (shortened proceedings).

It can be concluded that the trend in comparable legislation, including our country, prescribes the possibility of conclude the criminal proceedings without conducting the main trial, either through the confession of the suspect, guilty

11 According to the opinion of one group of authors as the beginning of criminal proceedings is considered the moment a particular opinion of the court is presented in relation to the indictment, while, according to the others, this moment is connected with the principle of accusation, and the beginning of the criminal proceedgins refers to filing of appropriate indictment act. See more details in: Škulić, 2009: 317.

12 In 2013 OSCE Mission in Serbia published on this topis a monography of group of authors under title *Simplified forms of conducts in criminal matters – Regional criminal and procedural legislations and experiences in application,* whose editors are Ivan Jovanović and Miroljub Stanis-

plea agreement or by a criminal order. Of course, it is necessary to take into account that the legal norm prescribing these possibilities is in accordance with the basic principles of criminal proceedings. In fact, each basic principle on which the establishment of regular criminal proceedings is based extends its validity to simplified forms of judgments in criminal matters if it is not limited or even abolished during the construction of a given procedural form (Đurđić, 2013: 65). Also, viewed from a normative point of view, efforts are made to speed up the preliminary criminal proceedings by expanding the principle of opportunity of criminal prosecution which allow the criminal prosecution bodies a higher rejection rata of criminal charges for minor crimes and thus to greater extent orientation of judicial bodies to more complex and more severe criminal cases (Bejatović, 2009b: 125-144). It should be emphasized here that the practical realization of the aforementioned request does not go beyond the lawfulness of the criminal proceedings or the threat to guaranteed rights and freedoms of the participants in the proceedings (Šikman, Bajičić, 2014: 285-310).

Efficiency of entities of criminal proceedings understands the organization of the judiciary and other entities participating in the criminal proceedings as well as their mutual relations. Given the complexity of the proceedings detecting and proving criminal offenses and the variety of measures and actions undertaken to that end, it is evident that it is a broad circle of entities whose activities affect their initiation, conduct and conclusion of criminal proceedings (Šikman, Bajičić, 2014: 295). There is no doubt that that the efficiency of criminal proceedings as a whole shall depend, to the most possible extent, on the efficiency of their actions (Bejatović, 2015a: 46).

In addition to the individual efficiency of the criminal proceedings, great importance for the efficiency of detection and proving of criminal offenses also has mutual relationship and cooperation of the process entities. This relationship, in order to serve the function of efficiency and adequacy of reaction to crime, must be a feature of the entire criminal proceeding, from its previous stage to the main stage of criminal proceedings. Thus, in the investigation, as the first stage of the preliminary proceedings, a professionally engaged relationship between the police, the prosecutor and the pre-trial judge, as well as with the defense counsel who can contribute to the efficiency of the criminal proceedings, must come to light. Furthermore, in view of the mutual relations between the criminal prosecution entities, their co-operation at the main hearing is of special

avljević. This monography has an extremely significant and actual problem of criminal procedural legislation of the countries in region (Serbia, BiH, Croatia, Macedonia, Slovenia and Monte Negro), and wider, as a topic.

value, which is particularly reflected not only to the duration of criminal proceedings within the boundaries necessary for objective and complete illumination and resolution of criminal matters, but also to the legality of the judicial decision (Bejatović, 2017a: 295). The circumstances of subjective nature, expressed through the expertise, engagement and motivation of the judicial functionaries in the work, should be added to the above (Bejatović, 2015a: 47).

4. Challenges of the efficiency of criminal proceedings

Given that we have accepted the view that the criminal proceedings are viewed as an entirety, including the preliminary and the main proceedings, and determined the efficiency factors of the criminal proceedings, then we can also talk about the challenges of the efficiency of criminal proceedings.

The first of them concerns the beginning of the investigation, which is *de facto* the beginning of the criminal proceedings as well. The investigation shall include activities undertaken by a prosecutor or an authorized official in accordance with the Criminal Procedure Code, including the collection and preservation of statements and evidences (Article 20 t.i) and shall commence if there are grounds for suspicion that a criminal offense has been committed (Article 216 p.1). Therefore, the formal requirement for initiating and conducting an investigation is the existence of a prosecutor's order, and the material requirement is existence of grounds for suspicion (Pivić, 2017: 9-45). While it would not be a problem to meet the formal requirement, because the order to conduct the investigation is a written act of the Prosecution with the law prescribed content, the other requirement is questionable in every sense. Namely, the ground for suspicion, as an indication or ground of suspicion, are the facts that point out to the existence of a criminal offense and the closer or further connection between that offense and a person, on the basis of which, more or less probably, it can be concluded whether a criminal offense was committed or not, what was the connection between certain person (persons) and the criminal offense, as well as other circumstances relevant to the clarification of criminal matter (Vodinelić, 1985: 188). It often only allows for a preliminary criminal differential diagnosis with regard to the existence of a criminal offense and a possible perpetrator, and is called "sufficient doubt" (Modly, Petrović, Korajlić, 2004: 64 i 65). It is clear that this is the lowest degree of probability, without any structure, which, through reasonable suspicion (higher and higher degree of probability), a provisional system of a certain quality, should grow into a completely new system of such quality

and quantity that excludes the possibility of any other interpretation of the factual background, which we call certainty (Šikman, 2010: 89-104).

In this regard, the key question is what is the level of facts on which the ground of suspicion is based on in relation to committed criminal offense and the perpetrator.[13] Certainly, it differs depending on the entity that takes the action. Thus, within its jurisdiction[14], the Police shall find out that the criminal offense has been committed and will report it to the Prosecutor, depending on the type and severity of the criminal offense, within the prescribed time limits. The report of criminal offense to the Prosecutor by a Police shall be mandatory only when the Police establishes grounds for suspicion that the criminal offense has been committed, which implies that the criminal offense has already been discovered in a certain way (Bajičić, Šikman, 2014: 453-465). Based on the Police report on the existence of the grounds for suspicion that a criminal offense has been committed, the Prosecutor shall decide whether to initiate an investigation.

The next issue, worthy of attention when talking about efficiency and achieving of goals of criminal proceedings - concerns the suspension or termination of the investigation. This issue is closely related to the right of the suspect or the accused to be brought before the court and to be tried without delay within the shortest possible and reasonable time (Article 13 paragraph 1). The law stipulates that the Prosecutor shall issue an order terminating the investigation if he/she considers there are no conditions for further prosecution, and will suspend the investigation when he finds that the state of affairs is sufficiently clarified to file an indictment (Article 225 paragraph 1), and if the investigation is not completed within six months of the issuance of an investigation order, the the Prosecution College shall take all necessary measures to complete the investigation (Article 225 paragraph 2).

In addition, the investigation does not only serve to collect material for the decision to terminate the proceedings or to file an indictment, but also, in the case of filing an indictment and presenting findings at the main hearing, to facilitate the main hearing by a preliminary investigation – by way of collecting the basic evidence, release the main hearing of redundant and useless material and duly check the allegations of the parties making the main hearing redundant, and to ensure the

13 Basis for suspicion, firstly, refer to the problems of establishing of existence of criminal offense in general, and secondly, to revealing of perpetrator and establishment of his guilt. Vodinelić, V. (1985). *op.cit*., pgs. 87-88.

14 The Police reaches the level of basis for suspicion through criminal activities it takes within its regular duties and tasks, by performing police job, search activities and prooving actions (for example, Articles 5 paragraph 1t, 5, 6, 7, 10 of the Law on Police and Internal Affairs of the Republika Srpska, Official Gazette of the Republika Srpska, Nos. 57/16 and 110/16).

accused's presence during the proceedings (Simović, Simović, 2014: 22). In order to be efficient, these activities must be realized within optimal time and shortest possible deadline, and must be of such extent to enable making of a lawful decision. Thus, not all the evidence and data that may be of use for making of verdict are collected in the investigation, but only those who are required to make a decision whether to terminate the proceedings or to file an indictment (Simović, Simović, 2014: 22). In this way, the criminal proceedings shall not only be efficient, but shall also limit the possibility of an omission in the course of an investigation that can make the evidence illegal, and thereby challenge the main criminal proceedings. In this respect, special responsibility lies with the Prosecutor as the Prosecutor is responsible for taking care of the lawfulness of investigation, including the conducts of authorized officials during the investigation (Pivić, 2017: 28).

After the conclusion of investigation, as the first stage of the preliminary proceedings, follows the prosecution procedure, as the second and final stage of the preliminary hearing, as the first stage of the criminal proceedings (Sijerčić-Čolić, et.al., 2005: 608). In order to complete the criminal proceedings in the most efficient manner, three procedural options are prescribed to complete it in a way that does not lead to holding of the main hearing. These are guilty plea, guilty plea agreement and issuance of a criminal order. In the first case, if the accused pleads guilty, the preliminary hearing judge shall refer the case to the judge, that is to the hearing panel for scheduling of the hearing to establish the existence of the grounds for deliberation on the guilty plea (Article 229 paragraph 2), and if the court accepts the guilty plea statement, the statement of the accused shall be entered into the record and it shall continue with the hearing for the determination of criminal sanction (Article 230 paragraph 2). In this way, the criminal proceedings are terminated without holding of the main hearing, which significantly contributes to its efficiency.

In addition to guilty plea, negotiations on the guilt before preliminary hearing judge, which may result in guilty plea agreement, is considered to be the most efficient way of conclusion of the criminal proceedings, which is characterized by the complete absence of the evidentiary proceedings (Simović, Simović, 2014: 98). Namely, the process of negotiating the conditions of guilty plea can be initiated by the parties and the defense attorney at all stages of criminal proceedings, and its ultimate goal is to conclude an agreement that primarily relates to the type and extent of criminal sanction (Sijerčić-Čolić, et.al., 2005: 622). This agreement is an advantage not only for the Prosecutor but also for the Defense Attorney (Simović, Simović, 2014: 100). Thus, this is a quick and cheap judgment: the agreement shall save the time it would spend by conducting regular criminal proceedings, and thereby it shall reduce the number of cases before the

court and leave enough funds for prosecution of perpetrators that represent more serious threat to society (Kiurski, Stanković, 2005: 559-580). If the court accepts the plea agreement, the statement of the accused shall be entered into the record and the hearing for imposing of criminal sanction provided for by the agreement shall continue (Article 231 paragraph 1), and the criminal proceedings shall be terminated by holding of the main hearing, at the same time achieving the purpose and aim of the punishment.

Finally, the efficiency of the criminal proceedings can also contribute to its termination by issuing a criminal order as a form of shortened or summary form of criminal proceedings conducted for minor offenses before the competent court and within which it is possible to impose an appropriate criminal sanction or measure without conducting the main hearing. In this way the criminal proceedings are rationalized, and quickly and efficiently completed, and is not less reliable than ordinary criminal proceedings. The legal requirements for the issuance of a criminal order are related to the criminal offense punishable by imprisonment for up to five years or a fine as the main punishment, and that the Prosecutor has sufficient legal evidence that provide a basis for the allegation that the suspect has committed the criminal offense he is charged with (Article 334 paragraph 1). If the accused pleads guilty and accepts the criminal sanction or measure proposed in the indictment, the judge shall first establish the guilt and then render the judgment imposing a criminal order in accordance with the indictment (Article 337 paragraph 2), which means that he cannot impose a criminal sanction the Prosecutor did not seek.

However, these possibilities have not been relieved of the objections that may be raised. It is justifiable to point out in the literature that the formation of simplified process forms faces two basic problems: recognition of those qualifications of process objects and subjects justifying the trivial forms, and finding the right measure of simplifying of the process form that corresponds to the peculiarities of process objects and subjects (Brkić, 2004: 166. Cited in: Radulović, 2013: 45–55). In addition, these complaints relate to the traditional judicial remedies, like proper establishment of factual background and determining of punishment in accordance with the established factual background (Bajović, 2015: 179-193). The request for the full and true determination of the factual background is replaced by a deliberation maxima which leaves the parties greater freedom as to the impact to which facts shall be established in the proceedings, having in mind that the recognition of the defendant and the consent of the parties with regard to certain facts eliminate the need for their substantiation (Bajović, 2015: 180). This applies in particular to the possibility of imposing of less severe penalties than those prescribed by law. Likewise, there is lack of elements of the second instance procedure, since there is no possibility to lodge an appeal against the judgment based on guilty plea agreement,

because the accused waives his right to trial and the possibility to file an appeal against the criminal sanction he shall be imposed.

If the parties and the Defense Attorney did not take advantage of the procedural possibility to conclude the criminal proceedings in one of the three ways in which the main hearing shall not be conducted, the procedure continues with the main proceedings. At this stage, conditions to ensure a trial within a reasonable time as one of the basic principles of criminal procedural law in general, are expressed. To this end, the process of reforming of criminal procedural legislation of the states in the region brought numerous novelties, one of the most important ones is a change of the structure of the main hearing, the content of the principle of its practical realization and regulation of different mode of process position of its main entities. Therefore, with the aim of the efficiency of the criminal proceedings, and in the function of practical realization of the principle of trial within a reasonable time – such norm must be adequately standardized and then adequately applied (Bejatović, Jovanović, 2015: str. 5). Without going into further analysis, it is evident that in the realization of goal set in this manner - in norming the structure of the main hearing, in norming the contents of its principles and process position of its main actors - there are numerous questions open, and realization of its goals depends on the manner of their solution (Bejatović, Jovanović, 2015: 5).

5. Conclusion

Efficiency of the criminal proceedings has become more actual as the criminal justice reform in Bosnia and Herzegovina has been ongoing. Thus, in the last 15 years, this is an unavoidable topic of scientific and professional public. Nevertheless, there seems to be significant discrepancies between expectations and reality. On one side, we have a normative and institutional basis that should provide, among other things, greater efficiency of criminal justice. Such efforts are the result of harmonization of criminal legislation with known standards in this area. Shortened procedures have been introduced, in particular the possibility of terminating the criminal proceedings, without a main hearing, through guilty plea agreement. Specialization was carried out within individual prosecutorial organizational departments, which would also have to make the criminal proceedings more efficient, especially in relation to more severe forms of crime. Knowledge of the protection of human rights have been strengthened, for example by affirming of the right to a fair trial within a reasonable time, followed by appropriate decisions of the court instances. There is no need to neglect a developed

framework on this issue set by the European Court of Human Rights, which is commonly used by domestic bodies.

On the other hand, the question of the state of affairs is raised when it comes to the efficiency of criminal justice. Although the dominant theoretical and legal framework for understanding the efficiency of criminal proceedings in our country (e.g. according to Bejatović, Simović, Škulić, Radulović, Đurđić and others), which under efficiency implies a quantitative (speed of proceedings) and a qualitative (legal decision) component, it seems that it is identified with the speed of criminal proceedings. Accordingly, no matter that the vast majority will accept the aforementioned concept of efficiency of criminal proceedings, it will manifest itself in practice through efforts to end the criminal proceedings as soon as possible, regardless of the quality of the court decision. There is a key difference in relation to expectations and reality when talking about efficient criminal proceedings. Hence, the quality of judicial decisions is of crucial importance for efficient criminal proceedings. Of course, it implies that this decision was reached within optimal period of time, that is, the time that was objectively necessary to resolve the criminal case without unnecessary delay. Likewise, it also understands adequate judicial staff, as well as the material assumptions necessary for the achievement of efficient criminal proceedings. These are the key components of efficiency: a quality standard, a high quality staff, and the fulfillment of material and technical requirements.

If it were linked to the current situation in Bosnia and Herzegovina, then it could be concluded that there is an adequate legislative framework. Of course, it can be further improved and it is the subject matter of constant administrative and legal analysis. The institutional aspects of efficient criminal justice, i.e. their analysis, indicate that there is a need for further strengthening of this component. Not only further training and specialization of staff has to be done, but it is also necessary to improve the issue of their mutual cooperation and relationship. This is what the efficiency depends on to a great extent, both in the individual stages and in the criminal proceedings as a whole. And last but not least, the creation of necessary material and technical conditions.

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MODERN APPLICATION OF THE PRINCIPLE *AUT DEDERE AUT JUDICARE* IN ACTS OF TERRORISM AND TORTURE

The maxim aut dedere aut judicare refers to the obligation of a state either to exercise jurisdiction over a person suspected of certain crime or to extradite the person to a state able and willing to do so or to surrender the person to an international court/tribunal with jurisdiction to prosecute such crime. The principle which has been postulated by Grotius in 1625 and subsequently laid down in a number of international conventions has a purpose to fight against modern forms of crimes and especially to combat against any form of terrorism and threats to the mankind.

This paper will focus on the application of the principle of "extradite or prosecute" in acts of terrorism through several cases such as the Lockerbie case and the Habré case and lastly will discuss about the obligation of states to punish terrorist crimes or to transfer (extradite) persons to states for such punishment.

Key words: aut dedere aut judicare, extradition, terrorism, prosecution, torture

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1. Introduction

Every day, it seems, we hear new accounts of atrocities being committed in countries around the world. In that sense we can easily get an impression that we live in a brutal world, and that human rights are being denied on a massive scale. Indeed, the last decade was marked with several terrorist attacks around the world which are showing that states must cooperate more eagerly in the fight against sophisticated forms of terrorism.

Undoubtedly, there are many reasons which may prevent states on whose territory the alleged criminal is found from extraditing him/her to a state where the crime was committed or any other state willing to prosecute. For that reason, the principle *dedere aut judicare* exist with a purpose not to allow criminal suspects to escape prosecution or enjoy impunity. This paper discusses first of all the historical overview of the principle extradite or prosecute which is contained in more than sixty international conventions. Then it elaborates several international cases such as the Habré and Lockerbie case including cases which involve terrorism and prohibition of extradition due to the death penalty. Further, it deliberates the work of the International Law Commission in respect of the subject matter and explains the collision between the obligation to extradite or prosecute in acts of terrorism and the problems arising because of the lack of universally accepted definition of terrorism and lack of consideration of terrorism as a *jus cogens*. Lastly, this paper argues the controversial nature of the obligation to extradite or prosecute due to its customary nature.

2. Historical overview of the principle *aut dedete aut judicare*

Terrorism, organized crime and other transnational crimes pose fundamental challenges to the rule of law, peace and security and must be fought at national, regional and international level. Since such crimes transcend "classical" borders of criminal law and in order for States to effectively address the challenges posed by such crimes, they need a coordinated and coherent response mainly through international cooperation in criminal matters, including extradition and mutual legal assistance. Hence, we live in a world where modern forms of crimes have taken advantage before the rule of law without respecting the basic human rights and the sovereignty and territorial integrity of democratic states. For that reasons the justice should not allow criminals to find their own 'safe heaven' and avoid prosecution for committed crimes. Among other, this is the main reason why the rule of extradite or prosecute exist.

From historical point of view, the early beginnings of the maxim *aut dedere aut judicare* have been postulated by Hugo Groitius who wrote the following in 1625: *"The state in which he who has been found guilty dwells ought to do one of two things. When appealed to, it should either punish the guilty person as he deserves, or it should entrust him to the discretion of the party making the appeal. This latter course is rendition, a procedure more frequently mentioned in historical narratives(...) All these examples nevertheless must be interpreted in the sense that a people or king is not absolutely bound to surrender a culprit, but as we have said, either to surrender or to punish him"* (Grotius, 1625).

If we analyze the meaning of Grotius's words, there is no doubt that they possess an astonishing actuality, however the scope of application of this maxim was limited to 'crimes which in some way affect human society' as a whole and which in contemporary language can be identified as international crimes (Plachta, 2001:72). Albeit it should be admitted that due to the circumstances in that period, the original wording an alternative to *dedere* was *punire* and it pointed actually to real punishment and subsequently has been replaced with *judicare* because the person accused for certain crime has right to a fair trial and to be considered as innocent unless proven guilty which nowadays is known as presumption of innocence. According to Bassiouni, accountability is in close correlation with this principle because it requires that persons who have committed crimes, particularly international crimes either be prosecuted by a state having jurisdiction or to be extradited to a State having jurisdiction and the willingness to carry out effective and fair prosecution (Bassiouni, 2008:35). In correlation to the above mentioned, extradition or prosecution of the accused person are mutually connected under the principle of *aut dedere aut judicare*. Thus, it derives that extradition is the only legal procedure by which a person accused or convicted of a crime (although not usually *in absentia* - in his absence) is formally transferred to a state where he/she is wanted for trial or to serve his/her sentence (Aust, 2005:264). Other forms of illegal extradition such as extraterritorial abductions are not legitimate grounds for prosecution, because their foundation cannot be located in the international law.

During the 18th and 19th centuries, under the influence of the idea that the law of a state resulted from social contract between its members, prosecution of foreigners for offences committed abroad was not very common and, unless their own direct interests should be affected by the offence, states often did not even establish jurisdiction over the time (Keijzer, 1982:412). Due to the fluctuation of people and subsequently many crimes committed outside its state of domicile, changes were inevitably to happen. The rule of *aut dedere aut judicare* has been prescribed in many international conventions and subsequently provisions were adopted in order

to make it easy for the extradition to happen, by making much more offences extraditable between particular states by signing bilateral/multilateral agreements.

The first convention containing an extradite or prosecute rule was the 1929 International Convention for the Suppression of Counterfeiting Currency, which provided that where a state's domestic law did not allow extradition of nationals, nationals returning to their state after committing a crime under the Convention should be punishable in the same manner as if the crime had been committed in that state.[1] This obligation has been repeated in the 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs and the 1937 Convention for the Prevention of Terrorism. The four Geneva Conventions of 1949 contain the same provision whereby each High Contracting Party is obliged to search for persons alleged to have committed, or to have ordered to be committed, grave breaches and to bring such persons, regardless of their nationality, before own courts.[2]

The explanation of this principle and its rationale came with the 1996 Draft Code of Crimes against Peace and Security of Mankind prescribing the following: *"The obligation to prosecute or extradite is imposed on the custodial State in whose territory an alleged offender is present. The custodial State has an obligation to take action to ensure that such an individual is prosecuted wither by the national authorities of that State or by another State which indicates that it is willing to prosecute the case by requesting extradition…".*[3]

The principle of aut dedere aut judicare became a subject of interest to the International Law Commission (ILC) which in 2004 identified the topic "Obligation to Extradite or Prosecute" and then the Special Rapporteur Zdzislaw Galicki expressed his opinion that the obligation to extradite or prosecute cannot be treated as a traditional topic only, because from Grotius till recent times, it reflects new developments in international law and pressing concerns of the international community.[4] Afterwards, in 2014, the ILC has adopted its final report under the guidance of Special Rapporteur Kriangsak Kittichhaisaree and addressed to the implementation of the obligation, gaps in the existing conventional regime, the priority between

1 See Article 9 of 1929 International Convention for the Suppression of Counterfeiting Currency.

2 Similar provision is contained in Article 7 of the1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft which provides that: "*The Contracting State in the territory of which the alleged offender is found, shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution".*

3 Article 9 of the1996 Draft Code of Crimes against Peace and Security of Mankind.

4 International Law Commission (2006). Document A/CN.4/572. Preliminary report, by Mr. Zdzislaw Galicki, Special Rapporteur

the obligation to prosecute and the obligation to extradite, the relationship between the obligation with *erga omnes* obligations or j*us cogens* norms.[5]

3. Dilemmas if *aut dedere aut judicare* is part of customary international law?

The obligation to extradite or prosecute is found in numerous treaties; but there are different views as to whether there is such an obligation in customary international law. Upon this issue, there is no consensus, although a large and growing number of scholars are in favor of supporting the concept of an international legal obligation *aut dedere aut judicare* as a general duty based not only on the provisions of particular international treaties, but also on generally binding customary norms, at least concerning certain categories of crimes.[6] Enache-Brown and Fried support the claim that this principle is part of customary international law due to the fact that if a state has signed and ratified a significant number of treaties containing the *aut dedere aut judicare* formula, then that state has demonstrated through this practice that *aut dedere aut judicare* is a customary norm. The state, through the act of signing related international agreements, articulates the belief that *aut dedere aut judicare* is an accepted norm and that it is the most effective way of preventing certain forms of conduct. This belief satisfies the requirement of *opinion juris* when establishing customary norms. If a state accedes to a large number of international treaties, all of which have a variation of *the aut dedere aut judicare* principle, there is a strong evidence that it intends to be bound by this generalizable provision, and that such practice should lead to the entrenchment of this principle in customary law (Enache-Brown and Fried, 1998:629). Moreover, the Article 27 of the Vienna Convention on the Law of Treaties reflects customary international law, thus a State Party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

There are over 60 multilateral treaties combining extradition and prosecution as alternative courses of action in order to bring suspects to justice. As regards the core crimes the obligation *aut dedere aut judicare* relates only to those war crimes that constitute 'grave breaches' of the Geneva Conventions and Additional protocol. There is therefore no treaty-based obligation *aut dedere aut judicare* for genocide, crimes against humanity and, except in the case of grave breaches,

5 International Law Commission (2014). Final Report of the International Law Commission: The obligation to extradite or prosecute (aut dedere aut judicare).

6 International Law Commission (2006). Document A/CN.4/572, p.266

for serious violations of the laws and customs applicable in armed conflicts of an international or non-international character (Zgonec-Rozej and Foakes, 2013:3). The International Criminal Court (ICC) whose Rome Statute entered into force on 1 July 2002, has currently jurisdiction for genocide, crimes against humanity and war crimes, and as it is well-known fact the ICC has been designed as a reserve Court in case states are "unable or unwilling" to prosecute. The sixth recital of the Rome Statute's Preamble recalls that "*it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes"*. On the other hand distinguished authors such as Christian Tomuschat do not read in the Preamble's recital an implicit obligation to prosecute, reasoning that one cannot impose any duty upon states unless it has been explicitly laid down and agreed upon by them. A mere reference in the Preamble would not suffice to derive any legally binding duty (Wouters, 2005:4). Hence, the dilemma if this principle constitutes part of international customary law or it applies only to those that are parties to some treaties, remains active. It may be recalled that in 2011 the then Special Rapporteur Galicki, in his Fourth Report, proposed a draft article on international custom as a source of the obligation *aut dedere aut judicare* prescribing that: *"Each State is obliged either to extradite or to prosecute an alleged offender if such an obligation is deriving from the customary norm of international law. Such an obligation may derive, in particular, from customary norms of international law concerning serious violations of international humanitarian law, genocide, crimes against humanity and war crimes…."*[7] *However, this draft article was not well received and there was general disagreement with the conclusion that the customary nature of the obligation to extradite or prosecute could be inferred from the existence of customary proscribing specific international crimes. Afterwards, a recent analysis of state practice has been undertaken by the chairman of the Working Group of the ILC, Kriangsak Kittichaisaree on the topic of the obligation to extradite or prosecute. It reveals that although large number of states provide for universal jurisdiction for core crimes, only several states implement in their national legislation the obligation to extradite for various crimes (Zgonec-Rozej and Foakes, 2013:4). In Kittichaisaree's opinion, the obligation to extradite or prosecute, in respect of core crimes under international law proscribed by jus cogens* 'has crystalized or at least is in process of crystallizing into a rule of customary international law, albeit not a universal rule of customary international law' (Amnesty International, 2011). This point of view has been confirmed in the case of *Belgium v. Senegal*, where it has been clearly stated that an

7 See Article 4 contained in ILC (2011). Fourth report on the obligation to extradite or prosecute (aut dedere aut judicare) by Zdzislaw Galicki, Special Rapporteur.

opportunity has yet to arise so the Court to determine the customary international law status or otherwise of the obligation to extradite or prosecute.

3.1. Landmark decision in the case of Belgium v. Senegal

On 20 July 2012, the International Court of Justice (ICJ) delivered its landmark decision in the case of Belgium v. Senegal concerning the prosecution of Chad's former head of state Hissène Habré or his extradition from Senegal (where he lived in exile) to Belgium for mass acts of torture and enforced disappearances committed in Chad during his presidency for the period 1982-1990. But why this case was of particular importance to the world public and law practitioners? What is the connection of this case with the principle of *aut dedere aut judicare*?

First and foremost, we will start with the early beginnings of the case till we reach the findings of the ICJ and the opinion of judges. In 2005, a Belgium Court indicated Hissène Habré for international crimes and requested (four times) his extradition from Senegal. Due to the fact that there wasn't response, in February 2009 Belgium initiated proceedings against Senegal before the ICJ alleging that Senegal has failed to comply with its obligations under the UN Convention on Torture (CAT) either to prosecute the former president of Chad, or to extradite him to Belgium to face trial here (Zgonec-Rožej e.al. 2013:2). Accordingly, Belgium requested the Court to declare that has jurisdiction to entertain this dispute due to the fact that an investigation has been instigated in Belgium at the behest of a Belgian national of Chadian origin 'a victim of the Habré regime' and Belgian courts were permitted to "exercise passive personal jurisdiction" by virtue of Article 5(1) (c) of the CAT (Garrod, 2018:138). Further, to declare Belgium's claim admissible; to declare that Senegal is obliged to bring criminal proceedings against Mr. Habré and to declare that Senegal failed to prosecute Mr. Habré and as a result of that is obliged to extradite him to Belgium. Contrary to these allegations, Senegal requested that the ICJ has no jurisdiction over the case as a result of the absence of a dispute between Belgium and Senegal and that Senegal has not breach any of the CAT provisions or any rule of customary international law.[8]

Hence, the ICJ found Senegal in breach of the provisions from CAT (Article 6(2) and 7(1)) in relation to the lack of preliminary inquiry into the facts and in breach with the obligation to submit the case to its competent authorities for the purpose of prosecution, if it decided not to extradite the accused person. Therefore, the ICJ confirmed that the obligations of the CAT may be defined as

8 See: International Court of Justice (2012) Questions relating to the obligation to prosecute or extradite (Belgium v. Senegal). Judgment of 20 July 2012, paragraph 12.

"*oblgations erga omnes partes*" in the sense that each state party has an interest in compliance with them in any given case (Harrington, 2012).

Moreover, under Article 7(1) of CAT, the Court agreed with the statement of Belgium that the time frame for implementation of the obligation to prosecute depends on the circumstances of each case and in particular on the evidences gathered, but however, considers that the State in whose territory the suspect is present cannot indefinitely delay performing the obligation incumbent upon it to submit the matter to its competent authorities for the purpose of prosecution.[9] Hence, the ICJ, unanimously found that: '*Senegal must, without further delay to submit the case of Mr. Hissène Habré to its competent authorities for the purpose of prosecution if it does not extradite him'.* From this last statement in the judgment, the ICJ undoubtedly reconfirms the obligation *aut dedere aut judicare*. Regarding this obligation, the Court reiterates that the prohibition of torture is a peremptory nor (*jus cogens*), so the prosecute or extradite formula under the CAT could serve as a model for new prosecute or extradite regimes governing prohibitions covered by peremptory norms such as genocide, crimes against humanity and serious war crimes.[10]

The saga with Habré case started to see its closure one month after the ICJ's judgment when Senegal and the African Union signed a deal to set up a special tribunal to try the former leader. Four years afterwards Habré was found guilty for human rights abuses including rape, sexual slavery and ordering the killing of 40.000 people and sentenced to life in prison.

4. Terrorism as a threat to the modern world

Undoubtedly terrorism is considered as an international crime and as such it requires the international community to act in the prevention of terrorism and the sanction of individuals perpetrating acts of terrorism. Thus, extradition as a legal procedure represents one of the options to fight against acts of terrorism. The other one is to prosecute those heinous crimes which arise from acts of terrorism if there is no possibility to conduct extradition. To conclude this thought, we are coming to the generally accepted principle of *aut dedere aut judicare*.

After the events of 11 September 2001 and the attacks on World Trade Center and Pentagon which subsequently triggered the 'war on terror', terrorist

9 ICJ (2012). Questions relating to the obligation to prosecute or extradite (Belgium v. Senegal), paragraph 106.

10 International Law Commission (2014) Final Report of the International Law Commission: The obligation to extradite or prosecute (aut dedere aut judicare), paragraph 15.

acts were committed also in the past but not on these sophisticated methods for creating public fear and terror among people. David Rapoport has outlined four major waves of international terrorism . The first ('anarchist') wave of modern terrorism began in Russia in the 1880s and lasted until the 1920s, the second ('anticolonial') wave began in the 1920s and ended in the 1960s, the third ('new left') wave began in the 1960s and continued through to the 1980s, and the fourth ('religious') wave emerged in 1979 and continues until today (Rapoport,2004:47).

The obligation of states to use their domestic judicial processes to punish terrorist crimes or to transfer custody of suspects to another state for such punishment is therefore an essential cornerstone of the modern framework for confronting transnational terrorist acts (Newton, 2013:68). International law embodies universal and strongly articulated support for the positivist premise that 'any acts of terrorism are criminal and unjustifiable, regardless of their motivation, whenever and by whosoever committed and are to be unequivocally condemned'. This was confirmed by the UN General Assembly in its Draft Resolution Measures stating that 'no terrorist act can be justified in any circumstances'.[11] Hence, a conclusion can be derived that a battle to suppression of terrorism is a 'must' and every state has a moral and legal obligation to protect its citizens and to give adequate response to acts of terrorism by either their extradition or prosecution.

4.1. Aut dedere aut judicare provisions in international conventions related to acts of terrorism

The principle of *aut dedere aut judicare* represents adequate legal response to different acts of terrorism which happen, unfortunately, on daily basis trying to jeopardize the basic human rights and the sovereignty of democratic states. The major obstacle in prosecution of terrorist offences represents the fact that there is no generally accepted definition of terrorism, so it is left to the discretion of each state individually to decide what could be considered as an act of terrorism and the way for their prosecution.

Even before the United Nations was founded, the extradition of persons accused of committing terrorist activities was formally recognized as a means of international law enforcement. During the League of Nations era, an unsuccessful Convention for the Prevention and Punishment of Terrorism was drafted in 1937. Prompted largely by the assassination of King Alexander of Yugoslavia, this abortive

11 United Nations. Draft Resolution on Measures to Eliminate International terrorism. Doc.A/C.6/62/L.14

instrument obligated parties to prevent and punish offenders who committed "acts of terrorism". The convention went further as it imposed a duty on parties to criminalize certain specific acts amounting to terrorist offenses (Joyner, 203:506). Terrorist offences are on substantive path with the grave breach provisions of the 1949 Geneva Conventions and the 1948 Genocide Convention because of the obligation arising from the principle *aut dedere aut judicare*. Since 1960 four specific issue-areas tended to dominate international concern over global terrorism: crimes against the safety of international aviation; crimes against the safety of individual persons; crimes against the safety of maritime navigation; and crimes associated with violent terrorist activities.

Conventions providing for the punishment of international crimes, such as hijacking, hostage taking, attacks on diplomats and torture rely largely on the procedure of *aut dedere aut judicare* as a means of enforcement. This procedure, which requires contracting parties either to extradite or to try offenders, is made possible by the generous jurisdictional clauses contained in these treaties (Dugard and Van den Wyngaert, 1998:209). As mentioned before in this paper, the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft contains provision about the principle of extradite or prosecute just as the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civilian Aviation.

However, what is particularly interesting about the 1970 Hague Convention is the fact that it developed the well-known 'Hague formula' which combines the options of extradition and prosecution by providing that the state party in the territory of which the alleged offender is found is obliged to submit the case to its competent authorities for the purpose of prosecution if it does not extradite the alleged offender. This formula requires states parties to assert jurisdiction over the prohibited conduct even in the absence of any link between itself and such conduct known as universal jurisdiction (Zgonec-Rožej and Foakes, 2013:6). Further, the 1979 International Convention against Taking of Hostages in its Article 8(1) prescribes that: *""The State Party in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State"*. In this sense, instead of the traditional formula provided by Grotius, which focused on the natural right to exact punishment, this expression better comprise the ambiguous meaning "to judge" or try, and also refers to an inquiry for the purpose of determining whether or not to initiate a trial (Ferreira, Carvalho et.al, 2013:3). Subsequently, the 1984 Convention against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment provides for the application of the principle extradite or prosecute on all acts of torture. Moreover, the 1997 Interna-

tional Convention for the Suppression of Terrorist Bombings in Article 8 provides clear obligation for the State in absence or lack of willingness of extradition without exception to submit the case to competent authorities for the purpose of prosecution (Amnesty International, 2009). The modern framework of multilateral conventions obligates states to cooperate in eradicating the specific acts deemed to be the most representative of the broader phenomenon of transnational terrorism. The 2005 Council of Europe Convention on the Prevention of Terrorism required states parties to adopt three new criminal offences such as: public provocation to commit a terrorist offence, recruitment for terrorism and training for terrorism.

4.2. Collision between the obligation to extradite and/or prosecute in acts of terrorism

The *aut dedere aut judicare* obligation as applied to terrorist cases thus reflects an entirely logical extension of the paramount state obligation to protect the basic human rights of all persons within their scope of lawful authority (Newton, 2013:72). However, in some occasions the obligation to prosecute is thus triggered by the refusal to surrender the alleged offender following a request for extradition. While in some circumstances when the obligation to extradite cannot be exercised due to the nationality factor, the obligation to prosecute is provided as an alternative. The major obstacle which appears in the area of application the formula *aut dedere aut judicare* in acts of terrorism is the lack of universally accepted definition of terrorism. Although there is some kind of "framework" that defines and criminalizes different manifestations of terrorism, from today's perspective it's just not enough. Even the 1998 Rome Statue of the International Criminal Court (ICC) does not contain a substantive offence of terrorism *stricto sensu* due to the difficulty of reaching consensus agreement on its incorporation into the fabric of a permanent ICC (Martinez, 2002:18). Although, if we look back, in 1994 the UN General Assembly Resolution titled as: 'Measures to Eliminate International Terrorism' provided some kind of a general definition of terrorism proscribing: "*criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the consideration of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them*". While, the EU Council Framework Decision defines terrorism as: seriously intimidating a population, unduly compelling a government or international organization to perform or abstain from performing any act and seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.

Everyone will agree with the statement that acts of terrorism diminish the normal function of every state and endanger the human rights of its citizens and because of this reason; the obligation to extradite or prosecute should be applied in respect of terrorist offenses. Alleged terrorist should not be allowed to hide behind their guaranteed human rights where there are not sufficient evidences that they can be violated on any matter whatsoever. Hence, the states should understand the grave responsibility that they have upon the principle of *aut dedre aut judicare* and they should respect and implement it in practice.

The Canadian case against Mohammed Momin Khawaja illustrates the application of the principle extradite or prosecute. Khawaja's involvement in an al-Qaeda inspired plot that spanned three continents to build and detonate ammonium nitrate-rich fertilizer bombs surfaced during an investigation by the British Security Services and the day after his arrest in Ottawa, his co-conspirators were arrested in London. While Khawaja was convicted in Canada, his seven co-conspirators were sentenced to life imprisonment by British authorities. In this and in other cases, the *aut dedere aut judicare* principle reflects basic common sense of fairness, as well as enduring principles of justice and equal application of law (Newton 2013:72).

However, the international case law is showing several occasions in which the principle of *aut dedere aut judicare* has been limited in respect of the prohibition of the application of death penalty. In December 2002, Denmark released a Chechen terrorist rather than extraditing him to Russia where he might face the death penalty. Britain refused to honor an Egyptian request to arrest and extradite a terrorist implicated in the 1995 assassination attempt against President Mubarak, as conviction for that crime carried the death penalty. Mexico also declined to extradite suspect to the United States who would face the death penalty for their alleged crimes (Kelly, 2003:491). In this connotation, if the principle of *aut dedere aut judicare* has been considered as part of customary international law and terrorism as *jus cogens*, in that circumstances the terrorists would not have the opportunity to escape justice.

4.3. The Lockerbie case

Unfortunately aircrafts are no longer merely the stage form criminal activities, they have become their target and on 11 September 2001, the very means itself. The easy mobility of aircraft may enable hijackers to escape to a state whose government is sympathetic to their cause, or just spineless, thereby evading arrest and punishment. Hence, we are coming to the first question which triggers

the jurisdiction. According to Martin Shaw in respect of the criminal jurisdiction, there are three different concepts: prescriptive jurisdiction which identifies the power of a State to make legal rules; enforcement jurisdiction reflects the power of a State to enforce legal rules by executive action and finally the judicial jurisdiction which addresses the power of the courts of a State to apply legal rules and punish their contravention (Shaw, 1997:452-478). The Lockerbie case, among other issues, first of all it questions the jurisdiction of the ICJ to hear the dispute between Libya from one side and US and UK Government on the other side. However, till we reach the question about jurisdiction and application of the provisions from Montreal Convention, we will start with the facts of the case.

On 3 March 1992, Libya filed in the Registry of the ICJ two separate Applications instituting proceedings against the US and the UK Governments, in respect of a dispute over the interpretation of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971 Montreal Convention). This filing followed the explosion of a bomb in the Pan Am Flight 103 over the town of Lockerbie, Scotland, on 21 December 1988, which killed all 259 passengers and crew, as well as eleven residents of the town of Lockerbie. The Lord Advocate of Scotland and a Grand Jury of the US respectively accused two Libyan citizens, Abdelbaset Ali Mohmed Al Megrahi and Ali Amin Khalifa Fhimah, of this bombing.

During the proceedings, Libya claimed that it had not signed any extradition treaty with the UK and the US, and that, subsequently and in conformity with the 1971 Montreal Convention which requires a State to establish its own jurisdiction over alleged offenders present in its territory an the event of their non-extradition, only Libyan authorities had jurisdiction to try their own citizens (Plachta, 2001). Subsequently, on April 1992, the ICJ declined to order the provisional measures thereby confirming the validity and binding force of Resolution 748.[12] Hence, in 2003 both sides notified the Court that they had "agreed to discontinue with prejudice the proceedings". In the meantime, Libya had agreed that the two accused be tried by five Scottish Judges sitting in a neutral Court, in the Netherlands. Abdelbaset Ali Mohmed Al Megrahi was found guilty on 31 January 2001. He was convicted of 270 counts of murder for his part in the bombing of Pan Am Flight 103 and sentenced to life imprisonment. His co-accused, Al Amin Khalifa Fhimah was found not guilty and released.

12 The US and UK presented the case before the UN Security Council and the General Assembly and in 1992, the Security Council adopted two resolutions. The first, Resolution 731, urged Libya to respond fully and effectively to the request of US and UK and the second, Resolution 748 imposed economic sanctions on Libya.

5. Conclusion

The principle to extradite or prosecute refers to a natural right of the state that had been 'injured' to prosecute the offender and any state which holds the offender should be bound to either extradite or prosecute the offender, so there is no other alternative. However, problems appear in an absence of a bilateral extradition treaty between the two states. Because of this particular reason there is a tendency to establish the principle of *aut dedere aut judicare* as a part of customary international law and in my opinion this should be a next topic of consideration to the International Law Commission which in its last report left this issue open and a subject of different interpretations. Further, the duty to prosecute terrorist crimes represents an extension of state authority to protect the human rights of its citizens. For that manner if a terrorism is considered as a *jus cogens norm* and *aut dedere aut judicare* as part of international customary law, the terrorist offenders would not have a chance to look for 'safe heaven' and stay unpunished for committed crimes.

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SOME FEMINIST PERSPECTIVES IN CRIMINOLOGY

The development of feminist criminology began in the 70s with the idea to raise the visibility of women within the criminological research, addressing their role as offenders and as victims, and to understand crime as a male activity, not only as a result of sex differences, but also as a result of gender differences. In addition, ignoring the female criminality by traditional criminology also puts aside other issues such as the role of the criminal justice system in their criminalization and victimization. In doing so, they start from the assumption that male and female offending result from qualitatively different gender processes. But, feminist-oriented criminologists vary according to several feminist perspectives and waves that were developed in the second half of the last century. This and other gender issues related to the limitation of the traditional criminology in explaining female crime and to the main feminist perspectives on gender inequality within different feminist movements consist the theoretical debate and subject of theoretical debate in this article.

Key words: female crime, feminism, gender, sex differences, traditional criminology

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1. Introduction

Criminology is a field of study within social sciences that are dominantly oriented to men. The majority of criminological theories and researches are based on research on male crimes, as well as on the role and activities of the criminal justice system against male offenders. In addition, the researchers and scholars at the beginning of development of criminological theories were dominantly male, which means that the results of the conducted researches were evaluated and interpreted from a male point of view (Sharp F. Susan, 2009, p. 245). All of these elements mark traditional criminology as male-dominated criminology. This does not mean that women's crime was ignored, but that it was explained in a way that was later unacceptable and criticized by feminist criminologists.

2. How does traditional criminology explain female crime?

According to traditional criminology, although surveys were mostly carried out on male offenders, still the results and conclusions were also applied to female crime. This means that traditional criminology does not make significant differences in the etiology of male and female crime (Konstantinović-Vilić, 2013: 104; Miller & Mullins, 2006: 226). Likewise, women are often portrayed in a negative and stereotypical manner with a focus on their failure to fulfill the "traditional" ways of appropriate female behavior. Such an approach to women is paternalistic, which means that women are seen as persons who need to be protected (Sharp, 2009: 245). Regarding the characteristics of men and women, it is considered that men are more active and more aggressive, compared to women who are more emotional, more passive and weaker. Such stereotypical understandings explain criminality on the basis of individual factors. In fact, the first criminological theories do not specifically explain the criminality of women, except that they particularly emphasized biological and psychological components related to this type of crime. Women are observed as sexual objects to satisfy the physiological and social needs of men, and sexuality is represented as cause of all female behaviors, including criminal behavior. So, female criminal behaviour is explained as result mainly of personality disorder and emotional inadequacy (Konstantinović-Vilić, 2013: 98).

However, within the traditional criminology, there is distinction between biological, psychological and social perceptions about female crime. In fact, the biological and psychological theories explain the female criminality through certain individual subjective biological and psychological factors related to the

woman. On the other hand, the social explanations, are part of certain traditional theories of crime that dominantly perceive the causes of women's crime in the processes of socialization, in the role of informal social control, as well as in the social disorganization of communities.

2.1. Biological-psychological concepts

In the beginning, within the traditional criminology, the emphasis is placed on sex differences between male and female crime, respectively on sex as a biological category which distinguishes men from women. And in terms of sex differences, the characteristics of men and women and their relationship with crime are explained. Representatives of the biological-psychological understanding of the explanation of female criminality are Lombroso, Otto Pollack, Freud, Exner, Mezger, Midendorf and others. Lombroso (1893) created the conception of "born offenders" and "born prostitutes". He performed autopsies on female offenders, proving that some women, based on the structure of the bones of the skull and other physical characteristics, are predestined to perform certain types of crime. On the other hand, with the help of biological factors, such as the weaker body constitution, Lombroso, had explained the lower participation of women in violent crime (Marsh *et al*., 2006: 146).

Freud's analysis (1933) of women as perpetrators was built under assumption that women are anatomically more heterogeneous than men. Or a criminal woman is motivated by sexual neuroses. Thus, according to Freud, the criminality of women stems from their desire and envy because they do not have a penis. He claimed that the deviant woman is a woman who wants to be a man and therefore becomes neurotic. Also, Freud believed that women are sexual masochists who can enjoy only through pain (Marsh *et al*., 2006: 147). In addition, Freud added passivity, emotionality, narcissism, and over activity as features that play a key role in female criminality.

Otto Polak, who published the book *The Criminality of women* in 1950, highlights the link between female biology and criminal behavior. According to him, female crime is associated with the biological phases of women throughout life, such as menstruation, pregnancy and menopause. These biological phases reduce inhibition and self-control of certain behaviors. For example, according to certain data, 71 out of 80 arrested women for resisting officials had a menstrual cycle at the time of the crime. According to other data, 50% of crimes (like theft, prostitution, public drunkenness) were performed during the period of that premenstrual syndrome (Marsh *et al*., 2006: 148). According to such and similar

researches, representatives of bio-psychological concepts have concluded that there is a link between premenstrual syndrome and aggressive behavior, including suicides among women. But today, these claims are dismissed. Regarding the lower crime rate, Polak argues that they statistically commit less criminal offenses, but this is due to the fact that within certain job positions, they commit such crimes that are hard to reveal. He argues that women also have the ability to mask their crime and introduces the concept of a *hidden female crime*, claiming that women are able to manipulate, they are insincere, without passion, and can cover up their crimes, just as they can pretend to enjoy while they have a sex (Klein, 1973 in Ignjatović, 2009).

So, female crime reflects the biological nature of women in a given cultural environment. Therefore, the typical female passivity, the less aggressiveness, the feeling of dependence and helplessness, the increased emotionality and the low self-confidence of the women, can be explained with the help of certain psychological factors. In addition, and having in mid the biological phases of women, general perception is that they are emotionally unbalanced during most of their lives. In short, early theories of female crime focus on the individual female pathology or on the sexual and emotional inadequacy.

2.2. Sociological explanations

Female criminality has also been explained by the use of social factors within certain traditional criminological theories. For example, due to different gender socialization and different position of women and men in society, some theories explain the smaller percentage of women in total crime, from one side, but the continuous increase in female criminality as a result of certain social processes, on the other side.

As part of social explanations, theory of social disorganization gives some considerations for the differences between male and female crime. This theory sees the breakdown of the family as one of the main factors for the increase in female crime, because it reduces informal social control (Schwartz & Gertseva, 2012: 33). Conversely, the strain theory, argues that women are less involved in crime because they are less susceptible to increased economic pressure. They measure their success in life through success to create a family and find a good husband, while men measure their success through the acquired reputation and wealth in society. Also, women are more protected from the influence and negative effects of certain delinquent subcultures (Schwartz & Gertseva, 2012: 35).

Thus, the lower rate of female criminality is explained by the fact that average women are less exposed to conflict of their ethical values, which is not the

case with the average man. In particular, women are less involved in political, economic and other social activities and therefore the opportunities to commit crimes are less available. In this part, we will particularly emphasise the Power-control Theory (Hagan's Theory). Namely, Hagan (1990) points to changes in the family structure and style after the late 50's in order to explain the level of female crime. While the husband is a head in the family and the one who cares for the material status and incomes within the families, the woman is subordinated to the position of the husband. She needs to take care of the home and the children. In that sense, daughters are expected to follow the role of the mother and such a process of learning and socialization moves them away from risky behaviors outside the home. But the changes in the family structure (single parents, disordered families, etc.) exposes them to greater independence and thus to greater risk both as perpetrators and as victims (Marsh *et al*., 2006: 152).

2.3. Limitations on traditional criminological theories in the explanation of female criminality

Traditional explanations of female crime got a series of remarks. First, most criminological theories ignore women and focus exclusively on male participation in crime. In that sense, they regard women as unimportant or peripheral in the crime rate. The tendency to ignore female results has led criminology to be primarily concerned with understanding and explaining male crime. The second criticism refers to the generalization of the results of criminological research (Konstantinović-Vilić, 2013: 96č Daly, 2008, Miller & Mullins, 2006: 220). This means that criminological theories that investigated the causes of crimes were gender-neutral and, although they were mostly considered with male offenders, there was presumption that the same findings encompass the female offenders. Hence, classical theorists strive to find out explanation of crime that can be generalized for both men and women. This endeavor, from a feminist point of view, is a problem because, due to the big discrepancies in the male and female crime rates, there cannot be a general etiological process. That generalization should be avoided, and instead of that, having in mind the experiences of women and men, it is necessary to examine how different macro and micro social factors affect male and female crime in a different ways. In fact, because of the gender nature of male and female lives, certain social factors have different meanings and have different consequences for them. The third criticism refers to the belief of the fundamental differences between women and men. For example, men are believed to be strong, independent, more rational, more aggressive and stronger

whereas women gentle, passive and obedient. These stereotypes are often a reflection of criminological theory and research. According to them (particularly psychological theories of crime), female greater emotionality, passivity and weakness can explain the nature of criminal activities and their involvement in crime (Miller & Mullins, 2006: 220).

The fourth weakness of traditional criminological theories is the perception of gender as a variable and individual trait rather than as a key concept that can explains women's crime. Traditional approaches explain the differences between men's crime and women's crime with stereotyped ideas about dichotomous gender difference and treating gender as an individual trait and as a control variable. This notion is criticized for the fact that gender is not considered as a key element of society and the differences regarding race, class and age are not taken into account (Konstantinović-Vilić, 2013: 104, Miller & Mullins. 2006: 220).

So, although men are much more in offending, there are still no surveys on female offenses. There are two assumptions about this approach: firstly, since males are more likely to engage in criminal behavior, women are not interesting in research. Secondly, mainstream criminology assumes that men and women are similar and that what can be explained for male, can be explained for female criminality, as well (Sharp, 2009: 247). But these theses are unacceptable by the new feminist perspectives within criminology.

3. The basis of feminist criminology: gender, feminism and crime

The development of feminist criminology began in the 70s with the idea to raise the visibility of women within the criminological research, addressing their role as offenders and as victims, and to understand crime as a male activity, not only as a result of sex differences, but also as a result of gender differences. This development is also associated with the fact that until the 60s of the 20th century, most criminologists focus on male offenders and the responses of the criminal justice system to male crime. In fact, the lack of attention to female offending stems from the fact that the majority of crimes at that time were committed by male persons. In addition, ignoring the criminality of women by traditional criminology also puts aside other issues such as the role of the criminal justice system in the processes of women criminalization and victimization. So, and considering that in the last two decades of the 20th century, the rate of female imprisonment has increased; there is an increased need to research girls, women, women's crimes and the criminal justice response to that crime (Sharp, 2009: 245). In this

direction, theories that explain the gender gap in crime are being developed, because neither the social order nor the structure of crime is gender neutral. These new "female" approaches within criminology seek to address the limitations of traditional criminological perceptions by extending our understanding of male and female offending, as well as the responses of the criminal justice system to those types of crime. In doing so, they start from the assumption that male and female offending result from qualitatively different gender processes. But, feminist-oriented criminologists vary according to several feminist perspectives and waves that were developed in the second half of the last century.

3.1. Gender, feminism and crime

Feminism is a collection of theories of female suppression and a set of strategies for social change (Daly & Chesney-Lind, 1988: 502). In essence, feminists believe that women suffer from discrimination due to their sex, denied and unsatisfied needs and that satisfying those needs requires a radical change (Daly & Chesney-Lind, 1988: 502). For the feminist perspective, the basic questions relate to the social construction of the gender identity and how it affects the women behavior. But according to them, female and male identity or characteristics are not the result of biological differences, but the result of social and cultural processes (Marsh *et al*., 2006: 151).

Namely, a distinction is made between sex and gender. *Sex* is defined through the biological and psychological characteristics that determine the individual as a man or as a woman. However, understandings of sex differences are not same in time and culture, but they vary. Therefore, the opinion about the sex defined by the "body" as biologically given is changing. *Gender,* on the other side, refers to socially defined concepts of masculinity and femininity that are learned behaviors. It refers to socially settled roles, behaviors and values that a particular society considers appropriate for men and women. Gender is an acquired identity that is learned, can change over time and varies within and through cultures (Belknap, 2016).

For example, being a man means having more control and power. At the same time it means more to earn, to lead, to be strong and influential. He can build, drive, catch the criminals, and ensure public order and community safety. On the other hand, being a woman means that she needs to take more care of the family and children, to become a mother, a wife, to do easier things, to earn less, to be kind. Her biological and reproductive role implies to be responsible for raising and caring for children, as well as for maintaining home and family harmony. Also, she can be a teacher, a doctor, worker in textile factories, etc. (Vold, Bernard & Snipes, 1998: 279).

3.2. Inclusion of gender in the explanation of crime

For feminists, gender, gender roles and gender identities can help explain female crime. Or, in other words, feminist criminologists argue that only with an understanding of gender, crime can be fully understood and theorized (Miller & Mullins. 2006: 217). It should be borne in mind that society and social life are shaped on the basis of gender. That is to say, gender organisations, their structures, policies, ideologies and practices reproduce gender hierarchies. From this, the examination of the nature of gender behavior enables a better understanding of the ways in which the gender shapes crime and criminality. Socialization, the influence of society, social control, family connection and supervision, individual pressure and opportunities are fundamental to understanding male and female crime. But, because of the gender nature of male and female lives, these factors have different meanings and different consequences for them. In fact, the gender ratio of crime means determining the reasons for the different rates of both, men's and women's crime. In this sense we open up the questions: *why are men more inclined to crime than women? And what are the reasons for these differences?* (Konstantinović-Vilić, 2013: 104). These questions lead criminologists to pay attention to gender differences and inequalities and to develop theories that will explain the differences between male and female crime. The search for answers starts from the point: *what prevents women from committing criminal acts*? The basis of that response lies in the gender, that is, in the gender roles and inequalities in society. So, what distinguishes feminist criminology from mainstream criminology is that, when considering women and crime, this is done through a theoretical understanding of gender (Daly, 2008: 217).

There are five aspects of feminist thought, which distinguish it from traditional criminology (Daly & Chesney-Lind, 1988). They are: (1) gender is not a natural fact, but a complex social, historical and cultural product. It is connected, but does not derive from biological sex differences and reproductive capacities, (2) gender and gender relations shape social life and social institutions, (3) gender relations and the construction of masculinity and femininity are not symmetrical, but are based on the organizational principle of male superiority and social and political-economic dominance over women, (4) knowledge systems reflect male views of the natural and social world. The production of knowledge is gender-based and (5) women should be part of criminological research, not peripheral, invisible or supplements to men. Also, they should be more represented in research teams. Based on the above-mentioned, we can conclude that the feminist perspectives in criminology start from the role, meaning and essence of the gender. Therefore, it is called gender consciousness criminology.

4. Feminist movements and their connection to feminist perspectives in criminology

4.1. The basics of liberal feminism

Liberal feminism was associated with the ideas and activities of the movement for the liberalisation of women from the early 1960s, as well as with the campaigns for their legal, social and gender equality with men. In doing so, the basis for gender inequality between men and women lies in their different gender socialization and expectations. According to liberal feminists, inequalities between men and women result from sexist attitudes and stereotypes and from discrimination among them (Simpson, 1989: 610; Walklate, 2004: 94; Daly & Chesney-Lind, 1988: 537). Some of the key issues that have been the focus of the feminist movement are issues of equal pay, problems of sexual abuse, domestic violence, pornography and sexism in the media and reproductive rights. Thus, for example, the fight for reproductive rights included advocacy for access to information and access to contraceptives, and lobbying for the decriminalization of abortion. Hence, liberal feminism advocates gender equality (Marsh *et al*., 2006: 153). The central task is to create an equal society and to create equal opportunities for men and women in the public sphere, in particular by abolishing sexual discrimination.

In the area of criminology, this movement advocates for equality between men and women as part of criminological research. On the other hand, in the part of female criminality, the basic questions posed by liberal feminism are to see why women's crimes are increasing in the '60s and' 70s, and how does the liberalization and emancipation of women affect that rate?

4.2. The basics of radical feminism

Radical feminism focuses on the power of men over women and on the patriarchy. In particular, radical feminist studies want to state that our understanding of social relations from private to public life is related to the power of men over women. In addition, it is assumed that all men use their masculinity, which means that their expression is through the application of sexual violence against women (Walklate, 2004: 95). So, radical feminism is more concerned with the experience of control and sexuality. And, this wave prefers to use the term *survivors* instead of *victims* that suggest that women have more active role rather

than a passive one. In this regard, radical feminists focus on women's strategies for resistance and survival (Walklate, 2007: 86, Marsh *et al*., 2006: 156). During the 1970s, radical feminists advocate for reform of the public response to crimes like rape and violence among intimate partners. Because before getting of appropriate legal and criminal law protection, victims of rape and violence from their intimate partners were often perceived as guilty for their victimization. In that period, two important feminists Brownmiller Susan (1975) & Smart Carol (1976), in their teachings, point out that the patriarchal structure of society contributes and shapes the victimization of the woman (Sharp, 2009: 246).

Apart from the above, radical feminism asks other questions: *how do women get subordinate roles in society? And how society can be transformed in this respect?* According to feminist perspectives, patriarchy is the most basic form of domination in every society. It is established and maintained through the division of socialization by sex and the creation of gender identities, according to which both men and women believe that a man is more superior. Based on these gender identities, men want to dominate over women in personal relationships, both within and outside the family. So, male domination is extended to all institutions and organizations in the wider society. But, according to radical feminism, the problem is not that men are socializing according to sex roles and differences, but in the nature of men is to dominate and to be violent. This means that biological / sex differences between men and women are the basis for patriarchy (Vold, Bernard, Snipes, 1998: 278). In this regards, radical feminism focuses much more on male oppression over women, than on other social conditions that determinate female subordination. Therefore, the question of sexuality is crucial for radical feminism and according to them; all men are "potential rapists" and have the power and control over their lives and the lives of women. Or, all men express the masculinity through violence against women (Walklate, 2007: 86). Nevertheless, the contribution of radical feminism to the development of feminist criminology is important for two reasons. First, violence against women has become a matter of public concern and second, they also recreate our understanding of violence within the family and among intimate partners.

4.3. The basics of social feminism

Social feminism is interested in two key things: how structural variables (class, race, and sex) affect each other and how this relationship affects the behavior of men and women. Second, how patriarchal capitalism structures the experiences of men and women? Unlike radical feminism, social feminist understanding of crime also has two assumptions: first, in order to understand the crime of powerful and powerless, we need to understand patriarchy and capitalism and their effect

on human behavior. Second, power is central point in order to understand serious forms of crime. The powerful (both in gender and in class sense) create greater criminal harm in society (Walklate, 2007: 87; Sharp, 2009: 249; Vold B, Bernard, Snipes, 1998: 277). For example, gender-based crime is explained by the various experiences that derive from gender inequality. Hence, social feminism focuses specifically on the connection between social structure and culture and argues that due to gender differences and different gender socialization, family control over girls and boys and exposure to deviant society are different. In this explanation, we should not ignore the fact that marginalized young men of the lower class are involved in street crime because of the "blocked" opportunities to realize their *male role* in patriarchal capitalist society (Sharp, 2009: 249). The basic problem lies in the socialization in gender roles, and not in male aggressiveness. According to social feminism, biological arguments about male aggression are inaccurate, which means that men are socializing in roles which lead to violence and domination. On the other hand, patriarchy and capitalism bring women in desperate situations which forced them to become, for example, victims of sexual exploitation in order to survive. So, social feminism focuses on the interdependence between class and gender and how they affect the life chances and life experiences of both women and men. Marxist feminism combines the radical with traditional feminism and argues that the root of the male dominance lies in the fact that men possess and control the means of economic production. In this way, this kind of feminism connects male dominance and female subordination to society with the economic structure of capitalism (Vold, Bernard, Snipes, 1998: 278).

4.4. A brief overview of the different feminist perspectives on gender inequality

Different feminist perspectives also have a different view of the origin of gender inequality and about ways and solutions to social change (Daly & Chesney-Lind, 1988). While traditional view of gender inequality is based on biological sex differences, for liberal feminism, gender inequality arises because women have limited access to participate in various areas of public life, such as education, employment or other public and political activities. For radical feminism, gender inequality is based on men needs and desires to control female sexuality and reproduction. Gender identity limits women's development as a completely human being. For Marxist feminism, gender inequality arises as a result of hierarchical relations of control and power, especially because it affects the increase of private property among men. Social feminism focuses on gender, class and racial relations of domination.

But the basis of all kinds of feminism is how gender relations structure crime, which means that gender is inseparably linked to it. In the analysis of female criminality, male criminality, violence against women, the role of women in the penal system, and so on, it starts from the thesis of female suppression and discrimination in the male patriarchal society. Namely, according to the patriarchal ideology, it is normal for a man to be dominant in the family and in the social life and to be in a superior position, while for a woman is normally to be excluded from the social life and to be in a more inferior position. For those (men and women) who fully believe in this ideology, the whole concept of equal rights or women's freedom is both problematic and unnatural (DeKeseredy, 2011: 30). Besides gender differences, the patriarchate also makes a difference in gender identities and roles, which binds them with biological, or sex differences. Such a view of gender roles, feminism regards as oppression, domination, exploitation, discrimination, inferiority, inequality, and marginalization. According to them, such situations and processes cause both violence against women and a tendency toward deviant and criminal behavior by them. In fact, criminal behavior is treated as an expression of revolt, escape, survival, frustration, and even liberation. Therefore, the key to an equal society is not so much for women to take ownership of the means of production, but to take control of their own body, and of their reproductive functions. If women take control and have fully rights related to reproduction and family planning, then, they can take the right place in a wider society (Vold, Bernard, Snipes 1998: 279).

So, feminist criminology differs significantly from other criminological theories that explain the causes of crime. It analyzes women crime and victimization in relation to learned behaviors that vary according to gender and gender differences in power in patriarchal societies. Hence, the gender socialization of boys and girls strongly influences their ability to commit crime, but also on how male and female abuse and victimization can be seen. Moreover, when determining gender differences in phenomenological and etiological sense, it is necessary to recognize the different social living conditions as they are shaped by their different social positions (Konstantinović-Vilić, 2013: 104). And, we should, in addition, take into account sexism, racism, prejudice against class and other forms of oppression, and the way in which lifestyle and life paths affect young boys and girls (Vold, Bernard, Snipes, 1998: 295).

This process of gender socialization gives girls less opportunities to explore the home outside. This means that a patriarchal male dominant society controls girls more than males. Their freedom of movement and expression is limited, both at home and outside the home. This creates the basis for male domination and control over women. According to Carllen (1988), women are

controlled through two mechanisms in modern society: at home and at work. Therefore, they are expected to act conformably. But not all women are conformists, which are reflected in increased female crime. Based on those differences, several feminist or gender theories which explain female criminality are built (Marsh *et al*., 2006:152). Common elements related to feminist perspectives in criminology (according to Gelsthorpe, 2002: 135) are: (1) focus on gender as a central principle in social life and (2) recognition of the importance of power in shaping all social relations in the society (stated in Daly, 2008).

In order to closely explore the relation between gender and crime, in the framework of criminological research, several questions are raised: 1. how do gender-based roles based on sex differences affect female crime? How does gender paths and gender experience affect future abuse? 2. How does social gender inequality based on the ideology of patriarchy affect crime? 3. How does institutional sexism and gender-based discrimination endanger women? 4. How does early victimization of girls based on gender inequality affect women's further criminal behavior? 5. What is the relationship between gender and the penal system? What is the context and quality of the crime of boys and girls? (Daly, 2008).

5. Conclusion

Feminist criminology focuses on a wide range of issues related to women and crime, including a theoretical explanation for crime, a response to female abuse, female prison programs, and women's labour in prison and etc. All those issues include: (1) a liberal feminist focus on class relations and capitalism as a source of female suppression, (2) a social focus on male domination over political and economic structures in society as a source of inequality and (3) a radical feminist focus on patriarchal domination over women. But regardless of the different priorities and approaches, their common feature is the way in which the gender structure of society is related to crime. However, during the 70s and 80s, under the influence of liberal feminism, the overall goal was to bring girls, women and crime theories, victimization and justice. One focus was to emphasize the lack of empirical knowledge of crime and criminalization. In the mid-1980s, under the influence of critical thought in criminology, the focus was on analyzing the differences between girls and women, especially in terms of class, race and ethnic identities and subjectivities. This change has been made because of the criticism of black women, beginning in the early 1980s, which argue for racial relationships and positions between men and women. Radical and social feminism address more the issues of men and masculinity on the criminological agenda, while the liberal one the women offenders.

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EFFECTIVENESS OF ANTI-CORRUPTION BODIES IN SUPPRESSION OF CORRUPTION IN SELECTED COUNTRIES

Many countries have established Anti-Corruption Agencies (ACA) in various forms, given them differing mandates and powers, and obtaining equally mixed results. The traditional anticorruption functions are prevention, including education and public awareness; investigation of corruption cases; prosecution of corruption cases and policy; and research and coordination.

The aim of the article is to examine effectiveness of preventive Anti-Corruption Agencies in Western Balkan countries (Albania, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia, Kosovo, Montenegro and Serbia), and their achieved results. The different circumstances in these countries, the different strategies pursued by the agencies, and their different degrees of success, have yielded some useful suggestive insights, even though there are too many variables and too few data points for any definitive statistically significant conclusions.

Factors that determine an Anti-Corruption Agencies effectiveness are political support from the country's leadership and a clear and comprehensive legislative framework that delineates its powers and relationship with other policy agencies. Additional factors for successful

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functioning of ACA are guarantee of adequate resources and independence, accountability and relationship with citizens and media. The Western Balkan ACAs were assessed against these factors and accomplished track-record. The article is based on the desk research, analysis of statistical data published in Annual reports, finance and human resources data.

Key words: corruption, anti-corruption authorities, resources, standards

1. Development of Anti-Corruption Agencies

As corruption infiltrates the political, economic and social spheres of countries, the stability and security of individual countries and of the international community are threatened and there can be few prospects for development and prosperity. Specifically, corruption undermines democracy and the rule of law, leads to human rights violations, distorts markets, erodes quality of life and allows organized crime, terrorism and other threats to human security to flourish. Affecting developed and developing countries alike, corruption has become a global concern. The 2005 World Summit[1] emphasized the need for solid democratic institutions responsive to the needs of people and the need to improve the efficiency, transparency, and accountability of domestic administration and public spending and the rule of law, to ensure full respect for human rights, including the right to development, and to eradicate corruption and build sound economic and social institutions.

According to the World Bank (WB) more than 1 trillion US dollars is paid in bribe every year.[2] The overall damage created by corruption is estimated at four trillion US-Dollars or around twelve per cent of the global gross production (Gabriela, 2014: 17). According to the Office of the High Commissioner for Human Rights (OHCHR), the money lost to corruption would suffice to provide food 80 times over to all the people of the world suffering from hunger.[3]

Preventing and combating corruption requires a comprehensive and multidisciplinary approach. States and international bodies have recognized this and drawn up regulatory frameworks to prevent and fight corrupt practice.

Over the past few decades the establishment of anti-corruption authorities (ACA) has widely been considered to be one of the most important national initia-

1 A/RES/60/1

2 World Bank, 2013, Six Questions on the Cost of Corruption with World Bank Institute Global Governance Director Daniel Kaufmann, available at: http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20190295~menuPK:34457~pagePK:34370~piPK:34424~theSitePK:4607,00.html accessed on 15 November 2018.

3 OHCHR, 2013, The Human Rights Case against Corruption, available at: https://www.ohchr.org/EN/NewsEvents/Pages/HRCaseAgainstCorruption.aspx accessed on 15 November 2018.

tives necessary to effectively tackle corruption (Heilbrunn, 2004: 1). This belief was largely popularized by the successful models of the Corrupt Practice Investigation Bureau of Singapore (CPIB), established in 1952 and of Hong Kong's Independent Commission Against Corruption, established in 1974.[4] Both institutions were widely considered to be effective in reducing corruption in their countries.[5] During the 1990s and 2000s, specialized anti-corruption agencies were established in many countries and today there are nearly 150 ACA in the world (Jaegere, 2012: 79-121).

However, although they are often established with high levels of optimisms, experience has shown that the efficiency of anti-corruption agencies varies from country to country. This approach has had far less success in countries where corruption problems were of a more systemic nature (Pope, 1999).

Considering the number of anti-corruption authorities worldwide, their various functions and actual performance, it is difficult to identify all main functional and structural patterns. The Organization for Economic Cooperation and Development (OECD) defined different models of specialized anti-corruption according to their main functions: multi-purpose agencies with law enforcement powers and preventive functions; law enforcement agencies, departments and/or units; and preventive, policy development and co-ordination institutions.[6]

There is no clear indication on which model is the most effective for combating corruption, and there is no blueprint for effective anti-corruption infrastructure. The legal and institutional environment needs to be supportive, with a robust legal framework supporting effective prevention and detection of corruption.

Having in mind that is difficult to compare performances of different models the analysis will focus on preventive authorities. Preventive anti-corruption authorities are specialized institutions established to fight the corruption by implementing preventive measures. In some countries, an institution such as anti-corruption agency can be a central anti-corruption body with broad powers including formulation, coordination and oversight of the anti-corruption policies.[7]

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4 For more information see: Quah, J.T (1982) Bureaucratic corruption in the ASEAN countries: a comparative analysis of their anti-corruption strategies. Journal of Southeast Asian Studies, 13(1), pp. 153–77; Quah, J.T (2000) Confronting Corruption: The Elements of a National Integrity System. Berlin: Transparency International; Doig, A, Riley S. (1998) Corruption and anti-corruption strategies: issues and case studies from developing countries. In: Corruption and Integrity Improvement Initiatives in Developing Countries. New York: United Nations Development Program, pp. 45–62.

5 UNDP (2011) *Practitioners' Guide: Capacity Assessment of Anti-Corruption Agencies,* 9.

6 Specialized anti-corruption institutions: Review of Models, OECD, 2008.

7 In other countries, these functions can be performed by several institutions, which have a mandate for the prevention and competencies, such as internal controls, commissions for the resolution of conflict of interest, and special sector-level agencies (e.g. Public Procurement Policy Sector, which has a shared competence in the prevention of corruption). The countries that have a complex system of anti-corruption policies and institutions establish special arrangements for horizontal and vertical interagency cooperation.

2. Reasons for establishment of specialized Anti-Corruption Agencies

The reasons for establishment of anti-corruption institutions is to address a specific problem of corruption, and to institutionally tackle paroles related to corruption**.** This was a situation in many countries, including Hong Kong, Singapore and Australia. In 1987, in response to scandals involving the police and narcotics money, political leaders in New South Wales decided to establish and agency that would have many of the same core functions as the Hong Kong Independent Commission Against Corruption, with a crucial difference of an emphasis on prevention.[8] The ICAC was formed in response to the 1974 Peter Godber affair,[9] while the CPIB was only strengthened in response to the 1970s scandals involving police officers in the narcotics trade. These crises forced policy makers to create anti-corruption agencies that were independent from the police since the police were themselves involved in the scandals.

A specialized anti-corruption institution might be needed when structural or operational deficiencies within an existing institutional framework does not allow for effective preventive and repressive actions against corruption.

Establishment of a new institution is justified where it promotes efficient prevention and fight against corruption.[10] Proponents for establishment of a new institution generally argue that it has several advantages: improved coordination among multiple agencies, centralization of information about the corruption and separation from political and corruption intrusion.

The advantages of establishment of a new institution is linked with the need for specialization. Combating corruption is gradually become a special field of expertise. The volume of academic knowledge and practical experience that exist in this area is growing. Therefore, it might lead to the improvement of quality. Separate institution would bring together people with relevant professional knowledge who could focus on these complex cases, which is difficult for the agencies that have other responsibilities as well.

The new anti-corruption institution should assume leading role in the coordination and implementation of complex measures that corruption prevention always implies. Effective anti-corruption efforts assume involvement of numerous institutions (police, prosecutors' office, tax administration, business registry, cadaster,

8 South Africa Anti-Corruption Architecture, Basel Institute on Governance, International Centre for Asset Recovery, 2012.

9 A British senior police officer Peter Godber, who had amassed a fortune of 4.3 million Hong Kong dollars, came under the investigation in 1973 and fled to the UK. He was later extradited, tried and convicted.

10 Specialized anti-corruption institutions: Review of Models, OECD, 2013.

state audit institution, public procurement administration, etc.) whose work should be coordinated to ensure exchange of intelligence and data.

Inability of existing institutions to effectively combat corruption, especially in young democracies, is because they are tainted by corruption or political intrusion. However, the establishment of new institutions can perpetuate social injustice by allowing a corrupt leader to claim a commitment to anti-corruption while using the agencies themselves for political gain (Huther, Shah, 2012).

Establishment of new institution has several drawbacks that can reduce efficiency in fight against corruption. It is difficult to build anti-corruption institutions which operate independently from the weak governance structures that characterize countries with systemic corruption, including the legal system, mechanisms of political accountability, and financial and regulatory institutions (Rose-Ackerman, 2006). Fight against corruption requires whole of the government approach and strong cooperation between all law enforcement agencies. Even if the determination to tackle corruption was initially strong, usually from a government newly in power, it often diminishes as the realities of office, the vested interests in the status quo and the pressure of more immediate tasks bear on the actions of government.

Simply creating an anti-corruption agency is not enough for positive changes to occur. The existence of such an institution is meaningful only if it is given adequate powers and resources and if other anti-corruption programs are in place (financial accountability, judicial and media independence, public awareness campaigns, citizens participation, decentralization, bureaucratic culture, etc.) (Johnson, 2016).

3. Corruption in Western Balkans

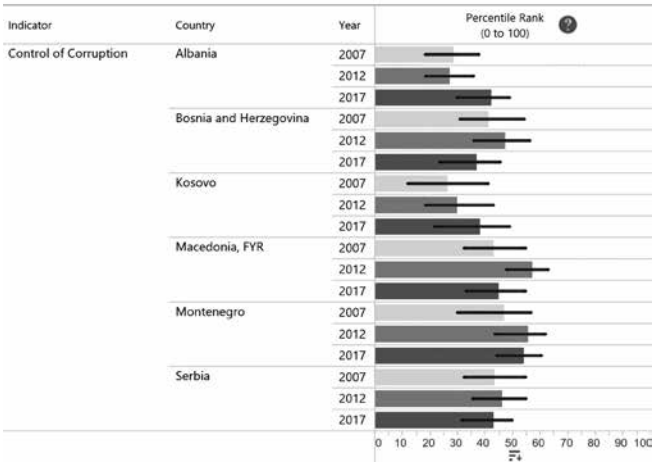
Western Balkans region was selected due to fact that rule of law is now at the heart of the EU accession process and candidate countries must demonstrate a solid track record to show that suppression of corruption is deeply rooted on the ground. The fight against corruption emerged as one of the most significant issues during 2004 enlargement of the EU and gained even more importance with the accession of Romania and Bulgaria in 2007.[11] To prepare candidate countries for membership, the EU found it necessary to create new institutions and mechanisms to address corruption. Assessment is focused on the Western Balkan countries that are

11 Bulgaria and Romania have joined the European Union on January 1st, 2007, but under the condition to continue the reforms in the area of justice and rule of law. The compromise was sealed by a special monitoring mechanism, called Control and Verification Mechanism (CVM). Under that mechanism the European Commission monitors the implementation of reforms in several benchmarks and makes recommendations. Each year, the Commission presents a general report in July and an interim document in the beginning of the year. The reports assess progress under the Cooperation and Verification Mechanism, with judicial reform, the fight against corruption and, concerning Bulgaria, the fight against organized crime.

in the process of EU integration:[12] Albania, Bosnia and Herzegovina (BIH), FYR of Macedonia, Montenegro, Serbia and Kosovo.[13]

In Western Balkans region the corruption is serious obstacle for doing business, investments and business development. Businesses consider corruption to be among the most important challenges when doing business in these countries.[14] Corruption in the Albanian is widespread and is considered one of the integral issues facing the country, as assessed by several sources, including Freedom in the World 2018[15] and the Human Rights Practices Report 2017[16]. According to the same sources corruption remain a prevalent problem in Montenegro, Macedonia, Kosovo, Bosnia and Herzegovina and Serbia. Same is confirmed by the World Bank Worldwide Governance Indicator (WGI) Control of Corruption which captures perception of the extent to which public power is exercised for private gain.[17]

Figure 1: *Worldwide Governance Indicator - Control of Corruption in Western Balkan countries*



Source: World Bank

12 Albania, the former Yugoslav Republic of Macedonia, Montenegro and Serbia have candidate status for EU membership, and Montenegro and Serbia started their accession negotiations in 2012 and 2014, respectively. BiH and Kosovo are lagging behind. BiH Stabilization and Association Agreement (SAA) with the EU entered into force in June 2015 and in September 2016 the EU Council invited Commission to present Opinion on BiH candidacy application, while Kosovo SAA enter into force in April 2016. All are committed to their EU future and to bringing their national legislation into line with the *acquis communitaire*, but the progress achieved in fulfilling the political and economic criteria is uneven.

13 Under UN Resolution 1244.

14 See Global Competitiveness Report 2019, World Economic Forum, 2018 and results for indicator Incidence of Corruption.

15 See Freedom in the World Report 2018, https://freedomhouse.org/report/freedom-world/2018/albania accessed on 15.11.2018.

16 For more information https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper

17 For more information http://info.worldbank.org/governance/wgi/index.aspx#home

Although, World Bank Doing Business Reports do not capture the prevalence of bribery and corruption, the case study also finds that economies with greater control and safety mechanism in place tend to have a lower incidence of corruption. In addition, the economies that rank high on Doing Business indicators tend to perform well in other international data sets, such as the Global Competitiveness Index and Transparency International's Corruption Perceptions Index.

Despite some important achievements in combating corruption in selected countries, mostly with respect to the adoption of laws in key anticorruption areas, anticorruption and good governance reforms are not consolidated. While many laws have been passed, implementation has been less certain, and it appears that implementation gaps are growing.

Difference between adopted laws and practice resulted with the perception that the Western Balkans is a region vulnerable to corruption.[18] In Montenegro according to a 2018 European Commission report the impact of anti-corruption measures in particularly vulnerable areas remains limited.[19] In Bosnia and Herzegovina[20] and Serbia[21], corruption remains prevalent in many area, particularly public procurement and continues to be a serious problem. Albania, along with Kosovo, ranks as the most corrupt in the Western Balkans. Its citizens perceive corruption the second most important problem after unemployment.

To evaluate the dimensions of a so-called 'victimless crime', can be hard. Different mechanisms are in place, e.g. Group of States against Corruption (GRECO) evaluations, the OECD Working Group on Bribery's assessments, the World Bank's Control of Corruption index, Transparency International (TI) Global Corruption Barometer. According to TI's Corruption Perception Index (CPI), all Western Balkans countries have a high corruption score and while ratings have improved slightly in some of them, the region as a whole remains among those with the poorest ratings in Europe.

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18 Measuring corruption has become popular method that should help countries to identify where is a need for action, as well as inform decision makers both what that action should be and assessing whether it has worked. The dominant mode of measurement since the mid-1990s has been perception-based, via cross-national indices drawn from a range of surveys and 'expert assessments'. Indices such as the Corruption Perception Index (CPI), the Bribe Payers Index (BPI), the Global Corruption Barometer (all produced by Transparency International), the Business Environment and Enterprise Performance Surveys (BEEPS) or other aggregate indicators such as the Control of Corruption element in the World Bank Group's Worldwide Governance Indicators (WGI), have undoubtedly proved immensely important in raising awareness of the issue of corruption, as well as allowing for detailed cross country comparisons.

19 For more information see Montenegro 2018 Report, SWD(2018) 150 final, p. 18-23.

20 For more information see Bosnia and Herzegovina 2018 Report, SWD(2018) 155 final, p. 12-15.

21 For more information see Serbia 2018 Report, SWD(2018) 152 final, p. 19-23.

All countries from the Western Balkans signed and ratified the most important international instruments in anti-corruption area, including the United Nations Convention Against Corruption (UNCAC) as the first global agreement in the anti-corruption field, it required from the member states not only to provide the specialization of the law enforcement authorities, but also to establish specialized preventive anti-corruption agencies.[22] Despite this, all these countries are faced with widespread corruption – one of the key challenges in the process of accession to the European Union. The results in combating corruption achieved so far can only be assessed as limited. It is therefore not surprising that all countries in the region maintain relatively high scores when it comes to corruption perception.

4. Key issues in implementation of international standards on anti-corruption authorities in Western Balkans

To address corruption challenges, international obligations from article 6 of UNCAC and recommendations received in GRECO Evaluation Reports, Western Balkan countries established specialized anti-corruption agencies.23 Bosnia and Herzegovina has Agency for the Prevention of Corruption and Coordination of Fight Against Corruption (APIK), Montenegro has Agency for Prevention of Corruption, Macedonia has State Corruption Prevention Commission, Albania has High Inspectorate of Declaration and audit of Assets and Conflict of Interest (HIDAACI), Serbia has Anticorruption Agency, and Kosovo has Anti-Corruption Agency.

Specialized anti-corruption agencies in the Western Balkan countries predominantly have a preventive role (Matić Bošković, 2013: 65-89). This model comprises institutions with one or more corruption prevention functions, such as investigation and analysis, strategic plan development and coordination, training and advisory activity for other institutions relating to the threat of corruption, proposal of preventive measures, etc. Some of these may have special authorizations such as control of the public officers' assets declarations, control of financing of political parties or deciding in the conflict of interest cases.

22 For list of signatories see following website https://www.unodc.org/unodc/en/treaties/CAC/signatories.html

23 Albania, Bosnia and Herzegovina, Macedonia, Montenegro, Romania, Serbia and Kosovo in accordance with the UN Security Council Resolution No. 1244.

All the anti-corruption institutions in the Western Balkan are declared as independent bodies in their funding act.[24] Thus, in accordance with the legal text, the Bosnia and Herzegovina Agency is an independent and autonomous administrative organization, reporting to the Parliamentary Assembly of BIH on its operations.[25] Similar provision is contained in the Macedonian Law on the Prevention of Corruption,[26] specifying that the State Commission is autonomous and independent in the performance of its statutory functions. The Serbian Law on Anti-Corruption Agency specifies that the Agency is an autonomous and independent state authority, reporting to the National Assembly on its operations.[27] The Kosovo Constitution contains a provision relating to independent agencies,[28] and in accordance with the Law, the Anti-Corruption Agency is defined as an autonomous and specialized agency responsible for the implementation of the state policy relating to the prevention of and action against corruption.[29] Montenegro Agency for Prevention of Corruption is autonomous and independent body established by Parliament.[30]

Governing over anti-corruption institutions in majority of Western Balkans is entrusted to collegial body and management over the body to director. The collegial bodies have different mandate and composition in selected countries. The State Commission for Prevention of Corruption in Macedonia is collegial body that governs and manage work of the Commission. Board of the Anti-corruption Agency in Serbia decides on appeals against decisions of the director pronouncing

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24 Both the United Nations Convention Against Corruption and the Council of Europe conventions specify the criteria for efficient anti-corruption agencies including independence, specialization, adequate training, and resources. In practice, many countries face major challenges in trying to implement these broadly defined criteria in practice.

25 Article 6 of the Law on Agency for the Prevention of Corruption and Coordination of the Fight Against Corruption (*Zakon o Agenciji za prevenciju korupcije i koordinaciju borbe protiv korupcije*), Official Gazette BIH, NO.103/09, 58/13

26 Article 47 of the RM Law on the Prevention of Corruption, Official Gazette of the Republic of Macedonia No.28/2002; 46/2004; 126/2006; 10/2008; 161/2008 and 145/2010.

27 Article 3 of the Law on Anti-Corruption Agency (*Zakon o Agenciji za borbu protiv korupcije*), Official Gazette of Republic of Serbia, No.97/2008, 53/2010, 66/2011, 67/2013, 112/2013, 8/2015.

28 2008 Constitution, Article 142, Official Gazette of Kosovo, No.25/2012,7/2013, 20/2015.

29 Article 3 of the Law on Anti-Corruption Agency (*Zakon o Agenciji za borbu protiv korpucije*), Official Gazette of Republic of Serbia, No.97/2008, 53/2010, 66/2011, 67/2013, 112/2013, 8/2015.

30 Article 4 of the Law on Prevention of Corruption. Before adoption of the new Law on Prevention of Corruption the Montenegrin Administration for Anti-Corruption Initiative was an integral part of the Ministry of Justice. See more in Article 4 of the Decree on the Public Administration Organization and Operating Procedures (*Uredba o organizaciji i načinu rada državne uprave*), Official Gazette of Montenegro, No. 5/12.

measures in accordance with the Law, adopts Agency annual report, performs supervision over the work and proposes budget for operation of the Agency. Similar mandate has Anti-Corruption Council in Kosovo over the work of the Agency director, as well as Council of the Agency for Prevention of Corruption in Montenegro. Members of the collegial bodies are elected by legislative and/or executive power.

With respect to resources, anti-corruption agencies should be provided adequate material resources, and specialized and trained staff required for the efficient performance of their functions. While the capacities of the anti-corruption agencies in the region are at different levels, most agencies lack staff or have vacant position due to lack of financial resources.[31] Having in mind financial crises and budget constraints, anticorruption bodies in region are also facing challenges in securing adequate funding.

5. Track record

Requirement for sufficient financial and human resources is related to the workload and results of the anticorruption bodies in Western Balkans region. The reason for establishment of anticorruption authorities in all Western Balkan countries was improvement in implementation of anticorruption activities. However, there is a gap between public expectations and results achieved till now.

Demand for ACA services differ from country to country. In all countries, anticorruption authorities are collecting records on assets of public officials. In Serbia approximately 20,000 officials are obliged to submit asset declaration, in Bosnia and Herzegovina 6,000, in Albania 4,200, in Montenegro around 4,000, while in Kosovo only 3,900 officials.[32] Asset declarations are valuable source of information and verification procedure could provide indication for corruption.

Although, all anticorruption agencies in the region have significant workload in keeping registries and controlling conflict of interest and asset declarations, the visible results are missing. The important achievement in all countries is established culture for public officials to declare assets and interests. In addition, in countries where anti-corruption authorities have power to control

31 Bosnia and Herzegovina 2018 Report, pp. 14. *The state level Anti-Corruption Agency has an appropriate budget but 20 % of its 41 positions are vacant, including in key areas. Premises are not adequate*.

32 Source Greco https://www.kpk-rs.si/upload/datoteke/GRECO%2060%20-%20Tour%20de%20table%20-%20Horia%20Georgescu.pdf

financing of political parties, the political parties are regularly submitting financial reports. However, effective control and verification of these reports has to be established, as well as smooth cooperation with the institutions responsible for investigation and prosecution.

After initial positive expectations, the Macedonia SCPC was in the limbo till 2017 since the overall political situation in the country. The SCPC regularly initiates misdemeanor proceedings for failure to declare assets or submit statements of interest, with around 500 cases for verification of conflict of interest per year.[33] In 2017 the SCPC submitted 48 requests to launch misdemeanor procedure for failure to declare assets.[34] It also investigates potential conflicts of interest, over 680 cases in the past five years and refers asset discrepancies to the Public Revenue Office for further investigation (over 60 cases in the past three years). The SCPC did not seem willing or able to tackle cases on reported high-level corruption, especially if they were against high-level officials from the government or governing party.[35] The SCPC developed data base, which contained more than 3,700 declarations. Only from 2018 there is registry of elected and appointed officials, which enables the SCPC to know how many MPs, judges and prosecutors are subject to a duty to declare their assets in any given year, following their election/appointment or the end of their office.

Although, ACA at Kosovo has results in implementation of the legislation, there is a lack in prosecution and final convictions. Since it was established the Agency has sent 700 cases to the prosecution. In 2017 the prosecution offices have filed indictments on 30 cases, based on the ACA referrals.[36] In 2018, out of 4,498 officials obliged to submit annual assets declarations, 98% complied with the obligation. The ACA in 2017 submitted criminal charges against 50 officials for failure to report or for false reporting of assets. However, verification of assets declaration remains the challenge for the ACA. The Agency handled 150 cases of conflicts of interest in 2017, of which 5 were submitted for the misdemeanor procedure and 5 were sent to the prosecution service for criminal investigation. In 2017 the Agency handled 40 cases on prevention of corruption in public procurement and issued 20 opinions, of which around 20 percent were not considered.

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33 FRYOM 2018 Report, SWD(2018) 154 final, pp. 23.

34 Idem.

35 For example, the SCPC did not take measures to investigate an increase of assets of the director of civil intelligence and some members of parliament. Also, the SCPC remained silent on independent audit reports showing that €58 million transferred from the central budget account to the account of Centar municipality for the "Skopje 2014" project were not accounted for. See: BTI 2016 Macedonia Country Report.

36 Kosovo 2018 Report, SWD (2018) 156 final, pp. 18.

Serbian Anti-corruption Agency has some track record for checks of party funding, conflicts of interest and asset declarations. The misdemeanor courts are issuing conviction based on the ACA requests. The Agency submitted 86 requests for misdemeanor proceedings relating to asset declarations in 2017 and misdemeanor courts issued 63 convictions in 2017.[37] In the area of criminal law, the Agency results are not so impressive. The Agency filed fifteen criminal charges in 2017 based on a reasonable suspicion that a public official had not reported assets or had given false information about assets with the intention of concealing the facts. Eight final judgment convicting eight public officials to imprisonment or probation was issued. Proceedings are under way in 16 cases; in 17 cases the criminal charge was dismissed and there was five acquittals.[38] The Agency has stepped up its checks on the funding of political activities and elections, and submitted 273 requests for misdemeanor proceedings for breaches of the law on financing political activities in 2017.

The fragmentation of powers across the country's various administrative layers influenced on the efficiency of the APIK in Bosnia and Herzegovina. The fight against and the prevention of corruption require dedicated and specialized bodies at all levels of government with appropriate coordination channels.[39] In 2015 the APIK coordinated adoption of integrity plans for state level institutions. The results are positive, 88% of institutions finalized and adopted integrity plans upon APIK positive opinion, 9% is in the process of preparation of integrity plans, while 3% did not take any action. In 2017 the APIK received asset declarations from 96 percent of state level public officials.

Although the Montenegro Agency for Prevention of Corruption is the youngest institution in the Western Balkans its exercise powers in relation to conflict of interest and incapability of functions, assets declarations and control of funding of political parties.[40] The majority of public officials, 96 percent, submitted assets declaration. The Agency initiated misdemeanor proceedings for 312 officials who failed to submit assets declaration and another 42 misdemeanor proceedings were instituted due to irregularities identified in the asset declarations submitted.

In 2017, the Agency issued 127 opinions on incompatibility of functions and based on Agency opinions, 37 public officials resigned from their office or function. Challenges remain regarding cases of conflict of interest, which are

37 Serbia 2018 Report, pp. 20.

38 Idem.

39 Bosnia and Herzegovina 2018 Report, pp. 13.

40 Montenegro 2018 Report, pp. 19.

scarce. When it comes to funding of political parties the Agency has not identified any abuse of public resources for party purposes. Funding of electoral campaigns resulted in initiation of 405 misdemeanor procedures for noncompliance.

Over the last few years the Albania HIDAACI has become more active in control of assets declarations submitted by state officials, including high level officials. In 2017 the HIDAACI submitted criminal charges to prosecution for 22 cases against high state officials and 72 charges against low and mid ranking officials.

Public perception of anticorruption authorities is in the direct relation with the achieved results and proactive communication with public. There is impression that anticorruption agencies in the region missed opportunities to communicate with media and public. By cooperating with the media and fully informing the public, anticorruption agencies can correct the public perception of corruption, accurately represent their work and its success, educate citizens about the negative effects of corruption on their everyday lives, and mobilize both citizens and the media to help the agency achieve its good governance objectives.[41]

6. Concluding remarks

Anti-corruption institutions in the region are a new trend, given they have emerged over the last ten years, as a consequence of the European integration process, and to meet the obligations taken with the ratification of the UN Convention Against Corruption. High as corruption might have been on the governments' agendas, it was not feasible to create institutions with extraordinary powers that would somehow affect the established balance of power.

Effects and results of the anti-corruption bodies in Western Balkans are modest. In all countries public officials are declare assets regularly, however anti-corruption bodies do not have impressive track record of the verification of declarations. Similar results are in the area of control of funding of political parties in those countries where anti-corruption bodies have this competence. Some progress has been achieved in the area of conflict of interest and incompatibility of functions. There is no high-level corruption cases that are initiated based on the work and control of anti-corruption bodies in Western Balkans, like it was in

41 More on communication with the public: E. Byrne, A. Arnold, F. Nagano, Building Public Support for Anti-Corruption Efforts – Why Anti-corruption Agencies need to communicate and how, International Bank for Reconstruction and Development / The World Bank Communication for Governance & Accountability Program (CommGAP), 2010.

Romania where National Integrity Agency (ANI) has significant track record in seizure of assets.[42]

These, relatively new institutions faced with the implementation challenges of political pressure, widely set powers, need to position within existing institutional framework and insufficient capacity. Establishment of new institutions raise following questions in all countries in the region: availability of appropriate facilities, equipment, and adjusted IT structures, including adjusted case management software; a system to monitor the implementation of the new approach; a communication strategy to ensure that users and others stakeholders understand the focus of the new institution and what to expect, as well as to allow feedback for further improvements; and the availability of qualified staff, and/or various experts.

Success of the anticorruption institutions depends on the fact if there is a genuine will of elites or it is imposed goal. Hong Kong and Singapore anti-corruption commissions have developed in response to domestic demands for reform rather than international pressure. A broad domestic coalition that supports reform ensured that policy makers had an incentive to build a strong anti-corruption institution which have effective powers and are adequately resourced. One should have in mind that although Singapore and Hong Kong get high ratings from freedom from bribery in their public administration,[43] they are far from being open access societies.[44] In Western Balkan countries the anti-corruption activities were based on external pressure and the recommendations of the EU and GRECO.

All analyzed Anti-Corruption Agencies face serious budgetary and staffing problems. The main reason for this is extremely tight fiscal situation in all countries in the region. As a result, the Anti-Corruption Agencies in the region are not fully operational and cannot exercise competences defined by law.[45] Most anti-corruption institutions in region were provided with limited institutional capacity, budget and personnel, despite declared intentions to the opposite. With respect to the problems relating to the implementation of regulations, in all the

42 Almost six years into ANI's history, 60 unjustified wealth cases with a total value of over 12 million euros have been investigated and sent to court. Five of those cases got a final court decision, while for two of them approximately one million euros went back to the state budget. Furthermore, in the period 2007-2013, 5,500 administrative fines were applied, which raised 800,000 euros for the state budget.

43 World Bank's World Governance Indicators for Control of Corruption and Transparency International Corruption Perception Index.

44 The Economist's Crony Capitalism Index 2016, http://www.economist.com/blogs/graphicdetail/2016/05/daily-chart-2

45 According to BIH 2018 Report in the Agency for Prevention and Coordination of Fight Against Corruption 20 percent of positions are still vacant.

countries in the region, independent anti-corruption agencies do not have adequate financial or human capacities to be able to perform all the duties and responsibilities specified by the legal framework and strategy papers. The economic conditions and the situation in the entire region create a difficult environment for implementation of planned reforms.

The problems in implementation of anti-corruption regulations are also affected by shortcomings in the process of passing of laws and strategic documents**.** All the countries in the region adopt regulations without having conducted cost assessments, economic impact analysis or investigated the possibilities for them to be implemented in practice, and often the link between the adoption of regulations/strategies and budget planning is missing. As a consequence of these shortcomings, in Bosnia and Herzegovina and Serbia, there were considerable delays in the implementation of the law and establishment of the anti-corruption agencies. In Bosnia and Herzegovina, the Law was adopted in 2009, whilst the director and two deputies were appointed as late as July 2011, and the Agency was not fully operational before end of 2012.[46] In Serbia, the Law on the Anti-Corruption Agency was adopted in 2008, and the Agency became operational in January 2010.

Lack of ACAs communication strategy resulted that these agencies have not become generally known and accepted central points for the anti-corruption action. In all countries, the civil sector express concerns on the performance of independent anti-corruption agencies, as the public expected more concrete results. It is difficult to restore public trust or engage the community in the fight against corruption, if the general public is not aware that anti-corruption agencies exist or what can really achieve in line with competences. Operating a proactive community and grassroots outreach program, through a community affairs staff person, for example, is imperative in rebuilding community confidence in government entities. Through such outreach programs, effective collaborations can be made with civil society.

All the institutions in the regions need to find an adequate way to impose themselves as the centers of excellence, i.e. the central anti-corruption institutions. Inter-institutional cooperation is an obstacle for effective work of the anti-corruption authorities in the region. In Bosnia and Herzegovina and Serbia, the institutions themselves request wider investigative powers. The all anti-corruption authorities in region, depend on cooperation with other state institutions and

46 EU Commission Bosnia and Herzegovina 2012 Progress Report, SWD (2012) 335 final, pp. 14.

on the efficiency and speed of response of the law enforcement institutions. For the efficient control of official's assets, the anti-corruption agency should have effective cooperation with the Ministry of Interior, the Business Registers' Agency, the Tax Administration, the Cadaster, banks and other institutions, to verify the accuracy of data contained in the asset declarations. In practice, this form of cooperation and exchange of information has proven to be an obstacle, either due to unsound databases in other institutions, or due to their unwillingness to exchange data with a new body.

Romania ANI developed successful cooperation with the judiciary, which could be recognized as a good practice for the Western Balkan countries. ANI is regularly organizing regional meetings with prosecutors to streamline investigations and exchange of information. The High Court of Cassation and Justice in order to ensure unification of court practice set up a central classification and monitoring of all incompatibility and conflict of interest cases that is available to the ANI.

There is little evidence that anti-corruption agencies have had any significant influence on the governments' legislative agenda and anti-corruption policies**.** All the institutions in the region have similar preventive powers stipulated by legal acts, laws and secondary legislation**.** Beside control of assets and conflict of interest, majority of institutions have an important role in the formulation of the anti-corruption strategy papers and the oversight of their implementation, raising awareness on combat against corruption, education and administrative control. Most of the tasks of these bodies are related to some form of coordination, supervision and control over the national anticorruption strategies.

Irrespective of number of functions they perform, the anti-corruption agencies rely on the cooperation of many other complementary bodies and their impact is strongly conditioned by their ability to interact and cooperation with other institutions involved in anti-corruption activities.

Executive and legislative powers also affect the independence and impartiality of the work of Western Balkan ACAs through their powers of appointing and reappointing of their leadership.

To be effective establishment of the anti-corruption agency should be based on internal pressure and commitment to fight corruption. International and external pressures are not enough for successful fight against corruption and effective anti-corruption agency.

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ENFORCEMENT OF ALTERNATIVES TO IMPRISONMENT IN ALBANIA

In this article, the authors reviewing history of development of the alternative sanctions in Albania. They examine the normative framework which regulates alternatives to imprisonment in this country. Additionally, authors analyze statistical parameters that shows positive trends, but also gaps in implementation practices. The particular attention authors pay to following issues: the non-proper understanding of the circumstances of their application; judicial reluctance; lack of necessary infrastructure for the implementation of certain types of alternative sentences. In final conclusions, they propose possible policy solutions in order to overcome current shortcomings.

Key words: alternative sanctions, criminal sanctions, alternatives to inprisonment.

1. Introduction

Started by the rich theoretical and practical problematic which contains the definition and the execution of sanctions, this article aims to analyze the Albanian legislation on the field of criminal sanctions system's reception and

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implementation. On the article is provided the informative background concerning changes which have been made in Albanian internal legislation. It notices that while its theoretical aspects have been consolidated, juridical practice needs to improve the system of sanctions nomenclature, by expanding its spectrum in a definitive result which educates and integrates in society. Criminal sanction is known as universal justice knowledge, on the contexts of fighting against crime. Since and till now, it is considered as "par excellence" tool for criminal phenomenon repression. In its sense, criminal sanction is identified with punishment (Kerchove, 2005: 23). The individualization of penal sanction must be considered as an important juridical operation, which finalizes the condemnation of the crime author. Execution of sanctions, favors the prevention of the recidivism criminal act (Poncela, 2013: 21). In its sense, criminal sanction is identified with criminal punishment (Kerchove, 2005: 23). The individualization of penal sanction must be considered as an important justice operation, which finalizes the condemnation of the crime author. Execution of condemnations, favors the prevention of criminal act repetition (Poncela, 2013: 21).

In the second section of this article, are treated a short history of alternatives to imprisonment and its forms under Albanian criminal code. In the third one, are displayed a few examples of condemnation on Albanian Court practices. The next section shows statistic dates which describe the target groups on whom are practiced the alternatives to imprisonment. Furthermore, in the fifth section, have been evaluated problems related to the development of judicial practices regarding alternatives to imprisonment. The last section, makes an overview of the ACC's alternatives to imprisonment aspects, during practices on 2009-2014, and also, suggests some solutions on its improvement. Nomenclature of criminal sanctions, in a democratic society, has to display clear, logical, rational trends. European dynamic on the field of criminal sanctions and the reverberate of its good experience should be considered inspiring for the criminal sanction standard equality enforcement and for its simplicity on execution.1

2. The development of alternatives to imprisonment in Albania

Determination, individualization and enforcement of penal sanctions are an important legal process for it finalizes the operation of a legal order under the controlling mechanisms of the principle of legality in the criminal law realm. A model of criminal sentencing based in the values of law and justice guides' hu-

1 See: Ministere de la Justice, Direction de l'Administration Penitentiaire, "*L'amenagement des peines privatives de liberte: l'execution de la peine autrement*", Collection Travaux & Documents n 79, Mai 2013, introduction.

man society towards a common approach to safety. The criminal sanction, as a concrete expression of decision-making in relation to the juridical truth, seeks to correct the offenders so as to contribute to a safer society.

The strategy of elaboration of this notion involves also the enforcement of alternatives to sentencing, different than imprisonment. The criminal sanction, as a repressive measure, is useful when it seeks for the enforcement of the substantial content of the law, and is primarily driven by the effects, and not the motives of punishment.

In modern criminal juridical theory and practice, criminal sentencing is seen in three components taken together, concretely:

Firstly: Seen in its punitive effect, which means that if a person commits an unlawful and socially dangerous act, he/she will definitely be punished criminally for such an action (Merle, Vitu, 1981: 743-744).

Secondly: Seen in its preventive effect, which implies that the sentencing will not only prevent the commission of unlawful acts by the offender (special prevention), but it will prevent the perpetration of criminal acts from other people with deviant tendency - general prevention (Baratta, 1991: 18).

Third: Seen in the rehabilitation or re-socialization of the convicted person, which implies that the execution of the criminal sentence subjects the convict to a thorough rehabilitation process facilitating his re-entering into society.

Seen closely related to the three components of criminal sentencing, a very important element of the Albanian penitentiary system is that of alternative sentences. They are provided in Chapter VII of the Criminal Code named "*Alternatives to imprisonment*". The naming itself shows that they are not specific types of sentences, but are alternative ways of execution of the imprisonment sentence.

The nature of these measures varies depending on the specifics, circumstances and legal requirements related to their application. Alternatives to criminal sentencing are laid down mainly in two legal acts: *firstly,* in the Criminal Code of the Republic of Albania (law no. 7895, dated 27.01.1995, with relevant amendments brought about by law no. 10023, dated 27.11.2008); *secondly,* in the law no. 8331, dated 21.04.1998 "*On the enforcement of criminal sentences*". Alternative sentences were recognized by the criminal legislation initially with the approval of the Criminal Code, which entered into force in 1995. Then, the changes and amendments made by law no. 10024, dated 27.11.2008 "*On amendments and additions to Law no. 8331, dated 21.04.1998 "On the execution of criminal sentences*", enriched the existing legal framework by providing specific rules of the execution of alternatives to imprisonment, as well as the establishment of the Probation Service, as an unique authority responsible for supervising the execution of alternatives to sentencing (Mandro, A., *et al*. 2010). The Probation

Service is under the dependency of the Ministry of Justice, acting at the central as well as at the local level, beginning from May 2009. Prediction of alternative sentencing and the consistent improvement of the relevant provisions are performed by Albanian legislator with a complete approach with European Union legislation, in which we aspire to integrate. Existing legal framework envisages the following alternatives to imprisonment:

The alternatives to imprisonment provided for under the Albanian Criminal Code are:

a. Semi-release, which may be given under specified personal or health conditions, conditions that will be explained in the next section, only for prison sentences of up to 1 year. Under these measures the convicted person is placed in a semi-freedom regime that allows him to follow his personal commitments during the day, and then, turn back to prison by night.

b. Suspension of sentence and placement on probation. For prison sentences of up to 5 years the court may suspend the execution of the imprisonment sentence and put the person on probation for a period ranging from 18 months to 5 years.

c. Staying at home or in a care centre, which may be given in the presence of certain conditions related to health or age of the convicted person, and where the court has decided for a prison sentence of less than 2 years. These conditions will be explained in the next section as well.

d. Suspension of sentence and court-ordered community service. In this regard, Prison sentences of up to 1 year may be suspended and instead the court might require the defendant to serve hours of unpaid community service. Application thereof should necessarily be contested by the convicted person. The total number of working hours ranges from 40 to 240, no more than 8 hours daily within a maximum period of 6 months.

e. The conditional release (Parole). There are four criteria for parole to take place:

- Serving a minimum period of imprisonment ranging from one half (1/2) to three quarters (3/4) of the sentencing time. Life sentences may be paroled after serving 25 years of prison.
- Prisoner's conduct and/or working activity should demonstrate the reaching of the conviction's rehabilitation goals.
- Recidivist offenders, who have committed deliberate crimes, are not eligible for parole.
- Parole may be applied only if the so-called 'security period' has not been ordered by the sentencing court. When delivering the sentencing time, the court may order a security period ranging from three quarters (3/4) to the whole of the sentencing time, in which parole may not take place.

A useful mean in implementing alternatives to sentencing is supervision by electronic monitoring according to law no. 10494, dated 22.12.2011. This measure started to be operational on March 2013 on certain parts of the state territory, and in 2015 the system is operative throughout the country. Electronic supervision is applied only with the consent of the person being supervised. In case of his refusal, the adoption of the alternative to sentencing fails. The legal practice regarding the enforcement of alternatives to imprisonment in Albania is under consolidation, having an increasing trend in the application of these measures. They are not considered as tools that give the person *pleaded guilty* a chance to avoid prison, but more as efficient measures to society. Development of case law is associated with some problems in giving or implementing these alternative sentences, which will be subject to treatment in this paper. On the other hand, the provision of these alternative sentences is made by the Court at the conclusion of a trial, either in an ordinary judgment basis or abbreviated trial.

3. The court practice

Presenting the trend of the judicial practice, as well as the developments of this practice in the application of alternative sentences, it helps providing a more representative picture of the Albanian framework of alternatives to imprisonment. By analysing the characteristics of the judicial practice, we can achieve to the conclusion that there are some positive developments regarding the implementation of the alternative sentences, but we also notice certain issues, which call for solutions and special legal treatment.

Reference to case law clearly indicates that, the institute of semi-release has been implemented for criminal offence of low social dangerousness, mainly for the simple theft,[2] and for other offenses for which are provided relatively low penalties[3] up to 1 (one) year of imprisonment. In the decision no. 124, dated 18.03.2011 of the District Court of Korca, are analysed a number of elements for the determination of the type and length of the sentence, and for the application of the alternative sentencing of semi-release. The court states that: "*in determining the type and length of the sentence, is to be taken into account the social dangerousness of the author, the form of guilt, the mitigating and aggravating circumstances*" provided by articles 48-50 of the criminal code.

In the case in question, the court paid special attention to the defendant's personal conditions such as his age, his level of education, social and family

2 See: Article 134 of the Criminal Code of the Republic of Albania, Tirana 2014.

3 See: Decision no. 41-2011-1174 (124), dated 18.03.2011, of the Korca District Court.

problems, (parents divorced and mother died, living with his grandmother, who was in old age and in difficult economic and health conditions). From the reasoning of this decision, it appears that the alternative sentence was applied for reasons related to the fulfilment of essential family obligations (*living with his grandmother, the parenthood over a child of three years old and difficult economic conditions*). Generally, the court decisions which impose the alternative sentence of semi-release[4] should analyse correctly and professionally any legal and factual ground applied to the case.

In another case, it is presented how the court decides for the implementation of the alternative of suspension of the execution of the imprisonment sentence and placement of the convict on probation.[5] The Korca District Court,[6] found guilty two defendants for committing the crime of theft, in cooperation by sentencing each of them with 2 months of imprisonment. In application of Article 59 of the Criminal Code, the court accepted the prosecutor's request, for suspension of the execution of the sentence for each of the defendants and their placement on probation for a period of 18 months. The court reasoned the application of this alternative measure as follows:

First: The criminal offense and the defendants present a low social risk, this, due to the fact that they have not been convicted previously, they were minors and had attended school. The court took also into consideration the small value of the item that was stolen (330) ALL and concluded that it was not a serious consequence.

Secondly, the court evaluated the existence of a set of circumstances that allowed the suspension of the imprisonment sentence, such as the defendants' repentance during the stage of preliminary investigation, the replacement of the damage they caused, the fact that the defendants were children, and attended school, and the very small value of the stolen item (330 ALL). The Court stressed that the special goal of the alternative punishment, is that the offender understands its duties arising out of an alternative sentence and commits to respect them until its punishment is completed.

As regards, the application of the alternative sentence of community work,[7] in several judgments, the Albanian courts have argued that *"this sentence should correspond to the factual circumstances and to the social dangerousness of the criminal offence in order to serve the purposes of criminal punishment"*.

4 Provided in the article 58 of the Albanian Criminal Code.

5 See: Article 59 of the Albanian Criminal Code.

6 In its decision no. 52, dated 12.02.2008.

7 See: Article 63 of the Albanian Criminal Code

The release on parole[8] is initiated only by the convicted persons at their request, in the phase of execution of the court decision. In this specific case, the competent courts which review the requests are those courts which have penitentiary institutions on their jurisdiction, for this alternative sentence is given only in the phase of the execution of court decision. In decision no.34, dated 29 April 2014, the Korça District Court rejected the request of a convicted person for release on parole and argued as follows: *"... the court evaluates that release on parole is not an opportunity that could be benefited by every convicted person who has served the previous part of the sentence or every convict who has family or economic specific reasons, but it can be benefited by those convicted persons who, besides these specific conditions, demonstrate to the court that during the time served, they have not been a recidivist for crimes committed with intent, they have been rehabilitated, educated and that the punishment has fulfilled its purpose".*

4. Enforcement of alternatives to imprisonment: figures and current issues

In 5 years (2009-2014) the total number of convicts show a general increasing trend in the application of alternatives to imprisonment, when compared to conviction rates their application still remains low (See Table 1).

Table 1. *Total number of convicts and application of alternatives to sentencing (2009-2014)*

Year	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**
Total number of convicts[9]	6235	8133	9127	8704	8578	13618
Number of persons in alternative sentences[10]	2552		2117	2602	2086	4027

Note: Dates gathered in the office of General Directorate of Prisons of Albania were not divided for each year, till 2010. That's why dates related 2009-2010 are cumulated.

As regards the application of alternatives to sentencing to special categories of inmates, it can be noted that there has been a constant increase in the number of alternative sentences given to female convicts (See: Table 2). In 2013,

8 See: Article 64 of the Albanian Criminal Code.

9 Source: Annual Penal Statistics of the Ministry of Justice.

10 Source: Annual Penal Statistics of the Albanian Probation Service.

alternative sentences were given to 58% of the female convicts, and in 2014, 65% of convicted females have been performing an alternative sentence.

Table 2. *Number of convicted females and application of alternative sentences (2009-2014)*

Year	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**
Number of convicted females[11]	515	549	501	336	335	401
No. of females placed under alternatives to imprisonment[12]	210		187	183	195	260

Note: Dates gathered in the office of General Directorate of Prisons of Albania were not divided for each year, till 2010. That's why dates related 2009-2010 are cumulated.

The same trend is noted in the application of alternative sentences to juvenile offenders. Over years, there has been a notable increase in the number of alternative sentences given to juvenile convicts (See: Table 3). In 2013, alternative sentences were given to 47% of the juvenile convicts, and in 2014, 59 % of convicted juveniles were performing an alternative sentence. However, it is necessary to further increase the application of alternatives sentences to juveniles so as to diminish as much as possible the incarceration rates for this category of inmates. Custodial measures might provide lower chances for contributing in the rehabilitation of juvenile offenders. As a result, they need to be applied only if absolutely necessary.

Table 3. *Number of convicted juveniles and application of alternative sentences (2009-2014)*

Year	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**
Number of convicted juveniles[13]	411	656	683	883	690	748
No. of juveniles placed under alternatives to imprisonment[14]	109	280	246	455	326	445

In 5 years (2009-2014) the Probation Service has supervised more than 13, 000 convicted persons. Among the 5 alternatives to imprisonment, the most frequently applied is *"probation"* with a total of 10,766 cases, followed by *"community work"* with 1487 cases, 'parole' with 894 cases each, and *"home detention"*

11 Source: Annual Penal Statistics of the Ministry of Justice.

12 Source: Annual Penal Statistics of the Albanian Probation Service.

13 Source : Annual Penal Statistics of the Ministry of Justice.

14 Source : Annual Penal Statistics of the Albanian Probation Service.

with 236 cases (See: Figure 1). 'Semi-freedom' is relatively underrated (only one case in five years), with more attention needed to be paid to its application in the near future.

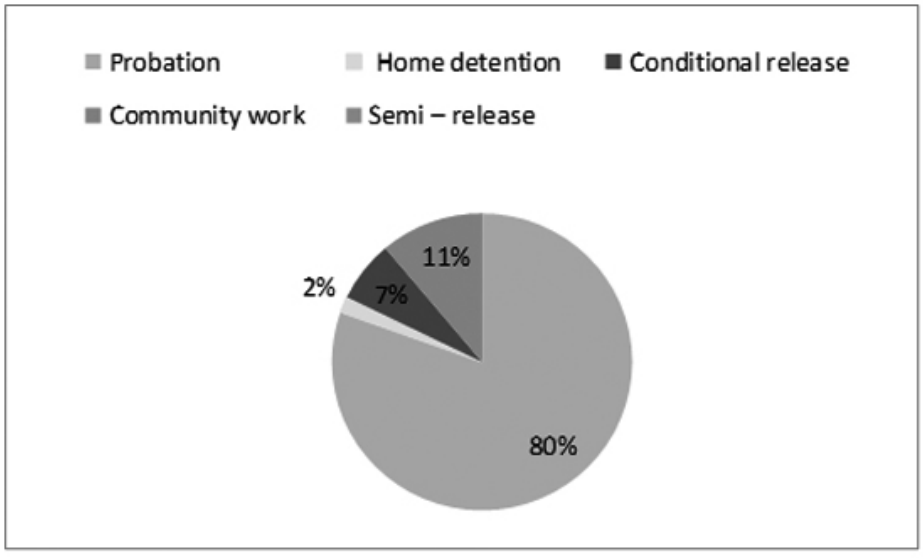
Even though official figures show a general increasing trend in the application of alternatives to imprisonment, when compared to conviction rates their application still remains low (See Table 4).

Table 4. *Total number of enforced alternatives to sentencing (2009-2014)*

Year	**2009- 2010**	**2011**	**2012**	**2013**	**2014**	**Total**[15]
Probation	2012	1616	2166	1758	3214	10766
Home detention	43	68	34	36	55	236
Conditional release	283	206	188	147	70	894
Community work	214	226	214	145	688	1487
Semi – release	0	1	0	0	0	1

Figure 1 clearly indicates that suspension of execution of the imprisonment sentence and putting a person in probation is frequently applied by the courts in up to 80% of the cases.

Figure 1. *Proportion of alternative sentences given by the court (2009-2014)*



15 Source : Annual Penal Statistics of the Albanian Probation Service.

5. Current discussions:

Development of judicial practice regarding alternatives to imprisonment has been associated with some problems related to:

- the non-proper understanding of the circumstances of their application,
- judicial reluctance,
- Notable lack of necessary infrastructure for the implementation of certain types of alternative sentences.

Experts of the field point out that although the Probation Service's role in monitoring alternative sentencing programmes already adopted by the courts has been significant, a lot needs to be done to involve the Probation Service earlier in the process, at the phase of decision-making on the relevant alternative to be adopted. Probation Service lacks an expressed role in the Criminal Procedure Code, whereas good foreign practices envisage the probation officer as an expert with his own role in assisting court's decision-making on alternative sentencing to be adopted. In practice the probation officer as representative of the Probation Service isn't regularly called upon in courts, the courts and prosecutors do not view this as a procedural obligation, thereby more space left for court decision-making being inconsistent and less accountable. In this respect, it is necessary to give to the institution of Probation Service a more active role, especially concerning its procedural position, to involve this institution earlier in the process, at the phase of decision-making on the relevant alternative to be adopted. This will also constitute an alignment with the legal framework of the European Union, in relation to the organization and functioning of the Probation Service.

Substantial efforts must be made to establish appropriate monitoring structures for the alternative sentence of semi-liberty, so that this alternative to imprisonment can be used more extensively for the category of offenders who present low threat to society. In this regard, it is necessary to take legislative and institutional reforms in order to make possible the establishment and operation of open-regime prisons. Open regime prisons would also constitute an efficient solution for the rehabilitation of juvenile offenders, who are orphans or who have a history of domestic violence. The alternative of house confinement cannot be applied for this category and, if efficient mechanisms for placing them in the semi-liberty regime are absent, the court would see their imprisonment as the only available alternative.

In order to guarantee a sustainable infrastructure for the employment of convicts in works of interest to the public it is necessary to broaden the cooperation framework between the Probation Service and public agencies and private organizations and, when possible, this cooperation must be grounded on written

agreements, where each of the parties takes on long-term commitments and responsibility.

The expansion of institutional capacities in the implementation of alternative sentences to imprisonment, would give judges and prosecutors more confidence in the effectiveness of the application of alternative sentences in the community, and would, thereby, increase availability for their application to short prison sentences.

6. Conclusions

Nowadays, a main concern for policymakers is how to ensure that criminal sanctions serve to the establishment of a secure environment of rehabilitation and social reintegration. Fostered application of alternative sentences would shift the focus of criminal justice from the offender's behaviour, to creating the opportunities that allow offenders to demonstrate their skills (competent behaviour) and build links with the community. Prof. Albrecht, says that alternatives to sentencing 'have a unique potential' in terms of their efficiency[16]. Alternatives to penal sanctions are alternatives that serve to the function of a real and social justice. The level of application of alternatives and their methods of implementation are indicators of the human and democratic values in a society. They present a juridical technique that highly reflects the moral sense of the society and its efforts towards strengthening the immuniser role of communities. Alternative sentences are considered as an efficient tool of dealing with delinquent conduct, not only from the social perspective, but also from a cost-oriented point of view. Their implementation serves to the accomplishment of an economic logic that shifts the traditional economic burden resulting from imprisonment sentences.

Application of alternatives to imprisonment has seen a rising trend on a year-by-year basis, but their number remains low compared to the total number of persons convicted each year. Courts continue to apply the prison sentence predominantly, contributing to further increase of the prison population. Low rates of application of alternative sentences are due to the lack of adequate support infrastructure, court scepticism about the effectiveness of these sanctions in the rehabilitation of the offender, and the high discretion that courts enjoy in delivering such sentences based on the actual legal provisions. The present formulation of provisions on the alternatives to prison sentences leaves space to more

16 See: Speech of Professor Dr. Hans-Jörg Albrecht. In the Second Annual Conference of the Max Planck Partner Group for Balkan Criminology: 'Imprisonment in the Balkans', Sarajevo, 17-19 September 2015.

judicial discretion as regards the evaluation of the possibility of their implementation. Thus, the general expression used in these provisions is that the court, in the presence of several circumstances related to the personal qualities or conditions of the offender or the act committed by him/her, may rule for the suspension of the execution of the imprisonment ruling and have the convict serve an alternative sentence.

In these conditions, it is left to the judge's personal evaluation whether he/she will take into consideration the possibility of implementing an alternative sentence to imprisonment. Furthermore, the judge, in the final ruling for the issuance of the sentence, is not obliged to reason on the fact of the refusal of the demand for the issuance of an alternative sentence.

This makes impossible the possibility of appealing a court ruling, in cases when the object of the demand of appeal is only the review of the court's position on the refusal of issuing an alternative sentence. The lack of effective appeal possibilities for cases of the court's rejection of demands for the implementation of alternative sentences has a considerable impact on the reduction of practical possibilities for the implementation of alternative sentences.

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NATURAL AND POSITIVE LAW IN THE CONCEPT OF CORRECTING OFFENDERS

In the article it is proposed to consider the relationship of purposeful process of correcting convicted persons in places of detention based on the norms of natural and positive law with the prevention of recurrence. Most philosophers consider legal regulation as a mandatory condition for the stable functioning of the state and recognize the law, as a system of norms, which is divided into natural law and positive one. In the penitentiary practice the concept of correcting offenders, which is based on the socio-cultural norms of natural law and the mandatory norms of positive law, should become an essential knowledge of convicted persons with the aim of preventing recurrence. In penal practice the concept of correcting criminals, which are recognized as socio-cultural norms of the natural law and the binding rules of positive law, should become a necessary knowledge of the prisoners for the purpose of prevention of recurrence. The author analyzes the outstanding experience of A.S. Makarenko, as an example of a multidimensional process of "vaccination" convicts by the norms of natural and positive law for their successful resocialization. The article demonstrates the author's method of comparative analysis of philosophical and legal ideas and also analysis of international law. The study assures that the actual task for the modern prison systems is not only serving the sentence in a safe environment, but also to help convicts to be ready for successful resocialization, as prevention of recurrence on the basis of norms of natural and positive law.

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Keywords: Crime relapse, philosophy of law, natural law, socio-cultural norms, positive law, the process of resocialization, experience of A.S. Makarenko, the penitentiary system, the correction process, socio-cultural regulators.

1. Introduction

At all times the communities of the people, the states are "affected" by the phenomenon of crime. Its distinctive feature is the social nature and social conditionality of criminal acts committed by people in society against their interests and needs, socio-cultural norms and established rules of social behavior as a set of social relations with their regularities and contradictions.

Despite the wide range of efforts, crime in the world is "a chronic disease" of human communities. "The central message … is that criminality is an integral part of how society, and its culture, is constructed. Thinking of crime as generated by abnormal individuals that is the responsibility of law enforcement and the judicial system is to ignore the endemic processes that sustain it and those who deal with it on a daily basis " (Canter, Youngs, 2016: 8).

In this regard, the recurrent crime as an indicator of "incurability" of the society is particularly troubling. In 2015, the leadership of the Federal penitentiary service pointed out a high percentage of recidivism among prisoners: "at hearings in Public Chamber of the Russian Federation first Deputy Director of the Federal penitentiary service Anatoly Rudy said that of 673 thousand convicts 85 percent are people who were convicted two or more times".[1]

A more detailed analysis of this situation was given by scientists-criminologists: "In 2015 the problem is accentuated by a contingent of convicts in correctional colonies, when the dominant position in the prison began to occupy previously convicted persons (62,0 %). According to recidivism rates, a significant proportion were persons convicted three or more times – 48,35%. The share of persons convicted the second time made up of 13.65%". (Avdeev, Avdeeva, 2017: 193).

The state of crime and, especially, a recurrent one, is always in the center of not only the criminal policy of the state, but also the whole society. However, "the analysis of the socio-criminological characteristics of crime in January – December 2016 shows that more than a half (674 935; APPG – 688 817) crimes committed by persons previously committed crimes. Their percentage is 56.7 % (APPG – 54, 9 %) of all preliminarily investigated crimes in the reporting period".[2]

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1 www. vesti.ru "Bitterish statistics: 85 percent of prisoners in Russia are recidivists". 24 March, 2015

2 www.genproc.gov.ru "A criminality condition in Russia for January - December 2016", Moscow, p. 8

Thus, the current situation, despite the complex law enforcement, unfortunately, is sustainable, which in turn can affect the stability of the state and its security.

Thinkers-philosophers in all times have tried to formulate the idea of an optimally functioning state, realizing the complexity and diversity of that task. Today, the search for new approaches to the concept of criminal reform in the name of stability of the state forces us to revisit the ideas of philosophy in general and philosophy of law in particular.

2. Methods

Humanity for long years of existence has developed the understanding of conditions for stable functioning of the state only in the presence of legal regulation. In the process of state development such factors are legal norms that are binding on all citizens: understanding the law as a system of norms it is in use to divide it into a natural law and a positive one.

Long-lasting, dynamic and fruitful evolution of the philosophy of a natural law, (prominent representatives of which were Aristotle, the Greek Stoics, Cicero, the Roman Stoics and the medieval scholastics), led to the understanding of the need for consideration of socio-cultural norms and rules of conduct prevailing in a natural way, coming from the needs and interests of the individual. In this way the natural law was formed as a list of freedoms and duties of man, provided he was born by nature.

Natural rights - the right to life, dignity, fair treatment, freedom of thought, etc., are not directly linked to the state, and therefore they cannot be controlled by it. They are prevalent in the socio-cultural environment and are supported by different forms of public opinion. "...Even in societies where "kings", "chiefs" or any formal state institutions are absent, regulators of social behavior that make social life predictable and, moreover, guarantee a more or less stable reproduction of its forms are visible... the famous American jurist Roscoe Pound suggested that "the force of politically organized society". (Marques Guedes, 2003: 4).

At the same time the natural norms become a benchmark for the state that creates their positive analogues. Thus, the rules of positive law are mandatory requirements to conditions and organization of society, responding to the goals and objectives of the state, established at the state level and regulated by law.

The problem, including a crime as "a disease of society," consists in finding a balance in the use of norms of natural law and positive one for optimization of the functioning of the state. However, the norms of positive law can interact with the natural ones, but at the same time and contradict them. And it concerns not a solitary idea, but a whole philosophical-religious theory and dogma. The

historic confrontations between these two types of law have developed under the burden of social changes in society.

The natural norms that are treated differently may be the causes of deviant behavior of some individuals. The tyranny and violence, various kinds of abuse of citizens perpetrated by them can be explained by misunderstood religious attitudes. The norms of positive law preserve society from such attitudes.

Most of modern scholars agree with the idea that "as internally balanced social system, the legal state has few leading, necessary and sufficient signs.

1. The priority of law over the power

It requires a balanced system of legal restrictions on the activities of state authorities. The norms of law inhibit the likelihood of the arbitrariness of the authorities; prevent any attempts of the state to exercise their authority to the detriment of civil society. They forbid the state to interfere in the private lives of law-abiding citizens, forced it to reckon with the principle of the inviolability of the rights and freedoms of the individual.

2. The priority of natural law over positive one

State legislation is based on the principles of inalienability and inviolability of the natural rights and freedoms of the individual. The natural right of everyone to life, liberty, property, dignity, well-being and happiness is a fundamental social value protected by the current legislation. Laws only prove that the natural rights are not bestowed by state, but are owned by the person initially". (Bachinin, 2004: 9)

Thus being relatively mutually independent the norms of natural and positive law determine, penetrate, interact with each other, and without them it is not possible to regulate relations in the society.

Another condition for the stability of the state is the individual who follow or does not follow the norms of natural and positive law. Thus, the concept of correcting criminals can and should rely on knowledge and acceptance of the norms of natural and positive law. This way, that is confirmed theoretically by researches and practitioners will give possibility to reduce recidivism and overall crime.

3. Main part

High recidivism rates indicate unsolved problems: on the one hand - the problems of execution of punishment, and, on the other - with the rejection by society of people who do not accept the rules of life, embodied in the laws of the state, as well as socio-cultural norms prevalent in the society.

The value of the ideas of philosophers who defend the existence of natural law is that it appears there and then, where the human community is born. Firstly, it forms elements of subculture, and then, with the development of society and the elements of cultural that are accepted by the whole society.

Philosophy itself takes the concept of natural law on the base of analysis of the psychological, physiological, biological, cultural and socio-historical factors. In turn, the study of diverse customs, traditions and rules of human behavior, opens up some of the general and permanent rules that are derived from the generic essence of man, and that creates the culture of a society.

Unfortunately, the modern theory of natural law is far from a fairly wide recognition of the specialists of the penitentiary system. At the same time, natural law is one of the most sustainable concepts of the philosophy of law, due to the interests and needs of man, forms the set of sociocultural rules and rules of conduct. A natural law should be understood as a set of socio-cultural natural regulators of human behavior. Of course it is rather an ideal, whereas positive law is the reality that monitors and provides by the state.

Legal anthropologists focused on the socio-cultural variability are to admit the doctrine of natural law. Let us remember G. Grotius, who in his famous work " On the law of war and peace" in the Chapter "Evidence for the existence of natural law" in support of his concept brought similar thoughts of other philosophers:

"Andronicus of Rhodes wrote: "…the people gifted with a right and sound mind, firmly adhered to the so-called natural law. For those ones whose spirit is painful and upset, everything seems different, and they have nothing in line with the subject. So does not mistake the one who finds honey to be sweet, whereas for the patient it seems to be otherwise".

The opinion of Plutarch was close to the abovementioned authors and in the life of Pompey he noted that "…by nature no man is and was not a wild and unsociable creature, but he goes wild when he get used to indulge in Vice, distorting his nature; however, following the other habits, changing his lifestyle and place of residence, he can return to his former meekness". (Grotius, 12)

Socio-cultural disadoptation and asocialisation of criminals is a complex and has taken place process of social and cultural "fall out" of the offender from society Anthropology of deviant and later criminal behavior can be explained by the neglect firstly the norms of the natural law and then the positive one.

The concept and process of returning the offender in open society should consist of repentance and acceptance of the two systems of law. On the one hand, sociocultural norms, born by natural law and reducible mainly to the existing moral values and standards, containing the stereotypes of socially approved behavior, the system of prohibitions, sample of activities and forms of interaction,

and even conflict resolution. On the other hand – the rules of positive law, concentrated in the current legislation of the society.

"The idea that legal rules and categories define social wrongs, determines their consequences, and resolve conflict remains strong, despite the fact that jurists …as well as anthropologists, have remarked that some societies seem to do very well without law when settling disputes. During my own fieldwork in Ladakhi village it quickly became apparent that the villagers felt no need to refer to any rules to address disputes or discipline those guilty of aberrant behavior". (Pirie, 2013: 9).

The position of the modern scholars of the University of Oxford has underlined the importance not only of the norms of positive law, but also a specific function of social and cultural norms as regulators of social relations.

Thus, the time allotted by the court for the enforcement of penalties should be used for "passing" by the convicted the "reverse" path through repentance, the acquisition of social-psychological health in the process of psychological harmonization of the personality, and the way of knowledge and recognition of socio-cultural rules and norms of the legislation of the country.

The practice, established in places of deprivation of liberty, as a rule, is focused on the security of the convicted person and society from the convicted person, on the conditions of punishment and some kind of social assistance in solving of his humanitarian problems.

If one does not see necessity of providing conditions for prisoners to study socio-cultural and legal norms, we leave the door closed for prisoners after their release in the legal field of socio-cultural space of the country.

Understanding of the importance of social and cultural norms of the natural law and the positive law in terms of the correctional institution is the incentive and support, the need and confidence on the path of humanization of the process of correction and resocialization of convicts.

Not caring about the knowledge and acceptance by prisoners in the places of deprivation of freedom socio-cultural and legal norms of the state, we create the conditions under which it becomes impossible to re-identity them in open society, which again leads to their internal instability, the loss of moral standards, disharmony, stress, and recurrent crimes.

In the twentieth century the foreign practice of corrections was focused only on the need for security of detainees. For almost a century the foreign colleagues gave preference to the guard of prisoners, technical means of protection and security. However, in the beginning of the century originated the first institutes of social work with prisoners in places of deprivation of liberty. Staff social workers of corrections took over the care of education of convicted persons and their subsequent employment. However, later it became apparent that the creation

of technically advanced conditions of imprisonment, and efforts of social work was not enough for the solution of personal problems.

Modern international legislation (a notable example is the law concerning minors, in particular, the Rules of the United Nations for the protection of juveniles deprived of their liberty) recommends the development of an individual program of returning the minors in the socio-cultural environment of society on the basis of the formation of appropriate attitudes and skills in terms of isolation.

"One should guarantee the implementation in correctional institutions the effective events and programs in the interests of minors that would ensure maintaining of their health and self-respect, foster their sense of responsibility and encourage the formation of such attitudes and skills that would help them to develop their potential as members of society...with the aim to counteract the adverse effects of all types of detention and to facilitate their integration into society".[3]

In favor of successful "soft" re-socialization in the Rules the series of events are regulated. Particular importance is attached to the staff - humane, conscientious, efficiently performing their duties with the goal of assisting offenders in their return to society. The Rules establish the right of minors to education, training and employment, leisure, medical care, freedom of religion. However, international law does not demand from convicts to study the legal and socio-cultural norms of the law of the state of re - resocialization.

However, the already accumulated experience in the use of socio-cultural factors in penal practice. In the legislation of many countries enshrine measures that protect the rights of prisoners with regard to their cultural traits - from the need for general and professional education and the development of specific, individual programs for their social and cultural reintegration to provide their preferred food (vegetarian, kosher) and the ability to follow religious customs and rituals in places of deprivation of liberty.

Since the early 80-ies of the last century the names of the proponents of art-therapeutic work with prisoners are well known: Carrell C. J. Laing, 1982; Laing J. 1984; Liebmann M., 1994; B. Karban, 1994; Innes R., 1996, and other specialists. Definitely interesting is the experience of Mr. Colin Tisdale (Great Britain), who became the winner of the award for the implementation of art therapy in correctional institutions (1997). "I am sure, wrote researcher, that each client-convict must be given the opportunity of art-therapeutic work in order in particular to understand the causes of their socially dangerous behavior, ...art therapy helps understanding why a person feels anger, and, ultimately, helps to "dealing with anger".[4]

3 Resolution # 45/113 of the UN General Assembly on 14 December 1990 , p.1.3

4 Workshop on art therapy, 2000, SPb: PETER , p. 324.

It is known that in the history of our penitentiary system there is a convincing example of the multidimensional process of acquaintance and upbringing of minors, first of all with sociocultural norms. This is the experience of Anton Semenovich Makarenko in the penitentiary institution.

He was a genius teacher and psychologist and he managed to find a golden middle in the use of "carrot and stick" in the process of correction.

He, perhaps for the first time in the world, made an attempt of the balanced use of two regulators – norms of natural and positive law: "...Anton Makarenko, first embodied the idea of training young delinquents in a special children's colonies, which combined work with training". (Gopal, Tikhvinsky, 2008: 580)

"Makarenko's ideas concerning the relationship between education and other disciplines, whether in the humanities (philosophy, ethics, aesthetics) or in the natural sciences (biology and physiology) deserve serious attention. More particularly, his far-reaching investigation of the essentials of a new, socialist pattern of moral and ethical relations led him to enunciate this very important idea: make as many demands as possible on a man, and at the same time show him as much respect as possible. This idea is occasionally criticized by some modern educators for putting the principle of demanding something of people in such a prominent position in the 'demand-respect' dyad. Makarenko himself pointed out that from a genuinely humanitarian point of view, respect for and demands on a person were not separate categories and attitudes, but were dialectically related facets of an indivisible whole". (Filonov, 2002: 2).

This statement of a modern scientist, formulated after nearly 80 years, confirms the relevance and prospects of Makarenko's ideas even in our days: for and from juvenile offenders Anton Semenovich organized theaters and orchestras (brass and strings), groups of fine art and the art of reading, dancing and singing. In Kharkiv city drama theatre every day was booked a bed for juvenile offenders. He attached great importance to the culture of the staff and the aesthetics of the surrounding environment of the colonists, introduced the concept of aesthetics, beauty, discipline, etc.

In fact A. S. Makarenko placing an emphasis on natural law, in his practice realized the necessity of ideas for new penitentiary culture! Today we need to revisit his legacy and, given modern conditions, to implement his experience purposeful creation of a sociocultural environment in a closed society.

"Some of the ideas proposed by Makarenko in "Pedagogicheskaya Poem" were more original than others, but they should be considered in the context of the time and place in which they were produced. Moreover, these were not abstract proposals made by Makarenko in the isolation of an office, but as a result

of concrete, practical experiences in which success was often preceded by trial and error". (Kuzmich, Schugurensky, 2009: 4).

However, until now we almost never use the norms of the natural law as a social regulator of relations in a closed society. Instead of purposeful, consciously formed and managed external influences, socio-cultural norms is "born" inside, fueling a subculture of the criminal world.

Thus, the administration of most prisons, unfortunately, do not use the possibility of recovering and acceptance by prisoners the sociocultural rules as one of the significant factors affecting the process of successful re-socialization of prisoners and, thereby, 50% delays and complicates the process of correction.

Ongoing in Russia process of reforming of criminal executive system is aimed at further humanization of the conditions of serving the punishments and the order of execution of criminal sanctions, bringing them to international standards.

The correction of the convict, which is the goal of corrections, provides, first of all, the return to society law-abiding and socially useful citizens who have successfully completed the process of re-socialization.

4. Conclusions

A consistently high percentage of recidivism stimulates scientists and practitioners to search for new concepts and ways of correcting the convicts. Despite the almost century-old history of the social experience of A. S. Makarenko to return a minor stumble in an open society, there is a need to analyze and use relevant ideas in modern penal practice.

Implementation of the proposed penal concept of criminal reform will require, in practice, its deeper comprehension, understanding of the mechanisms and prerequisites of its implementation. It is important and necessary to establish in the minds of the convicts the balance between the rules of natural law and mandatory rules of positive law.

Today the difficult way of return of criminals from a closed society to an open one should be seen as a twofold process of recovery and acceptance by them not only of the legal norms of positive law, but also socio-cultural norms of the natural law as the mandatory conditions of life in society.

This concept definitely requires from management of penitentiary institutions not only to create the conditions for safe keeping of criminals, but a purposeful complex of socio-cultural, psycho-pedagogical and organizational-legal measures to create special conditions, which implement the norms of natural and positive law in the concept of correcting criminals.

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PREVENTION OF JUVENILE DELINQUENCY AS ONE OF THE TASKS OF THE POLISH POLICE

Practically every policeman patrolling different areas every day encounters the phenomena of social pathology. This article deals with the issues related to juvenile delinquency and its etiology. It briefly discusses the regulations governing proceedings towards minors in Polish law. The paper presents current juvenile delinquency issues in the Warmian - Masurian Voivodeship, which can serve as an indicator for preventive work in youth groups. Components of two training programs run at the Police Academy in Katowice are also presented. During the programmes the participants acquire knowledge essential for procedures related to detaining juvenile perpetrators of prohibited acts, who display signs of demoralization.

Key words: juvenile, crime, prohibited act, demoralisation, training program

1. Introduction

Juvenile delinquency is one of the problems that law enforcement officials must face in all EU Member States. It is estimated that juvenile delinquency according to statistical data from European Union countries may constitute

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on average almost 15% of all committed crimes (Official Journal of the European Union C 110/75 p.2). The data of ESPAD (Europen School Survey Project on Alcohol and Drugs) is even more alarming; indicating that on average 97% of 15-year-olds consumed alcohol at least once in their lifetime.

As far as declared drug use is concerned, in Poland 25% of respondents said that they used drugs at least once in their lives. Among the EU Member States, the largest number of young people who had contact with drugs was recorded in the Czech Republic - 45%, while the lowest in Sweden - 9% (Summary 2011 ESPAD report, p. 6, 14). Accurate estimation of the demoralization of minors in EU countries is very difficult due to the diversity of legal systems and criminal justice, adopted definition concepts, methods of registering crimes, division into crimes and offenses, age of juvenile responsibility for committed acts, application of punitive or educational measures.

The causes and circumstances conducive to demoralization of minors may certainly include:

- the origin of minors from broken homes;
- socio-economic marginalization or poverty that hinder the proper process of socialization;
- missing classes and school failures;
- media presenting violent content, contributing to instill a system of values in which violence is permissible;
- the use of addictive substances;
- lack or limited message regarding civic values.

In the legislation of countries belonging to the European Union, it can be noted that the model of prevention rather than punishment of minors prevails. For this purpose, appropriate social welfare programs are not enough but also proper preparation of those who undertake activities directed to minors, i.e. judges, prosecutors, police officers etc.

Considering that in Poland the prevention and prosecution of juvenile perpetrators is dealt with by police officers in cooperation with family courts, it is necessary to properly prepare officers so that they will be able to recognize properly the symptoms of juvenile demoralization, take actions and document disclosed acts.

2. Juvenile Delinquency Law

When considering juvenile delinquency, several issues need to be clarified. The very concept of “juveniles” in Polish criminal law is ambiguous. The Penal

Code (Dz. U. (Journal of Laws) 2007 item 2204, as amended) identifies juveniles in the criminal-law aspect as persons who have not attained 17 years of age (Article 10, *ibid*.), and :

a) who as perpetrators of a prohibited act to whom guilt cannot be attributed at the time of the commission of the act have not committed an offence;

b) who can take criminal responsibility for committing some prohibited acts specified by the Penal Code.

And juveniles within the meaning of the Act of October 26, 1982 on the proceedingsin juvenile cases (Dz. U. (Journal of Laws) of 2016, item 1654, article 1), in procedural and educational terms, who:

a) have not attained 18 years of age and display signs of demoralization;

b) have committed a criminal offence having attained 13 years of age but before having reached the age of 17;

c) have not reached the age of 21, and against whom educational or correctional measures have been enforced.

It seems necessary to define here the term "criminal offence". The act on proceedings in juvenile cases, already cited in this article, will certainly be helpful. According to the provisions of this legal act, it is an act prohibited by law as a crime that is a felony or misdemeanor, a fiscal offence or one of the 12 offences against (Gromek, 2004: 66):

- public order and peace;
- state, local government and social institutions;
- the safety of persons and property;
- security and order in public transport;
- property;
- the interests of consumers;
- public facilities.

In the Polish criminal law system, an offender may only be a person who has committed a prohibited act after having attained the age of 17 years. Juveniles are liable to the measures provided for in the act on proceedings in juvenile cases. However, there are exceptions from the rule, which are discussed below. If a juvenile who has reached the age of 13 but has not attained 17 years of age commits a prohibited act – as a rule the court applies the measures provided for in the act on juvenile proceedings, but here the legislator introduces the first exception. In some cases, criminal liability may be borne by a juvenile who has reached the age of 15 and has committed an offence included in the list contained in art. 10 § 2 (penal code p.c.):

- assassination of the President of the Republic of Poland;

- murder;
- deliberate causing serious damage to the health of the basic or qualified type;
- deliberate causing widespread danger;
- hijacking of an aircraft or a ship of the basic and qualified type;
- deliberate causing disaster in transport;
- collective rape or accompanied by particular cruelty;
- taking hostages;
- mugging.

Juveniles who after attaining the age of 15 years have committed one of the above-mentioned prohibited acts, may take legal responsibility specified in the Penal Code procedure, if the circumstances of the case and the personal qualities and individual circumstances of the perpetrator support this, and especially if previously used educational or corrective measures have been ineffective (Gardocki, 2004: 61). When imposing penalty on a juvenile, the court's first and foremost objective is to provide the perpetrator with educational and corrective support (Dz.U. (Journal of Laws) 2017, item 2204, art.54§1). The penalty shall not exceed 2/3 of the statutory punishment provided for the offence. The court may also apply extraordinary mitigation of punishment.

However, art. 10 § 4 of the penal code provides for treating an adult perpetrator who has reached the age of 17 but has not attained 18 years of age as a juvenile (Gardocki, 2004: 61). This applies only to a perpetrator towards whom instead of a penalty educational, corrective or therapeutic measures provided for a juvenile can be adopted if the circumstances of the case or the degree of the development of the perpetrator, their personal qualities and individual circumstances support this.

2.1. Juvenile delinquency rates in the country

In order to carry out further considerations of juvenile delinquency it is necessary to find out its rates. The share of juveniles in the overall number of offenders over the years has changed. This study deals with the years 2014 - 2017. In 2017, 782,069 offences were recorded, which was 3505 more than in 2016, when 778,564 offences were recorded (Information Bulletin of the Police Headquarters in 2017). In 2015, 833,281 offences were recorded and it was 81,800 fewer than in the record year 2014 (taking into account the time span studied), when the total number of offences amounted to 915,081. In 2017, 26,433 prohibited

acts were committed by juveniles, of which the vast majority of 25,653 were of a criminal nature (for a total of 490,711 registered offences which accounts for 5.2%), and 10,127 in the 17x7[1] category (for a total of 243115 crimes). A similar situation took place also in previous years. In 2016, juveniles committed 29,222 prohibited acts, of which 28,345 were of a criminal nature and 12,446 falling into 17x7 categories. In 2015, the total number of prohibited acts reached 28, 875 and was 13, 860 lower than in 2014, when juvenile delinquencies were recorded at 42,735. A similar situation was recorded in the area of criminal offences – 27, 974 in 2015 and 41, 325 in 2014 and – 12, 877 and 18,603 in the 17x7 category in 2015 and in 2014 respectively.

Table 1. *The table below presents the numbers of prohibited acts, committed by juveniles in the years 2014 – 2017.*

Number of prohibited acts committed by juvenile perpetrators			
Year	**Total**	**Acts of criminal nature**	**17X7**
2014	17 286	16 494	9 425
2015	12 904	12 391	6 750
2016	13 001	12 452	6 589
2017	11 758	11 226	5 849

**Source: authors' own analysis based on Information Bulletin of the Police Headquarters*

As can be seen from the above table, in 2014 there were the most juvenile delinquencies i.e. 17,286. The lowest number of perpetrators was recorded in 2017, when it accounted for 11,758. An analogous trend was also noted in the remaining categories of offences of criminal nature and 17x7 category.

2.2. Juvenile delinquency in the Warmian-Masurian Voivodeship

The Warmian-Masurian Voivodeship is located in the north-eastern part of Poland in the immediate vicinity of the eastern border of the European Union - the Kaliningrad Oblast. In the west it is bordered by the Pomeranian Voivodeship, in the south-west by the Kuyavian-Pomeranian Voivodeship, in the south

1 17x7 - Category accepted in the statistics of the Police, 7 most socially troublesome crimes, i.e. robberies, thefts, theft with burglary, brawls and beatings, causing damage to health, destruction of property, theft of vehicles.

by the Masovian Voivodeship and by Podlaskie in the east. As a result of the administrative reform of the country, which took place in 1999, the area of the former Olsztyn voivodship together with some parts of the province of Elbląg and Suwalki, as well as parts of Toruń, Ciechanów and Ostrołęka were registered as the Warmian-Masurian Voivodeship.[2] The region consists of nineteen districts and two cities with poviat rights: Elbląg and Olsztyn, which is the capital of the region. In the voivodship there are 116 municipalities, 16 of which are classified as urban areas, 67 as rural areas , and 33 as urban and rural areas. The Warmian-Masurian Voivodeship is the fourth largest province in the country with the area of 24,176 km. The region is inhabited by 1.43 million people, of whom 733 thousand are women and 703 thousand men.[3]

Since the dawn of time youth crime has been an integral part of all crimes with the effects deeply experienced by the public. It has always been subjected to various countermeasures by criminal law (Urban, 2000: 15). The phenomenon of juvenile delinquency is of interest to legal representatives, criminologists, psychologists and pedagogues, as crimes are classified as the most dangerous varieties of pathology.

Does the trend visible across the country reflect the situation in the Warmian-Masurian Voivodeship? Or maybe it is completely different? The data of the Statistical Bulletin of the Provincial Police Headquarters in Olsztyn and information obtained from the Department of Criminal Intelligence of the Provincial Police Headquarters in Olsztyn have been used to carry out data analysis.

In 2014, in the Warmian-Masurian Voivodeship, 31,265 offences were reported. Subsequently, in 2015, there were 27,445 offences, which was 433 fewer than in the previous year. There were 27,057 reported offences in 2016 and 24,698 in 2017. Juveniles committed a total of 1016 prohibited acts under penalty in 2014, 583 acts in 2015, 515 in 2016 and 464 in the following analyzed year 2017. Criminal acts predominated and accounted for 97% (95.5% -2016, 94.3% -2015, 94.3% - 2014). In 2014 juveniles committed 611 violations of the provisions of the penal code falling into the 17x7 category, a year later 338 prohibited acts were committed, in 2016 - 291 and 263 in 2017.

Last year, the Warmian-Masurian Police identified 12,591 persons as suspects, 408 of whom were juveniles. The rate of juvenile offenders in the total number of suspects identified in 2017 in the Warmian-Masurian Voivodeship was 3.2%, while criminal offences accounted for 1.9% of all crimes identified in 2017.

2 http://www.oregionie.info/wojewodztwo, Warminsko-mazurskie,14, accessed on 08.03.2018.

3 http://demografia.stat.gov.pl/bazademografia/CustomSelectData.aspx?s=lud&y=2016&t=00/28, accessed on 08.03.2018

Table 2. *Detailed data on juvenile offenders revealed in 2014-2017 including their age and sex (male- M, female- F)*

Total number of offences												
	2014			2015			2016			2017		
Age	M	F	Total	M	F	Total	M	F	Total	M	F	Total
13	68	21	**89**	46	7	**53**	31	9	**40**	30	8	**38**
14	119	21	**140**	89	16	**105**	83	20	**103**	66	25	**91**
15	199	46	**245**	126	15	**141**	89	35	**124**	120	19	**139**
16	238	39	**277**	145	24	**169**	134	24	**158**	118	22	**140**
Total	**624**	**127**	**751**	**406**	**62**	**468**	**337**	**88**	**425**	**334**	**74**	**408**
Criminal acts												
	2014			2015			2016			2017		
Age	M	F	Total	M	F	Total	M	F	Total	M	F	Total
13	64	20	**84**	41	7	**48**	26	9	**35**	26	6	**32**
14	114	18	**132**	83	16	**99**	90	19	**109**	71	25	**96**
15	187	37	**224**	124	15	**139**	86	33	**119**	116	19	**135**
16	225	33	**258**	135	22	**157**	117	23	**140**	111	17	**128**
Total	**590**	**108**	**698**	**383**	**60**	**443**	**319**	**84**	**403**	**324**	**67**	**391**
17 X 7 Category												
	2014			2015			2016			2017		
Age	M	F	Total	M	F	Total	M	F	Total	M	F	Total
13	38	10	**48**	26	4	**30**	18	5	**23**	19	2	**21**
14	89	9	**98**	61	9	**70**	54	9	**63**	45	9	**54**
15	136	18	**154**	71	7	**78**	54	15	**69**	77	8	**85**
16	147	17	**164**	75	10	**85**	64	13	**77**	69	16	**85**
Total	**410**	**54**	**464**	**233**	**30**	**263**	**190**	**42**	**232**	**210**	**35**	**245**

** Source: authors' own analysis based on Information Bulletin of the Police Headquarters in Olsztyn*

As can be seen from the above data, there is a considerable disproportion between the number of crimes committed by male and female juvenile perpetrators. In the analyzed period, the highest number of juvenile perpetrators identified was in 2014 - at 751. These numbers systematically decreased reaching the lowest value in 2017, when 418 minors were detained. The analysis proves that among the youth population of both genders the crime rate slowly increases at the age of 13, reaching the highest values

at the age of 15 - 16 years. It is worth noting that in the analyzed period, the number of prohibited acts committed by girls remains more or less at the same level.

Literature related to the theme lists a number of reasons for juvenile delinquency, including: the desire to get money or other material benefits, to impress others, persuasion of group or adult persons, willingness to belong to informal groups, following patterns and behaviors having their source in the family home, a sense of impunity for previous criminal activity and seeking acceptance when suffering from lack of support and a sense of security from parents and guardians (Hołyst, 1999: 450). Despite the declining indicators, the above presented data suggest that the problem of juvenile delinquency will not be avoided in the future.

Just as the legislation regarding proceedings for juvenile offenders in various EU countries is different, the training systems of police officers regarding the above issues are not uniform. For example, in the basic training system of Lithuanian police officers, the issue related to the specificity of administrative responsibility of minors is taught within 5 academic hours. In the case of the police education system of Estonia, while discussing the procedure of proceedings in criminal and administrative matters, the issues related to juvenile rights and differences, e.g. in the tactics of conducting hearings and responsibility for repairing damages caused by them are discussed. The issues cover 4 academic hours. In turn, in the education system of Latvian police officers at the State Police College of Latvia these topics are devoted to a total of 18 academic hours at full-time studies. In the case of police education of the Czech Republic, at the basic level of education, issues of juvenile delinquency are devoted to a total of 19 academic hours divided into several thematic blocks. In Spanish system, these issues include, in turn, at the National Police Academy of the National Police Corpus, 20 academic hours, devoted both to crime, which the juvenile fall victim to, and the one which they are perpetrators.

3. Preparing police officers to activities aimed at preventing juvenile delinquency on the basis of training programs carried out at the Police School in Katowice

The Police School in Katowice is the youngest institution of this type in Poland. It was established pursuant to Order No. 1 of the Chief Police Commander of January 6, 1999 (Dz.Urz. KGP (Official Journal of the National Police Headquarters) No. 10, item 57). The school manages vast tracts of land, which

is 32.8 ha. There are 32 objects on the site with a total usable area of 22,775 m², situated on a fenced area of over 13.7 ha. There are lecture rooms, simulation halls, sports facilities in the form of halls for team games, gyms for martial arts, athletics field, obstacle courses, and shooting ranges. The current training and accommodation base is 740 places. The school offers a wide range of standard professional training and specialist courses, especially for police officers in prevention units.

All training courses carried out by the aforementioned unit prepare officers for the tasks assigned to the Police as a uniformed and armed formation serving the public and intended to protect human security and to maintain public safety and order, including (Dz.U. Journal of Laws of 2016 Item 147 as amended):

- protection of life and health of people and property against unlawful attacks violating these goods;
- protection of public safety and order, including ensuring peacein public places and in the means of public transport, in road traffic and in waters intended for public use;
- initiating and organizing activities aimed at preventing crimes and misdemeanors as well as criminogenic phenomena and cooperating in this respect with state, self-government and social organizations;
- detection of crimes and offences and prosecution of perpetrators;
- supervision of specialized armed protective formations to the extent specified in separate regulations;
- carrying out compliance checks on public activities or activities being in force in public places;
- cooperation with the police of other states and their international organizations, as well as with the organs and institutions of the European Union on the basis of international agreements and arrangements and separate regulations;
- collection, processing and transmission of criminal information;
- keeping data records containing information collected by authorized bodies on fingerprints of people, unidentified fingerprints from crime scenes and the results of analysis of deoxyribonucleic acid (DNA).

For the purpose of this article, two training programs run at the Police School in Katowice were reviewed to present the preparation of police officers in the field of preventing juvenile delinquency.

3.1. Standard Professional Training

Standard Professional Training program (Dz.Urz. Official Journal of the National Police Headquarters of 2016, item 77) was developed in accordance with the methodology of the so-called module employable skills, in which the tasks of a police officer constitute both a criterion for the selection and organization of the content of teaching / learning. The training, implemented on the basis of the program, prepares future police officers to perform the following basic professional tasks:

- Determining the circumstances of events and securing their place;
- Ensuring safety and public order in the place of service and intervening;
- Search for people and things and disclosing the perpetrators of crimes within selected operational and cognitive and administrative activities;
- Servicing in convoys and rooms for detainees or persons brought for sobering up;
- Taking actions towards road traffic participants;
- Performing actions in response to offences;
- Participation in activities related to the restoration of collectively violated public order;
- Counteracting criminogenic phenomena;
- Shooting training;
- Tactics and intervention techniques.

The training lasts 143 training days and takes 1117 hours. Participants of the training programme take part in subsequent components of the course, which are:

- introduction to the programme: presenting the regulations and the schedule of the training - 1 day;
- programme classes - 140 days;
- consolidation - 1 day;
- final exam and conclusion of training - 1 day.

Young professional police officers familiarize themselves with issues related to detaining juvenile perpetrators of criminal acts, who also display signs of demoralization in the block dedicated to counteracting criminogenic phenomena. During 8 hours, students are introduced with the following content:

- identification of situations and facts posing a threat to the minor;
- identification of behavior of minors, demonstrating their demoralization;

- ability to distinguish a prohibited act under penalty from other offences;
- ability to record data and observations and information obtained that indicate a minor's risk of demoralization, their demoralization or committing a punishable act;
- ability to make notes to inform a specialist on juveniles and pathology about criminal acts or juveniles threatened with demoralization;
- assessment of the eligibility conditions for detaining a minor;
- detaining a juvenile perpetrator of a punishable act or juvenile in the course of illegal stay outside the youth detention centres or a juvenile shelter;
- drawing up a protocol of detention of a juvenile.

During these classes the emphasis is placed on acquiring the knowledge related to the concepts of demoralization, punishable act, and juveniles. In addition, documenting information on criminal acts and signs of demoralization, as well as the conditions for the eligibility of detaining a minor and taking them to emergency youth centres.

3.2. Specialist training for district police officers.

The purpose of the training course is to prepare a police officer to perform duties as a district police officer, that is, a police officer who has been assigned a part of the operating area of the police headquarters, police station or police checkpoint as an area of activity. This type of training is designed for the police officers who are in the position of a district police officer or are intended to perform such service.

The course takes 22 training days and requires covering 174 hours according to the following frame (Dz.Urz. Official Journal of the National Police Headquarters of 2016 item 16, as amended):

- Introduction to the regulations and the schedule of the training. – 1 hour
- Implementation of programme content 170 hours.
- Final exam – 2 hours.
- Conclusion of the training programme – 1 hour

Issues related to juvenile delinquency are covered in block II, which comprises legal issues. It takes 40 hours altogether of which 6 hours is devoted to juvenile proceedings in the case of unaccompanied minors.

After having completed this part of training a participant should be able to:

- define the tasks of a district police officer related to perpetrators of criminal acts and minors threatened by demoralisation;

– draw up a minor detention report;
– specify actions undertaken in the event of detaining unaccompanied minors.

During the training, district police officers are made aware that the security and order in the assigned area of service largely depends on their work. Among other things, proper performance of tasks in the field of juvenile delinquency prevention contributes to reducing the phenomena of social pathology. Activities that certainly affect bring positive results are, among others, preventive activities consisting mainly in patrolling school areas and care and educational facilities, places where minors gather, as well as places where entertainment events take place. Also, carrying checks on unaccompanied juveniles in the evening and night may contribute to actions limiting the phenomenon referred to in this article. An important role is also the cooperation with various entities from both the state, local government and social organizations to take all preventive initiatives aimed at preventing demoralization and juvenile delinquency.

4. Conclusion

For many years the phenomenon of juvenile delinquency has been a constant interest of researchers representing many research areas. It is obvious that the behavior of young people who decide to commit prohibited acts is influenced by many factors ranging from family conditions to the media. One of the duties of the Police is to undertake all activities aimed at counteracting the demoralization and juvenile delinquency. There are two main types of activities in this area carried out by police officers The first one is all actions aimed at broadly understood prevention consisting in carrying out checks on juveniles, checks on places, organizing meetings to raise awareness of threats and to heighten the sense of responsibility of minors. The second is the sphere of activities closely related to already commit prohibited acts as well as criminal liability. Although according to police statistics, prohibited acts in the total number of committed offences account for approx. 3.4%, while the share of minors as perpetrators in relation to adult offenders is about 38%, this situation cannot be marginalized. Committing prohibited acts may lead to further development of negative behaviors, thereby consolidating incorrect patterns of behavior in adult life. An important element in the effective prevention of juvenile delinquency is the proper preparation of police officers, especially those serving in basic positions. This purpose is served, inter alia, by their participation in the classes included in the standard professional

training and specialist training for the district police officers, thanks to which participants: acquire knowledge on juvenile behaviors indicating minors' demoralization; are able to distinguish a prohibited act from other offences; learn about situations, in which juvenile detention can be carried out; find out how to prepare documentation related to the threat of a minor being demoralized or to committing a prohibited act by a juvenile.

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