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EU ACCESSION NEGOTIATIONS AND STRATEGIC APPROACH TO THE PROSECUTION OF WAR CRIMES IN THE WESTERN BALKANS*

Milica Kolaković-Bojović[a]

Overloaded by the 1990s' armed conflicts' "ballast from the past" the Western Balkans states are still struggling to manage their EU Accession agendas, whose Chapter 23 "list of issues" includes, in addition to the standard judiciary, anticorruption and fundamental rights, also the challenge to address war crimes committed in 1990s. Despite visible differences in terms of the extent to which those countries have been affected by the armed conflicts as well as the gravity of their consequences, the European Commission keeps pushing for a strategic approach to the prosecution of war crimes, including enhancing the protection and support for war crime victims and clarifying the fate of persons went missing and/or disappeared in/or in connection to armed conflicts. However, the quality and comprehensiveness of such an approach varies to the great extent among the Western Balkans states, intensifying in the periods of intensive EU accession reform agenda, followed by periods of passivation after achieving some progress on EU part. This speaks itself to what extent EU accession processes can contribute to the transitional justice processes in Western Balkans.

KEYWORDS: war crimes, victims, EU accession, Chapter 23, policy planning and evaluation, Western Balkans.

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The armed conflicts in ex-Yugoslav region

Two decades have passed since last armed conflicts in the ex-Yugoslav region finished. Armed conflicts in the former Socialist Federal Republic of Yugoslavia were characterized by grave, large-scale and systematic violations of international humanitarian law. According to estimates by various organizations during the wars in Slovenia (June-July 1991), Croatia (1991-95), Bosnia and Herzegovina (1992-1995), in Kosovo and Metohija and during the bombing of the Federal Republic of Yugoslavia (1999), as well as in the Former Yugoslav Republic of Macedonia (February-August 2001) - more than 130,000 people lost their lives, with civilians accounting for the majority of them. (Kolaković-Bojović & Tilovska-Kechegi, 2019)

It is estimated that about 40,000 people went missing. In that period, various initiatives at the national and the regional level have been made to carry out search and identification processes, mostly with the support of the International Committee of Red Cross (ICRC) and ICMP. 35,007 cases it total were reported to ICRC. According to the data of this organization from September 2023, 9,772 people were still missing as a result of the conflicts in the region. Of these, 6,233 cases are related to the conflict in Bosnia and Herzegovina, 1,924 to the conflict in Croatia and 1,615 to the conflict in AP Kosovo and Metohija.[1] Additional complexity of the situation is associated to the fact that, in some cases, persons who disappeared on the territory of one state may have family members, who are also victims, living in the territory of another state (Kolaković-Bojović & Džumhur, 2025).

In addition to wilful killing of civilians in these conflicts numerous cases were registered of enforced displacement of the civilian population, unlawful imprisonment, torture, sexual violence, inhumane treatment, as well as looting and destruction of property, economic assets, cultural and religious buildings on a large scale. War crimes were committed by all parties to the armed conflicts.[2]

EU, transitional justice and the rule of law

Transitional justice and the EU human rights agenda

An importance of the transitional justice for the European Union (hereinafter: EU) has been confirmed through the EU Action Plan on Human Rights and Democracy 2020 - 2024[3]. Namely, the whole Chapter 1.6 of the Action Plan is dedicated

[1] See more on www.kznl.gov.rs/latinica/dokumenta.php.

[2] See more in: The National Strategy for the Prosecution of War Crimes, "The Official Gazette", No. 19/2016.

[3] EU Action Plan on Human Rights and Democracy 2020-2024, available at: https://www.eeas.europa.eu/sites/default/files/eu_action_plan_on_human_rights_and_democracy_2020-2024.pdf, last accessed on October 2nd 2024.

to the closing the accountability gap, fighting impunity and supporting transitional justice, where EU recognized, among others, necessity to "support in-country initiatives to combat impunity for human rights violations and abuses and transitional justice processes, including by strengthening links with the UN (point e), as well as to actively promote measures to prevent enforced disappearances and extrajudicial killings. (point f) The same chapter also provides for developing comprehensive EU approaches to ensuring accountability, in particular for the most serious crimes and human rights violations and abuses, and to supporting victims in seeking remedy by linking national and international efforts, building on EU policies, … (point b)[4] Such an approach is logical continuation of the EU Action plan on Human Rights and Democracy 2015 – 2019. whose provisions have been concretised and elaborated through *The EU's Policy Framework on support to transitional justice*[5], which incorporates the four essential elements of transitional justice, namely: criminal justice; truth; reparations; guarantees of non-recurrence/institutional reform.[6]

EU accession negotiations of Westen Balkan states: A new accession methodology

Frequently mentioned, yet barely proven in practice- this is how the new accession methodology can be briefly described (Kolaković-Bojović & Simonovski, 2023) The main argument to introduce this new approach was that it is aimed at re-establishing a credible EU perspective for the Western Balkans and to make it very clear that for the Commission and for the EU as a whole, it is a top priority to have stability, peace and prosperity in the region. (Commission, 2020).[7]

[4] e.g. on the International Criminal Court, children and armed conflict, Women, Peace and Security, survivors of conflict-related sexual and gender-based violence, transitional justice, the fight against torture and other ill-treatment.

[5] This document forms part of the implementation of the EU Action Plan on Human Rights and Democracy –2015 - 2019, which outlines in action 22 (b) the commitment to develop and implement an EU policy on Transitional Justice. The objective is to provide a framework for EU support to transitional justice mechanisms and processes and enhance the EU's ability to play a more active and consistent role, both in our engagement with partner countries and with international and regional organisations. *The EU's Policy Framework on support to transitional justice*, available at: http://eeas.europa.eu/archives/docs/top_stories/pdf/the_eus_policy_framework_on_support_to_transitional_justice.pdf, last accessed on March 9th 2019

[6] "A transitional justice process which combats impunity, provides recognition to victims, establishes the rule of law and fosters trust also aims to contribute to a process of reconciliation. Reconciliation seeks to redesign the relationship between individuals and enable society to move from a divided past to a shared future. Legal and institutional measures alone will not be sufficient. Initiatives that target the more personal dimension of a transition may also be required, such as official apologies, memorials and the reform. However, reconciliation must not be conceived as an alternative to justice, or a goal that can be achieved independently of the comprehensive implementation of the four elements of transitional justice discussed in detail below. Furthermore, while transitional justice is a core part of the reconciliation process, other components, such as security and development, are equally important."

[7] Matić Bošković, M., Kostić, J. (2020) 'How to Build Common Features of the Justice Systems in

Since such an approach has been introduced when some of the WBs countries have been already in the accession negotiation process, while others were waiting opening the negotiations, it is important to mention that the Council agreed on the application of the revised enlargement methodology to the accession negotiations with Montenegro and Serbia (already in in the process), after both candidate countries expressed their acceptance of the new methodology (Matić Bošković and Kostić, 2021). This consequently required accommodation within the existing negotiating frameworks with both countries during the next Intergovernmental Conferences. In parallel, for North Macedonia and Albania, this new approach/methodology was applicable from the very beginning of the process. (Kolaković-Bojović & Simonovski, 2023)

There are three main elements of the new methodology to be addressed: a more credible process, a stronger political steer/monitoring, dynamics determined by the cluster approach and predictability of the process.

A more credible process

Credibility here refers to the stronger focus on fundamental reforms, starting with the rule of law, the functioning of democratic institutions and public administration as well as the economy of the candidate countries.[8] Therefore, the EC has given the predominate status to those, vital area of a state functioning, over the others. In practice, this means that unless a country meets the objective criteria, the Member States shall not agree to move forward to the next stage of the process, respecting the merits-based approach. In practice, this also has consequences articulated in the third principle- predictability and dynamism (Kolaković-Bojović & Simonovski, 2023).

Predictability and Dynamism

This principle has brought grouping the negotiating chapters in six thematic clusters[9], where the Chapter 23 which addresses the issue of war crimes has been placed

Candidate Countries and EU Member States', *Legal Challenges for the New European Commission,* Bratislava Legal Forum, Comenius University in Bratislava, Faculty of Law, pp. 101-113

[8] See more on rule of law requirements in Matić Bošković, M., Kostić, J. (2022) 'Reform of Public Prosecution in Serbia in Line with EU Accession Requirements', in: *Efektívnosť prípravného konania – súčasný stav a výzvy pro futuro Zborník príspevkov.* Bratislava: Univerzita Komenského v Bratislave, Právnická fakulta, Katedra trestného práva, kriminológie a krimainalistiky, 392-416. ISSN 978-80-571-0547-3 and Matić Bošković, M. Nenadić, S. (2018) 'European Judicial Standards', *Strani pravni* život, 62 (1), pp. 39-56. https://doi.org/10.5937/spz1801039b

[9] 1) fundamentals, 2) internal market 3) competitiveness and inclusive growth, 4) green agenda and sustainable connectivity, 5) resources, agriculture and cohesion, 6) external relations. In addition to this, the cluster organization means that the negotiations on each cluster will be open as a whole – after fulfilling the opening benchmarks at the level of whole cluster, comparing with "the old" approach based on the fulfillment of opening benchmarks on an individual chapter basis. However,

to the Cluster I. Negotiations on the fundamentals are to be open first and closed last, since the progress in this chapter will determine the overall pace of negotiations. Finally, once negotiations on Cluster 1 are open, the order of opening the other clusters shall not necessarily follow their enumeration, but it is rather based on the reform progress achieved, which is basically expected step forward based on the "Fundamentals first" introduced by EC in 2012 for the countries of the Stabilization and Association Process, which included the rule of law, functional democratic institutions, economic management, and professional public administration, with the addition - developing and maintaining good neighbourly relations and resolution of mutual bilateral disputes. (Kolaković-Bojović & Simonovski, 2023).

The initial step in introducing "the Fundamentals first" approach could be found in establishing the transitional measures (Interim Benchmarks) in chapters 23 and 24 in Serbia and Montenegro, as a mechanism that will further contribute to the quality of reforms and their monitoring.[10] At the same stage, the EU also introduced the rule that chapters 23 and 24 nave to be open at the beginning of the negotiation process, but also closed at the end of it. (Kolaković-Bojović & Petković, 2020) Therefore, even before introducing the enhanced methodology in 2020, the European Union sets these transitional measures that need to be fulfilled prior to define the closing benchmarks, but also opened the door for the continuous monitoring of the rule of law reforms in chapters 23 and 24. With this step, the EU once again underlined the importance of these two chapters. Therefore, the concept of the new methodology which established Cluster 1, was highly logical and expected additional effort of EU to ensure more effective mechanisms to foster, implement and monitor reform processes associated these, vital parts of a state functioning. (Kolaković-Bojović, 2017)

Other important novelties brought through the new methodology

In addition to the two above-described principles, a new methodology has also brought an *increased importance of the anticorruption* which is now horizontal principle/crosscutting issue in all chapters.[11] EU promised also *a more predictable pro-*

not only the progress of an each and every negotiation chapter has been preconditioned by the progress at the level of the whole cluster, but also by the progress made in Cluster 1 (Fundamentals). Therefore, this requires a stronger focus throughout the accession process on the rule of law, fundamental rights, the functioning of democratic institutions and public administration reform, as well as on economic criteria (Cekov, 2022).

[10] See more: Matić Bošković, M., Kolaković-Bojović, M. (2022) 'New Approach to the EU Enlargement Process - Whether COVID-19 Affected Chapter 23 Requirements?', *International Scientific Conference "The recovery of the EU and strengthening the ability to respond to new challenges – legal and economic aspects",* Osijek, 9-10 June 2022, pp. 330-350. ISSN 2459-9425; https://doi.org/10.25234/eclic/22433

[11] See more in: Kolaković-Bojović, M., Simonovski, I. (2023) 'The Accession Negotiations of North

cess, including the accelerated integration and "phasing-in" to individual EU policies, the EU market and EU programmes, which can trigger additional efforts of the decision makers to achieve progress, but also to make the benefits of the EU accession process to the citizens.[12] However, the Commission assumed that a motivation and benefits cannot be the only way to make the progress more predictable, so it established, as the other side of the same coin, sanctioning any serious or prolonged stagnation or backsliding in reform implementation and meeting the requirements of accession process. (Balkanews, 2020) Finally, EC underlines within the new methodology a *political engagement at the highest level as a tool to ensure* the political commitment, regional cooperation and good neighbour relationships (Kolaković-Bojović & Simonovski, 2023).

The place of the prosecution of war crimes in the EU accession processes of Western Balkans countries: Let's have a strategy!

With the previously elaborated visible focus of the EU on the transitional justice issues, coupled with its changed approach to the accession negotiations, proven ability to deal with and the track record in dealing with war crime cases became one of the key requirements for Western Balkans countries to progress on their EU path. Even the extent to they've been involved and/or affected by armed conflicts as well as the gravity of consequences arising from them significantly vary, the issue of war crimes appears in their agendas within the scope of the Cluster I, Chapter 23 (Judiciary and Fundamental Rights). Therefore, overweighted by the abovementioned "ballast from the past" the Western Balkans states are struggling to manage their EU accession agendas, whose Cluster I, Chapter 23 "list of issues" includes, also the challenge to address war crimes committed in 1990s. While only Croatia has finished the accession negotiations and joined EU in 2013, the rest of the Western Balkan states previously affected by armed conflicts are yet to "fulfil necessary conditions".

Macedonia to the EU: Between New Methodology and Old Challenges'. *International scientific conference "Law between the ideal and the reality"*. Priština: Faculty of Law; Belgrade: Institute for Comparative Law, 103-115. ISBN 978-86-6083-087-8 and Kolaković-Bojović, M. (2019) *Monitoring i evaluacija reformi u oblasti borbe protiv korupcije*. Zbornik Instituta za kriminološka i sociološka istraživanja, 38 (1). pp. 83-97.

[12] See more on conditionality in Kostić J., Matić Bošković, M. (2020) 'How Covid-19 Pandemic Influences Rule of Law Backsliding in Europe'. *Regional Law Review*, 77-90. ISBN 978-86-80186-60-3; https://doi.org/10.18485/iup_rlr.2020.ch6

Croatia

Largely affected by armed conflicts in 1991-1995 period. This could be the best illustrated through the fact that In the Republic of Croatia until December 31, 2013, proceedings against 3,599 people were initiated due to criminal offenses of war crimes. In relation to the part of the persons against whom the proceedings were initiated, after the investigation conducted, state lawyers gave up persecution, since during the investigation, it was determined that the offense was not a war crime or because no evidence of the criminal offense and the guilt of the perpetrator was collected during the investigation. An investigation against 241 persons was conducted, a first -instance criminal proceedings were underway against 613 persons on the basis of an indictment of the State Attorney's Office and a conviction was rendered in relation to 608 persons.[13]

The issue of war crimes in Croatia has been traditionally addressed through the two types of policy documents: judicial reform strategies and the internal action plans endorsed/adopted by the State Prosecutor's Office of the Republic of Croatia and the Ministry of Interior. At the moment of joining the EU, Judicial Reform Strategy 2011-2015[14] was in force in Croatia. However, it addressed this issue only through the one strategic guideline (2.17) which provides for "continuation and strengthening of all activities of judicial bodies as well as cooperation with other state bodies and ICTY in order to process more war crime cases."

In order to ensure the implementation of the Strategy, in the State Prosecutor's Office of the Republic of Croatia has developed an operational document that in detail prescribed immediate obligations of all state prosecutors, including certain deadlines and especially obliges the prosecutors to coordinate their work with police officers in charge of this kind of cases.

Bosnia and Herzegovina

The specificity of Bosnia and Herzegovina in this regard lays in the fact that it has been affected by armed conflicts to the greatest extend among WBs countries. However, it was the last state to be upgraded from the "potential candidate" to the "candidate country" status in late 2022. Therefore, it is still difficult to anticipate how this

[13] See more in: Report of the State Prosecutor's Office of the Republic of Croatia Available at: https://dorh.hr/sites/default/files/dokumenti/2014-02/ratni-zlocini-31-12-2013.pdf (Last accessed: 14 October 2024)

[14] *The Parliament of Croatia, Judicial Reform Strategy 2011-2015*. Available at: https://vlada.gov.hr/UserDocsImages//ZPPI/Strategije%20%20OGP/pravosu%C4%91e//Strategija%20reforme%20pravosu%C4%91a,%20za%20razdoblje%20od%202011.%20do%202015..pdf (Last accessed: 14 October 2024)

issue will be treated in the light of the accession benchmarks, including there all of the three categories: opening benchmarks, interim benchmarks and closing benchmarks (OBMs, IBMs and CBMs). It is expected that the importance of this issue will be at least the same as for Serbia, especially having in mind that as of 2023, almost 500 war crimes cases remained with over 4,000 known suspects. (OSCE, 2022)

The lack of progress in EU accession negotiations hasn't prevented the Bosnia and Herzegovina from introducing the strategic approach in terms of the State response to the war crimes issue. Namely, in 2008 National Strategy for War Crimes Case Processing[15] was adopted. With the aim of monitoring and conducting the implementation of the Strategy and the implementation of the Council of Ministers made the decision in 2009 on the establishment of the Supervisory Body for Monitoring the State Strategy for War Crimes Strategies. Given that all objectives provided for the strategy are not achieved in the scheduled deadlines and the number of war crimes cases in Prosecutor's Office in BiH, the need for amendments to the Strategy. Accordingly, the Council of Ministers in 2017 established the working group was founded for the preparation of amendments to the State Strategy for War Crimes Cases. As a result of this in 2020 Revised National War Crimes Processing Strategy.[16]

It is important to mention that both versions of the Strategy approach the issue of the prosecution of war crimes comprehensively, addressing all the relevant issues, including the organization and the competence of the judiciary, cooperation with the International Criminal Tribunal for ex-Yugoslavia (hereinafter: ICTY) and with the authorities of the neighbouring states as well as protection and support to war crime victims and witnesses. An importance of the monitoring mechanism has been recognized, too.

Serbia

Since it began working in 2003 until the end of 2023, the Office of the War Crime Prosecutor (herein after: OWCP) brought indictments in 104 war crimes cases, indicting a total of at least 238 persons and encompassing at least 3,544 victims who lost their lives. Final judgments have been rendered in 68 cases and 21 cases are ongoing. In cases which have been concluded by a final decision, a total of 94 accused have been convicted and 56 acquitted. Also, indictments were dismissed against 30 out of the total number of accused, either on account of their incapacity to stand trial, or because proceedings were terminated on account of their deaths. In the finally

[15] See: *National Strategy for War Crimes Case Processing (Državna strategija za rad na predmetima ratnih zločina) (2008).* Available at: http://www.mpr.gov.ba/web_dokumenti/Drzavna%20strategije%20za%20rad%20na%20predmetima%20RZ.pdf (Last accessed: 1 October 2024)

[16] *Revised National War Crimes Processing Strategy (2020).* Available at https://portalfo2.pravosudje.ba/vstvfo-api/vijest/download/108066 (Last accessed: 1 October 2024)

concluded cases, the indictments listed a total of 1,274 victims, whereas the final judgments list 1,048 victims who had lost their lives.[17]

Serbia has officially opened its accession negotiations with EU in January 2014 when the intergovernmental conference was held. However, Chapter 23 itself was opened in July 2016, after the Action Plan for Chapter 23 (AP 23) had been adopted in April 2016 (Ilić, Matić Bošković, 2019, p. 258). The content of the AP 23 was shaped by the recommendations from the Screening Report for Chapter 23.[18]

However, contrary to recommendations from the Screening Report for Chapter 23 addressed in the Action Plan for the same negotiation chapter, the interim benchmarks given in the Common Negotiation Position[19] are more detailed, but also more concrete, tackling the strategic approach to the issue of war crimes comprehensively.[20] Namely, while six IBMs in total addressed the issue of war crimes, even two of them (IBMs 16 and 17) refers directly to the State obligation to ensure a long-term strategic approach in dealing with this issue. Namely, the EU requested Serbia to implement effectively the measures in its National Strategy in support of investigation, prosecution and adjudication of war crimes. "Serbia monitors its implementation, assesses its impact and revises the strategy in parallel." At the same time EU requested Serbia to adopt and implement effectively a Prosecutorial strategy for the investigation and prosecution of war crimes; Serbia monitors its implementation and assesses its impact, as necessary and appropriate. (IBMs 16-17)

The reasons for this could be found in the fact that Serbia was requested in 2015 to develop/adopt those policy documents (before all the National Strategy) together with AP 23.[21] Therefore, adoption of the National Strategy for Prosecution of War Crimes (2016-2020) was one of opening benchmarks together with adoption of the Action Plan for Chapter 23[22].

[17] See more in: Humanitarian Law Centre (2024) *Report on War Crimes Trials In Serbia During 2023, Belgrade, May 2024*. Available at: https://www.hlc-rdc.org/wp-content/uploads/2024/05/Godisnji_izvestaj_2324_eng_CEO_web.pdf (Last accessed: 14 October 2024)

[18] Screening Report for Chapter 23, available on: *http://seio.gov.rs/upload/documents/eu_dokumenta/Skrining/Screening%20Report%2023_SR.pdf*, last accessed on July 26th 2016.

[19] Common Negotiation Position for Chapter 23, available at: https://www.mpravde.gov.rs/tekst/13244/pregovaracka-pozicija-.php, last accessed on April 4th 2019.

[20] IBMs 16-21 refers to the issue of war crimes from the perspective of increasing efficiency of investigations, proper penalties, regional cooperation, cooperation with ICTY, resolving cases of missing people

[21] See more in: Kolaković-Bojović, M. (2015) 'Efikasnost postupaka za ratne zločine u Republici Srbiji.' *Zbornik Instituta za kriminološka i sociološka istraživanja,* 34 (1), 155-167; Kolaković-Bojović, M. (2017) *Inkriminacija prisilnog nestanka u krivičnom pravu Republike Srbije*. Zbornik Instituta za kriminološka i sociološka istraživanja, 36 (1). pp. 135-147.

[22] Action Plan for Chapter 23, available on: *http://mpravde.gov.rs/files/Action%20plan%20Ch%2023.*

Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia (Prosecutorial Strategy) has been adopted in 2018 with the aim of providing a detailed guidelines to the War Crime Prosecutors Office on how to prioritise cases, foster efficiency of investigations and how to improve its overall work, based on the general directions provided in this regard in the 2016 National Strategy.

However, since the progress made through the implementation of both strategies were limited, as well as in order to fulfil IBMs 16-17, in 2021 the impact of the 2016 National Strategy was assessed and the new National Strategy for 2021-2026 period with the accompanying Action Plan were developed and adopted. In terms of the methodology used to develop it, as well as in terms of the structure and the content of the document, this was significant step forward ensuring that the progress can be measured through the set of quantitative and qualitative indicators.

In 2023 the War Crime Prosecutor's Office adopted the Revised Prosecutorial Strategy for 2022-2026[23] period with the accompanying Action Plan[24]. However, the quality of this document is disputable. Namely, despite at the first glance the structure and the content of the document looks well developed, in fact, most of the text has been actually transposed from the 2021 National Strategy and accompanied Action Plan, with almost no substantial plans added.

However, the fact that the 2021 National Strategy included the clear indicators ensured that the first report on the fulfilment of the IBMs in Chapter 23 can be prepared and submitted to the European Commission in late 2023 to serve as a starting point in defining a much clearer path of Serbia in fulfilling remaining obligations as provided in IBMs.

Montenegro

Over the last three decades, from 1992 to 2024, Montenegro conducted and concluded seven criminal trials for war crimes committed in the former Yugoslavia during the 1990s wars, with one trial still ongoing before the High Court in Podgorica. A total of 37 individuals were charged, and 11 were convicted by final judgment.[25]

pdf, last accessed on October 30th 2016.

[23] *Revised Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia for the 2022-2026 period*. Available at: https://tuzilastvorz.org.rs/public/documents/2023-11/revidirana%20strategija.pdf, (Serbian only) (Last accessed: 3 October 2024)

[24] *Action Plan for Implementation of the Revised Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia for the 2022-2026 period*. Available at: https://tuzilastvorz.org.rs/public/documents/2023-11/AKCIONI%20PLAN%20TS-1.pdf, (Serbian only) (Last accessed: 3 October 2024)

[25] See more in: Strategy for War Crimes Investigations for 2024-2027.

Significantly less affected by armed conflicts in ex-Yugoslavia, but the most progressed in its accession negotiations among candidate countries[26], Montenegro, however, hasn't avoided the issue of war crimes in its EU agenda. In its attempt to address recommendations from the Screening Report for Chapter 23 Montenegro Government has adopted the Action Plan for Chapter 23 in 2013, which provided for a set of measures defined in Chapter 1.5. of this document, focusing, among others, on the outcome of the 6 cases finished or ongoing at the time of adopting the Action Plan (2013), capacity building of judges and prosecutors, as well as enhancing protection and support to war crime victims.

In 2015 The Supreme Prosecutor's Office of Montenegro adopted the Strategy for War Crimes Investigations (hereinafter: WCIS 2015)[27]. This brief (less than three pages long) document was aimed at enhancing the efficiency of war crimes prosecution in Montenegro, and "designed to address the key challenges faced by the Montenegrin judiciary in this area. Methodologically, the Strategy outlined four specific tasks with corresponding activities and included five sections that addressed potential challenges during war crimes investigations, proposed solutions, required resources for implementation, initiation of the Strategy's execution, and the responsibilities for its application."[28]

Despite of being an important step forward for Montenegrin authorities, compared to the similar initiatives in the region, the WCIS 2015 was significantly different, as in terms of the methodological approach used to develop it, us in terms of the comprehensiveness. The first of all, it was not a national or sectoral strategy formally adopted by the Government, but rather internal guiding document of the prosecution service. This has impacted its scope, structure, and ability to effectively address the challenges faced in practice. This limitation is partly due to the fact that the Strategy was adopted before Montenegro had established a comprehensive Methodology for developing policies, drafting, and monitoring the implementation of strategic documents,[29] developed on the basis of and for the purpose of implementing the Regulation on the manner and procedure of drafting, harmonizing and monitoring the implementation

[26] For more information on the nexus between justice reform and Montenegro EU agenda, see: Kolaković-Bojović, M. and Jauković, M. (2024) 'Strategic Approach to the Judicial Reform in Montenegro: The Current State of Play and a Way Forward'. *International scientific conference "The dynamics of modern legal order"*, Kosovska Mitrovica 24th and 25th of May 2024. Kosovska Mitrovica: University of Priština, Faculty of law; Belgrade: Institute of Criminological and Sociological Research; Belgrade: Institute of comparative law, 51-66

[27] The Supreme Prosecutor's Office of Montenegro (2015) *The Strategy for War Crimes Investigations*

[28] The Supreme Prosecutor's Office of Montenegro (2015) *The Strategy for War Crimes Investigations*

[29] Available at: https://www.gov.me/dokumenta/23c216b2-3eb7-453c-b0a7-3cdae9e9742e

of strategic documents[30]. In contrast, as described before, war crimes strategies in the region typically include an extensive introduction based on a thorough analysis of the situation in this area. "In this regard, the WCIS 2015 lacked a historical context, a detailed problem description, and clear strategic and operational goals. Additionally, the Strategy was not accompanied by an action plan for implementation, which would typically include deadlines, performance indicators, and an assessment of the financial resources required. Consequently, the goals set forth by that strategy only partially addressed the challenges associated with war crimes investigations." [31]

Even not explicitly mentioned in Montenegro IBMs, an adoption of a new strategy for investigation of war crimes was part of the unofficial "to do list" prepared by EC in the context of fulfilling necessary conditions to issue the Interim Benchmark Assessment Report (hereinafter: IBAR) in 2024.[32] Triggered by this, in June 2024 the Supreme Prosecutor's Office of Montenegro adopted the Strategy for War Crimes Investigations for 2024-2027 (hereinafter: WCIS 2024-2027) with accompanying Action Plan for 2024-2025 period,[33] which comprehensively addresses all the issues associated with the efficient investigation of war crimes, including strengthening administrative and infrastructural capacities of the Special Prosecutors Office. It also deals with enhancing access to justice for war crime victims, as a particularly vulnerable group[34]. The Strategy also brings a comprehensive approach to the issue

[30] Official Gazette of Montenegro 54/2018 of 31 July 2018 which entered into force on 8 August 2018

[31] Supreme Prosecutor's Office of Montenegro (2015) *The Strategy for War Crimes Investigations*

[32] Namely, Interim Benchmark No. 19 from the EU Common Position for Chapter 23 stipulated the following obligation: "Montenegro effectively demonstrates the capacity of law enforcement bodies and courts to handle impartially war crimes cases in line with international humanitarian law and the jurisprudence of the International Criminal Tribunal for the former Yugoslavia, and takes effective action to address issues of impunity, in particular by accelerating progress with investigations and prosecutions of these crimes, and by ensuring civilian victims' access to justice and reparations."

[33] Supreme Prosecutor's Office of Montenegro, *The Strategy for War Crimes Investigations for the 2024-2027 period*

[34] For more about alignment with relevant international standards on victims' rights in the context of EU accession negotiations see: Kolaković-Bojović, M. and Grujić, Z. (2020) 'Crime Victims and the Right to Human Dignity - Challenges and Attitudes in Serbia', in: Pavović, Z. (ed.) *Yearbook. No. 3, Human rights protection: the right to human dignity*. Novi Sad: Provincial Protector of Citizens - Ombudsman; Belgrade: Institute of Criminological and Sociological Research, 239-269; Kolaković-Bojović, M. and Džumhur, J. (2025) 'Enforced Disappearances and the Right to Reparation in Western Balkans', In: Baranowska, G. and Kolaković-Bojović, M. (eds.) *Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon*. Cambridge University Press (in publishing); Kolaković-Bojović, M. (2023) *Víctimas de desaparición forzada y derecho a la reparación*. In: *Desaparición forzada: Colección en temas de derechos humanos*, Tomo I. Centro Internacional para la Promoción de los Derechos Humanos bajo los auspicios de UNESCO (CIPDH), Buenos Aires, Argentina, pp. 196-226.; Kolaković-Bojović, M. (2020) Direktiva o žrtvama (2012/29/EU) i kazneno zakonodavstvo Republike Srbije', in: Bejatović, S. (ed) Žrtva *krivičnog dela i krivičnopravni*

of people disappeared in, or in connection with armed conflicts. For all above mentioned areas, it addresses both: the need to further align Montenegro's normative and institutional framework with international standards and the recommendations of global bodies responsible for monitoring compliance with those standards.[35] A very important step forward can be also found in fact that the Strategy includes the whole chapter dealing with monitoring and evaluation of its implementation as well as in fact that the Supreme Prosecutor's Office adopted also the special Methodology for reporting, monitoring and evaluation of the Strategy implementation based on the indicators contained in Action Plan.

Just a few days after adopting the WCIS 2024-2027 EU adopted the European Union Common Position regarding Chapter 23: Judiciary and Fundamental Rights[36], where "the EU urges Montenegro to further intensify its efforts to fight impunity, including on high levels, for war crimes by applying a proactive approach to effectively investigate, prosecute, try, and punish war crimes in line with international law and standards, including full cooperation with the International Residual Mecha-

instrumenti zaštite (međunarodni pravni standardi, regionalna krivična zakonodavstva, primena i mere unapređenja zaštite). Beograd: Misija OEBS-a u Srbiji, 41-54.; Kolaković-Bojović, M. (2020) 'Medijski tretman žrtava', In: *Oštećeno lice i krivičnopravni instrumenti zaštite (međunarodni pravni standardi, norma i praksa): LX redovno godišnje savetovanje udruženja*. Beograd: Srpsko udruženje za krivičnopravnu teoriju i praksu ; "Intermex", 402-420.; Kolaković-Bojović, M. (2017) 'Žrtva krivičnog dela (Poglavlje 23 - norma i praksa u Republici Srbiji)', *Reformski procesi i Poglavlje 23 (godinu dana posle) - krivičnoparni aspekti ; LVII Savetovanje Srpskog udruženja za krivičnopravnu teoriju i praksu ;* Beograd: Srpsko udruženje za krivičnopravnu teoriju i praksu; Intermex, Beograd, 140-150.; Kolaković-Bojović, M. (2016) 'Victims and Witnesses Support in the Context of the Accession Negotiations with EU', In: *Naučno-stručni skup sa međunarodnim učešćem "Evropske integracije: pravda, sloboda i bezbednost", zbornik radova: Tom 2.* Beograd: Kriminalističko-policijska akademija ; Fondacija "Hans Zajdel", 355-366; Stevanović, I. and Marković, Lj. (2024) 'The Position of Juvenile Victims and Witnesses in Criminal Proceedings: Where are We now and What is Next', *International scientific thematic conference The Position of Victims in the Republic of Serbia.* Palić, 12-13 June 2024. Belgrade: Institute of Criminological and Sociological Research, 165-182. https://doi.org/10.47152/palic2024.12.

[35] For more about these standards see: Galvis Patiño, M.C. and Huhle, R. (2025) `The Guiding Principles on the Search for Disappeared Persons – Origins and Impact`, In: Baranowska, G. and Kolaković-Bojović, M. (eds.) *Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon*. Cambridge University Press (in publishing); Baranowska, G. and Kolaković-Bojović, M. (2025) 'Dealing with Uncertainty: On Addressing Enforced Disappearances Universally', in: Baranowska, G. and Kolaković-Bojović, M. (eds.) *Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon*. Cambridge University Press (in publishing); Kolaković-Bojović, M. (2021)' Disappeared Persons and the Right to be Considered Alive - The current State of Play in the Western Balkans', in: Pavlović, Z. (ed.) *Yearbook. No. 4, Human rights protection: right to life.* Novi Sad: Provincial Protector of Citizens - Ombudsman; Belgrade: Institute of Criminological and Sociological Research, 271-287.

[36] *European Union Common Position regarding Chapter 23: Judiciary and Fundamental Rights, Brussels 21 June 2024*. Available at: https://data.consilium.europa.eu/doc/document/AD-13-2024-INIT/en/pdf (accessed on October 14th 2024).

nism for Criminal Tribunals, and to ensure access to justice and reparations for victims. The EU underscores the importance of meaningful regional cooperation in the domestic handling of war crimes, resolving the remaining cases of missing persons." The closing Benchmark itself reads as follows: "Establishes a credible and sustained track-record of effectively investigating, prosecuting, and trying cases of war crimes, including high level cases in line with international law and standards, in full cooperation with the International Residual Mechanism for Criminal Tribunals, and ensures access to justice and reparations to victims."

Such a comprehensive approach of EC proves that the decision of Montenegrin authorities to adopt a much more developed policy document this time was the right one.

Conclusions

From the above-described strategic approach used to address the prosecution of war crimes, it is clear that the quality and comprehensiveness of such an approach varies to the great extent among the Western Balkans states, intensifying in the periods of intensive EU accession reform agenda, followed by periods of passivation after achieving some progress on EU part.

In that regard, the role of the EU accession processes in Western Balkans should not be disregarded as a mechanism that can significantly contributes as to the developments at the national level as through the regional cooperation. Namely, the mechanisms established by EC to measure the progress made by candidate countries based on the fulfilment of the interim and closing benchmarks in Cluster I (Fundamentals), more precisely, in negotiation Chapter 23 (Judiciary and Fundamental Rights) ensures that the progress towards the better protection of victims and the rights of missing persons and their families influences the EC assessment of the Rule of Law state of play and therefore ensures fostering additional reforms.

However, the EU membership should not be perceived as the end of those efforts. Contrary, the EU itself needs to use and further develop monitoring mechanisms aimed at overseeing the country situation concerning the rule of law in the Member States.

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PROTECTION OF EU FINANCIAL INTERESTS: EPPO'S COOPERATION WITH NON-EU STATES*

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The European Public Prosecutor's Office (EEPO) is a cornerstone institution in the EU's efforts to combat financial crimes and protect its financial interests. Its role encompasses a wide range of activities, from investigating and prosecuting financial crimes to fostering cooperation and ensuring accountability. By centralizing and coordinating efforts across member states, the EPPO significantly strengthens the EU's ability to safeguard its financial resources and uphold the rule of law.

The cooperation between the EPPO and non-EU countries, particularly candidate countries, is essential for ensuring comprehensive protection against financial crimes due to their economic ties with the EU. Sebia, as candidate country for EU membership, has a vested interest in aligning its judicial and law enforcement practices and regulations with the European Union. For the period 2021-2023, Serbia has been allocated 571 million euro under the IPA III funding for national programmes. Proper utilization and protection of these funds are vital, and cooperation with the EPPO can help in achieving this objective. Through mutual legal assistance, information sharing, capacity building, joint investigations, and preventive measures, this international collaboration is safeguarding the EU's financial stability.

The paper identifies benefits and challenges of cooperation between third countries national authorities and EPPO. The paper recognizes challenges in identification of the legal basis for cooperation with the EPPO for some of the third countries and propose options for overcoming and mitigation measures.

KEYWORDS: EU financial interest, EU funds, EPPO, judicial cooperation, third countries.

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Introduction

The European Public Prosecutor's Office (EPPO) was established to combat crimes affecting the financial interests of the European Union (Herlin-Karnell, 2012, p. 487). Its creation was driven by the need for a specialized body that could efficiently handle cross-border financial crimes within the EU (Matić Bošković, 2022, p. 132). The EPPO was established by Council Regulation 2017/1939, adopted on October 12, 2017 (EPPO Regulation),[1] as the result of a political agreement among a group of EU member states that recognized the necessity of creating a dedicated body to tackle financial crimes impacting the EU (Dabić, 2019, p. 27).

The EPPO as an EU body with legal personality (Article 3 of the EPPO Regulation) is enjoying guarantees of independence (Article 6) and being accountable to the European Parliament, the Council, and the Commission, to which it submits an annual report.

The Regulation has established a complex, two-tier structure: a central level based in Luxembourg and a decentralized level consisting of delegated prosecutors in the Member States (Articles 8-13 of the EPPO Regulation). Delegated prosecutors represent the EPPO in Member States and are responsible for conducting investigations, prosecutions, and related activities. Besides the powers conferred by the Regulation, delegated European prosecutors must have the same investigative and prosecutorial powers as national prosecutors[2] (Matić Bošković, 2016, p. 250). Delegated prosecutors are not employees of the EPPO but are active members of the public prosecution service of the Member State that nominated them. Despite their roles within the national prosecution service, they must remain independent and impartial when performing tasks assigned by the EPPO. They are required to represent the interests of the EU and must not seek or receive instructions from their Member State, taking direction only from the EPPO. While there were arguments

[1] Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Offce ('the EPPO').

[2] For more about investigative and prosecutorial powers of national prosecutors see: Kolaković-Bojović, M., Tilovska Kechegi, E., and Kurtović, R. (2019) *Prosecutorial Discretion and Legal Predictability*. Journal of Eastern European Criminal Law (2). pp. 181-192; Kolaković-Bojović, M., Turanjanin, V. (2017) 'Autonomy of Public Prosecution Service - The Impact of the "Checks and Balances" Principle and International Standards', *Journal of Eastern-European Criminal Law (2)*, 26-41; Kolaković-Bojović, M. (2018) *The Rule of Law Principle: the EU Concept vs. National Legal Identity*. In: Naučni skup sa međunarodnim učešćem Univerzalno i osobeno u pravu. Univerzitet u Kosovskoj Mitrovici, Pravni fakultet, Kosovska Mitrovica, pp. 137-159; Kolaković-Bojović, M. (2018) 'The Rule of Law and Constitutional Changes in Serbia'. *Međunarodna naučno-stručna konferencija "Krivično zakonodavstvo i funkcionisanje pravne države"* . Trebinje, 20-21. april 2018. Srpsko udruženje za krivičnopravnu teoriju i praksu; Grad Trebinje; Ministarstvo pravde Republike Srpske, Trebinje, 277-292

for creating a central body responsible to the EU institutions, the effectiveness of the EPPO requires familiarity with national regulations and collaboration with associates in each Member State. Thus, delegated prosecutors are pivotal in bridging the gap between the EPPO and national legal systems. Their unique position allows them to leverage local expertise and legal powers while operating under the independent and unified framework of the EPPO.

The establishment of the EPPO is grounded in the Treaty of Lisbon, specifically Article 86, paragraph 1 of the Treaty on the Functioning of the European Union (TFEU). This Article allows for the creation of the EPPO through enhanced cooperation among member states. Namely, member states interested in participating in the EPPO notified the European Parliament, the Council, and the Commission of their intention to adopt the Regulation based on enhanced cooperation mechanism provided by the Treaty of Lisbon.

The Regulation entered into force on November 20, 2017. However, Article 120 of the Regulation provided preparatory period of at least three years for both the EU and its member states to undertake necessary measures for the establishment of the EPPO. During this period, the EU and member states worked on creating the administrative, legal, and operational frameworks required for the EPPO to function effectively.

The Council of the European Union decided on the operational start date for the EPPO. The EPPO officially began its operations on June 1, 2021. In October 2019 the European Parliament confirms appointment of the first European Chief Prosecutor and in July 2020 the Council appoints 22 European Prosecutors, representing each of the participating EU member states. The EPPO's early years have been marked by significant activity and achievements, reflecting its critical role in protecting the financial interests of the EU.[3]

The primary competence of the EPPO is to investigate, prosecute, and bring to justice perpetrators of crimes against the EU's financial interests. Directive (EU) 2017/1371,[4] known as the PIF Directive, addresses the criminal aspects of fraud impacting the financial interests of the European Union. It defines specific offenses falling under the jurisdiction of the EPPO.[5] These include, but are not limited to,

[3] Within its first seven months, the EPPO launched 576 investigations, highlighting its proactive approach. By the end of 2022, the EPPO had 1117 active investigations with an estimated financial impact of 14.1-billion-euro damages to the EU budget. The EPPO has secured substantial freezing orders, totaling 359.1 million, to prevent further financial losses. More information on the EPPO website: https://www.eppo.europa.eu/en/about/background

[4] Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law.

[5] Specific offenses: Fraud related to EU expenditure and revenues; Cross-border value-added tax (VAT) fraud involving damages amounting to at least EUR 10,000,000; Passive and active corruption,

fraud, corruption, money laundering, and cross-border VAT fraud (Wade, 2019, p. 167). These offenses are explicitly within the EPPO's scope, emphasizing its role in investigating and prosecuting crimes that undermine EU financial integrity across Member States. The PIF Directive aims to harmonize legal frameworks and enhance cooperation among EU countries to combat fraud effectively. Regarding fraud that adversely affects the financial interests of the Union, as specified in Article 3, paragraph 2, point (d) of the Directive, the EPPO has jurisdiction when such fraud involves the territory of two or more Member States and results in a total damage of at least one million euros (Jelisavac Trošić, Kostić: 2019, p. 688).

The Regulation outlines the jurisdictional division between the EPPO and national authorities in combating offenses that impact the Union's financial interests (Preamble, point 13 of the Regulation). National authorities must forward any information related to such criminal offenses to the EPPO. If the EPPO decides to take over the case, the national authorities will relinquish their jurisdiction.

The EPPO works closely with national judicial authorities, Europol, Eurojust, and other relevant bodies to enhance the effectiveness of investigations and prosecutions. The EU's protection of its financial interests involves not only domestic oversight but also a robust external dimension that ensures funds are used effectively and responsible wherever they are spent, including in third countries outside the EU. According to the Article 23 of the EPPO Regulation, the European Public Prosecutor's Office (EPPO) has the authority to investigate, prosecute, and bring to judgment those involved in criminal offenses related to EU funds allocated to third countries when the offences are committed by a national of the member state participating to the EPPO or by an EU official.

In efforts to extend cooperation beyond EU boarders, the EPPO has engaged in negotiations and signed cooperation agreements with several third countries. The European Commission's 2024 Rule of Law Report on Serbia noted that Serbia has yet to conclude working arrangements for cooperation with the EPPO.[6] The author analyzed the development of cooperation agreement between the EPPO and third countries, reviewed signed cooperation agreements, and identified challenges associated with signing of these instruments. Specifically, the Article analysis arguments that Serbian authorities expressed in relation to cooperation with EPPO.

encompassing bribery of public officials (both receiving and offering bribes) that results in or is likely to result in harm to the EU's financial interests; Misappropriation of EU funds or assets by public officials; Money laundering involving proceeds derived from any of the aforementioned offenses; Acts such as incitement, aiding, abetting, or attempting to commit any of the listed offenses.

[6] European Commission, 2024 Rule of Law Report – Country Chapter on the rule of law situation in Serbia, Brussels, SWD(2024) 831 final, p. 2.

Protection of the EU financial interests

Fraud against the financial interests of the European Union has long been a key concern for Community institutions, prompting significant intervention in national criminal law (Baciu, 2013, p. 151). In 1987, the European Commission established the Task Force Anti-Fraud Coordination Unit (UCLAF), which became operational in 1988.[7] During the 1990s, the European Union actively passed numerous anti-fraud measures, encouraging member states to prosecute fraud against the EU's financial interests. However, allegations of internal embezzlement led to institutional reforms (Mitsilegas, 2009, p. 201). Criticism of UCLAF resulted in the establishment of the European Anti-Fraud Office (OLAF) to replace it in 1999. The legal basis for the EU's anti-fraud activities is Article 325 of the Treaty of Lisbon.

Unlike Europol and Eurojust, OLAF does not have legal personality but functions as a body attached to the European Commission (Ruszkowski, 2019, p. 108). It was established by a 1999 Commission Decision, which outlined OLAF's tasks, including internal and external administrative investigations, with OLAF operating independently.[8] Regulation 1073/99 further defined OLAF's investigative powers.[9]

To address operational issues, Regulation 883/2013 replaced the 1999 Decision, enhancing OLAF's effectiveness in combating fraud, corruption, and other illegal activities affecting the EU's financial interests.[10] The so-called OLAF Regulation was amended with Regulation 2020/2223, which came into force on January 17, 2021.[11] The new Regulation harmonizes the roles and competencies between OLAF and the European Public Prosecutor's Office (EPPO), ensuring effective information exchange, supporting EPPO investigations, and preventing overlapping actions.

OLAF lacks police or prosecutorial powers and must forward information to national prosecuting authorities or EU bodies for necessary action. It cannot independently initiate court proceedings but submits cases to national bodies or the EPPO.

[7] See: https://anti-fraud.ec.europa.eu/about-us/history_en

[8] Commission Decision of 28 April 1999 establishing the European Anti-fraud Office (OLAF), 1999/325/EC, ECSC, Euroatom.

[9] Regulation (EC) No 1073/1999 of the European Parliament and of the Council concerning investigations conducted by the European Anti-Fraud Office (OLAF).

[10] Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999.

[11] Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations.

The Regulation expanded OLAF's jurisdiction to protect EU interests from violations leading to administrative or criminal proceedings. OLAF's investigative powers include on-site inspections and detailed hearing procedures. It conducts administrative investigations of fraud, corruption, and other illegal activities affecting the EU's financial interests and those involving EU officials. Upon completing investigations, OLAF may recommend national prosecuting authorities initiate legal proceedings.

The Regulation mandates each member state designate a body or institution to support OLAF at various investigation stages. Anti-fraud coordination services in each EU member state now play a more significant role in supporting OLAF's external and internal investigations.

For external investigations, Regulation 2020/2223 stipulates that only EU law governs on-the-spot checks and investigations by OLAF, contingent on the economic operator's agreement. Economic operators must cooperate with OLAF, providing all relevant information if involved in or possessing information about the investigation. The Regulation also strengthens the rights of business entities, allowing them assistance from a person of their choice, including an external legal advisor, during on-site checks and inspections.

Regarding internal investigations, the 2020 Regulation grants OLAF access to all relevant information held by EU institutions, bodies, offices, and agencies, regardless of the media type. OLAF can request access to information on privately owned devices used for work purposes if there is reasonable suspicion of relevant information being stored on them. OLAF is also authorized to inspect the accounts of all EU institutions and bodies and, if necessary, take custody of relevant documents or data.

The Regulation allows OLAF access to bank account information under the same conditions as competent national authorities, enhancing investigation efficiency. The probative value of OLAF reports has been strengthened in proceedings before the Court of Justice, non-criminal proceedings before national courts, and national administrative proceedings. OLAF reports and attached evidence are admissible in these contexts, though in criminal proceedings, they are treated similarly to reports from state administrative inspectors.

The Regulation strengthens cooperation with Eurojust and Europol, allowing for the exchange of operational, strategic, and technical information. It mandates a close relationship between OLAF and the European Public Prosecutor's Office, based on sincere cooperation. OLAF must notify the EPPO without undue delay of alleged criminal conduct within the EPPO's jurisdiction.

Both administrative and criminal law tools are necessary for the protection of EU financial interests because they provide a comprehensive approach to comba-

ting fraud, corruption, and other illegal activities (Bellacosa, de Bellis, 2023, p. 16). Administrative tools allow for swift and preventive actions. OLAF conducts administrative investigations into fraud, corruption, and other activities detrimental to the EU's financial interests. These investigations can be internal (within EU institutions) or external (involving economic operators and other entities). OLAF can perform on-site inspections to gather evidence quickly and efficiently. These checks are crucial for detecting and stopping fraudulent activities in their early stages. In relation to access to information OLAF has the authority to access all relevant information held by EU institutions and can request information from private entities involved in investigations. This broad access is vital for comprehensive investigations. Administrative tools include the ability to recommend actions to prevent further fraud. For example, OLAF can suggest improvements in financial controls within EU institutions or recommend suspension of payments to suspected fraudulent beneficiaries.

Criminal law tools are essential for ensuring that severe violations are adequately punished and act as a deterrent to potential offenders and provides for stringent penalties, including imprisonment and substantial fines, which are essential for punishing offenders and deterring future crimes.[12] The EPPO has the authority to prosecute crimes against the EU's financial interests. This includes initiating criminal proceedings, conducting investigations, and bringing cases to court. Criminal investigations can involve coercive measures such as searches, seizures, and arrests, which are necessary for gathering evidence and securing suspects.

The collaboration between OLAF and EPPO is designed to leverage the strengths of both administrative and criminal law tools, ensuring a comprehensive and efficient approach to protecting EU financial interests. The effective exchange of information between OLAF and EPPO is crucial. OLAF's administrative investigations often uncover evidence that can be used in criminal prosecutions. Timely sharing of this information ensures that EPPO can take swift action. OLAF and EPPO work complementarily. While OLAF handles administrative investigations, EPPO focuses on criminal prosecutions. This division of labor allows each body to specialize and operate efficiently within its mandate. However, Protocols are in place to prevent overlapping actions. This ensures that resources are used efficiently, and investigations are not duplicated, which could delay proceedings and reduce their effectiveness. According to Article 101 para 3 of the EPPO Regulation OLAF supports EPPO's criminal investigations

[12] For more about developing penal policies at the national level, see: Kolaković-Bojović, M. (2022) 'Human Rights Protection: From Populism to the Evidence - Based Policy Making', in: Pavlović, Z. (ed.) *Yearbook. No. 5, Human rights protection : from childhood to the right to a dignified old age : human rights and institutions*. Novi Sad: Provincial Protector of Citizens - Ombudsman; Belgrade: Institute of Criminological and Sociological Research, 63-80.

by providing expertise, conducting complementary administrative investigations, and gathering evidence that can bolster criminal cases (Dianese, Grozdev, 2022, p. 281).

Regulation 2020/2223 provide a clear legal framework that defines the roles and responsibilities of OLAF and EPPO. These frameworks ensure that both bodies operate within the boundaries of their mandates while maintaining a close working relationship.

Legal basis for EPPO cooperation with third countries

Legal basis for EPPO cooperation with third countries are Articles 99 and 104 of the Regulation, which deals with the relations between the European Public Prosecutor's Office and third countries. The Article 99 envisages that EPPO can establish and maintain cooperative relations with EU institutions, non-participating EU Member States, third countries, and international organizations as necessary for its tasks. It may directly exchange information with these entities, unless restricted by regulation. Additionally, the EPPO can conclude technical and operational working arrangements to facilitate cooperation and information exchange, but these arrangements cannot allow personal data exchange or have legally binding effects on the EU or its Member States.

Article 104 outlines several key mechanisms for cooperation, which include working arrangements with third countries' authorities, strategic information exchanges, and the secondment of liaison officers to the EPPO. The EPPO can designate contact points in third countries to facilitate cooperation in line with its operational needs.

Three main possibilities for judicial cooperation are conclusion or accession to international agreements (para 3), the application of existing multilateral treaties (para 4) and applying the double hat principle by European delegate prosecutor (Franssen, 2019, p. 200).

The EU can conclude new international agreements or accede to existing ones in areas under the EPPO's competence, such as cooperation in criminal matters. Specifically, Article 104 para 3 states that any international agreement concluded by the EU or to which the EU has acceded shall be binding on the EPPO. The EU is currently a party to the UN Convention against Transnational Organized Crime (UNTOC)[13] and the UN Convention against Corruption (UNCAC).[14] Additionally, the EU has bilateral mutual legal assistance agreements with the United States[15] and Japan.[16]

[13] EU signed UNTOC on 12 December 2000 and approved on 21 May 2004. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en

[14] EU signed UNCAC on 15 September 2005 and approved on 12 November 2008. https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-14&chapter=18&clang=_en

[15] Agreement on mutual legal assistance between the European Union and the United States of America of 25 June 2003, *O.J.* L 181, 19 July 2003.

[16] Agreement between the EU and Japan on mutual legal assistance in criminal matters of 30

Furthermore, the EPPO can be recognized as the competent authority replacing national judicial authorities for crimes within its remit. Article 104 para 4 envisages that in the absence of an agreement, member states should, if permitted under the relevant multilateral agreement and subject to third country acceptance, recognize and notify the EPPO as a competent authority for implementing multilateral agreements. Member states are obliged to recognize the EPPO as competent for PIF crimes and notify third countries of this status, potentially requiring amendments to existing agreements.

Interpretation of the Article 104 para 4 could be that if the third country and the EU do not have a bilateral mutual legal assistance treaty, cooperation should primarily rely on Council of Europe instruments.

Finaly, the European Delegated Prosecutors (EDPs) can act in their national capacity to request mutual legal assistance from third countries. Article 104 para 5 enables if the previous mechanisms are unavailable, the handling EDP can use their powers as a national prosecutor to request mutual legal assistance based on international agreements concluded by their member states or applicable national law, informing third countries that the EPPO will be the final recipient of the information. EDPs must act transparently and seek third country consent where necessary, ensuring the third country is aware that the EPPO will ultimately use the provided information.

Recital 109 of the Regulation provides context and sets a hierarchy among the cooperation mechanisms. Member states are encouraged to facilitate the EPPO's functions based on the principle of sincere cooperation under Article 4 para 3 of the Treaty of EU. If the first option (concluding or acceding to international agreements) is not feasible, alternative options must be explored.

In case where the three main mechanisms fail, Article 104 para 5 includes a provision for ad hoc cooperation based on reciprocity or international comity. The EPPO can request mutual legal assistance from third countries in individual cases, subject to any conditions imposed by those third countries.

The EPPO can provide information or evidence upon request to competent authorities in third countries for use in investigations or as evidence, but only if it is in the EPPO's possession. The Regulation does not cover extradition, leaving this sensitive area to members states. EDPs can request their member state's competent authority to issue an extradition request according to applicable treaties and national law.

The practical application of Article 104 must consider public international law, European law, and national law. The modalities for judicial cooperation will be influenced by these legal frameworks and the specific operational needs of the EPPO.

November 2009, *O.J.* L 39, 12 February 2010.

Regardless of the legal pathway the EPPO pursues, it ultimately depends on the consent of the third countries involved, as it is rooted in the principle "a treaty does not create either obligations or rights for a third state without its consent" as par Article 34 of the Vienna Convention.[17]

Amending an existing treaty to include the EPPO, especially a multilateral one, is a challenging task. The difficulty lies in identifying treaties suitable for the EPPO's limited mandate. Crafting a new treaty between the EU and a third country under Article 218 of the Treaty on Functioning of the EU might be more feasible. However, this requires clarity on the EPPO's role and types of mutual legal assistance it will cover. Additionally, since not all EU member states participate in the EPPO, the procedural aspects of treaty adoption need careful consideration. For new treaties under Articles 218 and 86 Treaty on Functioning of the EU, unanimous approval by participating member states is necessary, without requiring non-participating member states to agree. However, for amending multilateral treaties involving non-participating member states, their consent is needed. Notifications to third countries about the EPPO's role as a competent authority must align with existing agreements, but third countries might still resist cooperation, leading to counter-declarations. Coordinated notifications by the EU and the 22 participating member states could mitigate confusion.

One the challenges with the EPPO is that judicial cooperation traditionally occurs between states, which the EPPO is not. States typically designate a central authority for receiving and executing mutual legal assistance requests. Direct communication with judicial authorities in third countries is sometimes allowed by national laws, as seen in the Second Additional Protocol to the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters.[18]

The EU's bilateral mutual legal assistance treaties with the United States and Japan also follow the central authority concept. Although the EU is a party to UNCAC and UNTOC, it has not designated a central authority, as it lacks one. Even if member states agree to the EPPO as a central authority for specific crimes, its narrow mandate versus the broader scopes of UNCAC and UNOTC complicates matters. Central authorities, usually ministries of justice or prosecutor general's offices, add complexity as the EPPO's independence depends on cooperation from potentially pollical actors. Recent European Court of Justice decisions on European Arrest Warrants highlight the importance of 'independence' (Matić Bošković, 2020: 341).[19]

[17] Vienna Convention on the Law of Treaties, 23 May 1969, entered into force on 27 January 1980.

[18] European Treaty Series No. 182, Strasbourg, 8 November 2001.

[19] Judgments of 27 May 2019 in Joined Cases C-508/18 *OG* and C-82/19 PPU *PI* and in Case C-509/18 *PF.* In deciding on the European Arrest Warrant (EAW) application, the Court examined whether the public prosecution authority of the Member State issuing the EAW

For judicial cooperation with third countries, the EPPO must follow applicable national and international laws. This stems from Article 5 para 3 of the Regulation: *The investigations and prosecutions on behalf of the EPPO shall be governed by this Regulation. National law shall apply to the extent that a matter is not regulated by this Regulation.* Additionally, the EPPO must adhere to strict data exchange rules with third countries as outlined in Articles 80 to 83 of the Regulation. These provisions ensure compliance with both national and European legal frameworks. [20]

The 'double hat' principle and the EPPO's role as a 'legal successor' for PIF crimes require careful consideration. The EPPO shares competence with national authorities, complicating its role as a legal successor unless it has effectively exercised its competence in a given case. This ambiguity can confuse third-country authorities about who to contact within the EU. Even if third countries accept an EDP acting as a national prosecutor, courts may question the legitimacy of the evidence gathered, affecting its independence in legal proceedings.

Judicial cooperation with third countries must be reciprocal. Third-country authorities seeking assistance in PIF cases will likely contact the central authority in the member state involved unless the EPPO can be directly contacted. The EPPO's limited mandate and inability to guarantee all evidence needed by third countries complicate its role as an executing authority. Therefore, third countries must evaluate whether engaging with the EPPO is beneficial, given its constraints.

Till now the Working arrangements on cooperation between the EPPO and third countries' authorities were signed with Prosecution services of Albania (2022), Georgia (2022), Moldova (2022), Montenegro (2022), North Macedonia (2022), Seychelles (2024), Ukraine (2022 and 2023), USA (2022), and Bosnia and Herzegovina (2023).[21] Key parts of the working arrangements relate to operation and strategic cooperation. Operation cooperation includes cooperation on gathering evidence, freezing of assets, joint investigation teams and extradition, while strategic cooperation relates

provides a sufficient level of judicial protection. In its judgment on 27 May 2019, the CJEU ruled that the public prosecution in Germany lacks guarantees of independence from executive and political interference, and therefore, cannot issue a European Arrest Warrant. On autonomy of public prosecutors see: Matić Bošković, M., Ilić, G. (2019) *Javno tužilaštvo u Srbiji: Istorijski razvoj, međunarodni standardi, uporedni modeli i izazovi modernog društva.* Beograd: Institut za kriminološka i sociološka istraživanja; Matić Bošković, M., Nenadić, S. (2018) Evropski standardi u oblasti pravosuđa. *Strani pravni život,* 62 (1), 39-56. https://doi.org/10.5937/spz1801039b

[20] For more about phasin in approach of EU to the candidate countries, see: Kolaković-Bojović, M. and Simonovski, I. (2023) The Accession Negotiations of North Macedonia to the EU: Between New Methodology and Old Challenges. In: *International scientific conference "Law between the ideal and the reality"*. Faculty of Law, Institute for Comparative Law, Priština, Belgrade, pp. 103-115

[21] See: https://www.eppo.europa.eu/en/about/international-cooperation#cooperation-between-the-eppo-and-non-eu-states-third-countries

to exchange of strategic and other information, secondment of liaison officers to the EPPO, EPPO contact points in the national authority, meetings, technical support and channels of communication.

By 30 September 2022, 17 member states participating in the EPPO notified the EPPO as a competent authority for the purposes of the 1959 European Convention on Mutual Assistance in Criminal Matters and its Protocols. Switzerland believes that under the current framework, EPPO recognition as a competent authority under the 1959 European Convention is legally untenable without the EU itself being a member.

However, discussions within the Council of Europe regarding the conclusion of a new Protocol to the 1959 European Convention on Mutual Assistance in Criminal Matters, aimed at facilitating cooperation between the EPPO and the competent authorities of other Parties, have currently been put on hold.[22] In addition, Switzerland maintains reservations about current proposals for cooperation with the EPPO under existing frameworks, advocating for new instruments that align with its national legal principles and sovereignty concerns.

Impact of EPPO Regulation on Serbia

Since 2001, the EU has provided, through several various instruments and funds, more than EUR 3 billion in grants to the Republic of Serbia in order to support the reforms.[23]

Through the Instrument for Pre-accession Assistance (IPA), Serbia can receive over 200 million euros per year to support reforms within the negotiation chapters. In 2021, the European Anti-Fraud Office (OLAF) concluded two investigations related to Serbia concerning the use of EU funds managed or spent at the national or regional level.[24] Out of these two investigations, OLAF issued a recommendation in only one case. This limited number of investigations and recommendations suggests that OLAF does not have a significant volume of cases involving Serbia. Related to EPPO activities Serbia and legal entities registered in Serbia were part of the investigation of the VAT carousel fraud in 2022.[25] Collaborating across borders, European Prosecutors, European Delegated Prosecutors, EPPO financial fraud analysts, Euro-

[22] Non-paper from the Commission services and the European Public Prosecutor's Office (EPPO) on the state of play of the EPPO's activities, 10 October 2022.

[23] See: https://www.mei.gov.rs/eng/funds/eu-funds/

[24] See: https://anti-fraud.ec.europa.eu/system/files/2022-09/olaf-report-2021_en.pdf

[25] See: https://www.eppo.europa.eu/en/media/news/operation-admiral-eppo-uncovers-organised-crime-groups-responsible-vat-fraud-estimated

pol, and national law enforcement authorities uncovered connections between the suspected Portuguese company and nearly 9,000 other legal entities and over 600 individuals in different countries. Eighteen months after the initial report, the EPPO is exposing what is believed to be the largest VAT carousel fraud ever investigated in the EU. This example demonstrates that Serbia is cooperating with EPPO when EU financial interest is endangered.

Judicial cooperation in criminal matters between Serbia and EU is already established through different mechanisms, specifically through Eurojust,[26] the European Union Agency for Criminal Justice Cooperation.[27] Serbia signed a Cooperation agreement with Eurojust in November 2019 and the first liaison prosecutor have taken duties in March 2020. A Cooperation agreement includes also Eurojust liaison magistrate, contact point to Eurojust, operational and strategic meetings, exchange of information and channels of transmission. In 2023, the Serbian liaison prosecutor was involved in 89 new cases, 23 coordination meetings, 4 coordination centres, and 4 joint investigation teams.[28]

Eurojust facilitates and improves the coordination of investigations and prosecutions and enhances cooperation between competent authorities in Member States. It plays a crucial role in facilitating the execution of international mutual legal assistance requests and the implementation of extradition requests. In comparison with EPPO, Eurojust's competence is broader and encompasses a wide range of crimes, including terrorism, drug trafficking, human trafficking, counterfeiting, money laundering, computer crime, offenses affecting the EU's financial interests, environmental crimes, etc.

Despite appearing to have similar roles, EPPO and Eurojust are significantly different. EPPO is competent to investigate and prosecute PIF crimes, while Eurojust facilitates judicial cooperation between national authorities and only has soft powers.

[26] Eurojust Legal Framework includes: Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA; Regulation (EU) 2022/838 of the European Parliament and of the Council of 30 May 2022 amending Regulation (EU) 2018/1727 as regards the preservation, analysis and storage at Eurojust of evidence relating to genocide, crimes against humanity, war crimes and related criminal offences; Regulation (EU) 2023/2131 of the European Parliament and of the Council of 4 October 2023 amending Regulation (EU) 2018/1727 of the European Parliament and of the Council and Council Decision 2005/671/JHA, as regards digital information exchange in terrorism cases.

[27] Eurojust is a specialised hub providing tailor-made support to prosecutors and judges across the EU and beyond. The aim of the Eurojust is to ensure that national borders are no obstacle to prosecuting criminals.

[28] See: https://www.eurojust.europa.eu/states-and-partners/third-countries/liaison-prosecutors/serbia

Since other Western Balkan countries signed cooperation agreement with the EPPO it is expected that Serbian authorities do the same. However, according to the reply provided to a questionnaire on co-operation under the MLA convention the Republic of Serbia asserts that unilateral declarations by EU Member States are insufficient to establish a legal basis for cooperation with the European Public Prosecutor's Office (EPPO).[29] Serbia points out that its national law, specifically the Law on Mutual Legal Assistance in Criminal Matters (Official Gazette of the RS No. 20/09), does not currently encompass provisions allowing for such cooperation. According to Article 3 of the Law, mutual legal assistance is granted for criminal proceedings falling under the jurisdiction of the requesting state's court at the time of the request. Additionally, assistance shall be provided for offenses that could lead to criminal proceedings based on administrative decisions in either the requesting or requested state. Finally, assistance shall be provided at the request of the International Court of Justice, International Criminal Court, European Court of Human Rights and other international institutions established under international agreements ratified by the Republic of Serbia.[30]

Furthermore, the Law on Mutual Legal Assistance in Criminal Matters, in Article 1, regulates mutual legal assistance procedures when no ratified international agreement exists, or certain matters are not covered by existing agreements. Notably, since the European Union is not a signatory to the 1959 Mutual Legal Assistance Convention, Serbia argues that this domestic law would govern mutual legal assistance cases involving the EU. In addition, Serbia is not signatory to the EU founding agreements, so Article 3 of the Law on MLA in criminal matters is not applicable.

To establish a framework for bilateral cooperation with the EPPO, Serbian authorities envisage two cumulative requirements, one is signing of bilateral agreement and second is signing of additional protocol to the European Convention on Mutual Assistance in Criminal Matters that will enable EU to become a party to the Convention. Namely, Serbia advocates for the negotiation and conclusion of a bilateral agreement with the EPPO. Such an agreement would serve as a formal legal basis for cooperation between Serbia and the EPPO, aligning with Serbia's legal requirements. Furthermore, Serbian authorities suggest negotiating an Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. This proto-

[29] European Committee on Crime Problems (CDPC) Committee of Experts on the Operation of European Convention on Co-operation in Criminal Matters (PC-OC), Compilation of replies to a questionnaire on co-operation under the MLA convention, 26 October 2022, Strasbourg.

[30] For more about hierarchy of within the legal order of the Republic of Serbia, see: Kolaković-Bojović, M. (2021) 'Life Imprisonment and Parole in Serbia - (Un)intentionally Missed Opportunity', *Revija za kriminologiju i krivično pravo*, 59 (1), 93-108. https://doi.org/10.47152/rkkp.59.1.2

col would enable the EU to become a party to the convention, thereby providing a structured legal framework for cooperation that meets Serbia's legal standards.

Serbia's position underscores the necessity for explicit legal arrangements, through both bilateral agreements and international protocols, to enable cooperation with the EPPO within the framework of its existing national legislation on mutual legal assistance in criminal matters. However, it should be stressed that Serbian authorities are obliged to cooperate with EPPO in cases when EU financial interests are involved. This obligation specifically pertains to the protection of EU funds and the investigation of VAT frauds. Such cooperation ensures that financial misconduct affecting the EU's budget is effectively addressed, highlighting the importance of Serbia's role in maintaining financial integrity within the EU framework. In addition, as it is mentioned the EPPO is legally equipped to investigate and prosecute fraud cases linked to third countries. Article 23 of the Regulation affirms the EPPO's extraterritorial jurisdiction concerning PIF (protection of financial interests) offences.

Conclusions

The practical usefulness of the possibilities in Article 104 for the EPPO is limited, as several third countries have interpreted that this Article does not provide a sufficient legal basis for signing cooperation agreement. Thus, the EPPO's effectiveness depends on the willingness of third states to engage in either structural or ad hoc judicial cooperation. Switzerland and Serbia identified shortcomings of Article 104 as legal basis for signing cooperation agreement and advocating for signing of additional protocol to the European Convention on Mutual Assistance in Criminal Matters that will enable EU to become a party to the Convention. According to both, Serbia and Swiss legislation, this will be crucial precondition for signing of cooperation agreement with the EPPO.

However, several third countries already opted for signing of cooperation agreement on cooperation with the EPPO (Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, but also USA). In addition, Serbia is already having ad hoc cooperation with the EPPO in specific cases. Thus, it would be useful to explore other options that will enable structural cooperation with the EPPO. Given that Serbian authorities are currently amending numerous laws, including criminal legislation (criminal procedure and criminal code), it would be prudent to consider amendments to the Law on Mutual Legal Assistance in Criminal Matters to enable the signing of a cooperation agreement with the EPPO.

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THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY ACROSS CENTRAL EASTERN EUROPEAN COUNTRIES

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This article examines the legal frameworks for juvenile justice across Croatia, Serbia, Slovenia, Hungary, Slovakia, the Czech Republic, and Poland, focusing on the minimum age of criminal responsibility (MACR), juvenile offender categorization, and applicable legal measures. While these countries share a focus on rehabilitation and developmental considerations, significant differences exist in age thresholds and the treatment of young offenders. The MACR is an ongoing issue, shaped by legal, developmental, and societal factors. Two main trends emerge: one advocates for lowering the age and imposing stricter punishments, while the other emphasizes children's rights and rehabilitation. International standards, such as those from the Committee on the Rights of the Child, promote diversion programs to avoid stigmatization, yet no global consensus exists on the MACR. Pressure to lower the MACR, as seen in Hungary and Serbia, contrasts with neuroscientific findings that full maturity occurs in the third decade of life. A holistic approach integrating legal, psychological, and developmental perspectives is essential to balance accountability, rehabilitation, and the protection of children's rights in juvenile justice systems.

KEYWORDS: juvenile justice, minimum age of criminal responsibility, central europe, children's rights

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Legal Frameworks Across Jurisdictions of Central Eastern European Countries

Understanding the legal frameworks surrounding juvenile offenders and the age of criminal responsibility is crucial for ensuring a fair and effective justice system, especially across diverse jurisdictions. In this chapter, we explore the approaches taken by Croatia, Serbia, Slovenia, Hungary, Slovakia, Czech Republic, and Poland in defining the age of criminal responsibility, categorizing juvenile offenders, and prescribing appropriate legal measures. The selected countries represent a diverse range of legal systems within Eastern Europe. These nations offer a comprehensive view of the various approaches to juvenile justice and the age of criminal responsibility prevalent in the region. This short comparative analysis aims to shed light on the complexities of juvenile justice and highlights commonalities and differences in approaches across Eastern European countries.

Croatia

In the Croatian legal system, in accordance with the provisions of the CRC (United Nations, 1989), any individual under the age of 18 is considered a child. When discussing the sphere of criminal law, the Croatian Criminal Code legislation addresses the application of criminal law concerning young individuals. According to its provisions, criminal legislation does not extend to children under the age of fourteen at the time an offense is committed.[1] This provision acknowledges the developmental stage and immaturity of children below this age, recognizing their incapacity for full criminal responsibility. Individuals aged 14 to 21 at the time of committing a criminal act fall under the provisions of criminal law unless otherwise stipulated by specific legislation.[2] This framework balances accountability with recognizing the developmental stage of young individuals and sets the MACR to the age of 14.

On that trace, Croatian criminal law distinguishes between the terms *child* and *juvenile*. For that matter, every individual below the age of 18 falls within the scope of the *child* as defined in the CRC, only within the framework of criminal protection for children. Therefore, we can say that under the Croatian criminal legislation child is considered every person under the age of 14. However, when we talk about the offenders of the criminal acts who, at the time of the omission of the crime, have not yet reached the age of 18, Croatian Law on Youth Courts uses the term *juvenile* and establishes the jurisdiction (Dragičević Prtenjača, Bezić, 2018, 2) in the trials

[1] Article 7, paragraph 1 of the Croatian Criminal Code.
[2] Article 7, paragraph 2 of the Croatian Criminal Code.

on criminal matter. Juveniles who commit a criminal offense between the ages of 14 and 18 are divided into two groups: younger juveniles (14-16)[3] and older juveniles (16-18).[4] This categorization is significant regarding the types of sanctions that can be imposed on each offender.[5]

Even further, the Article 2 of the mentioned law prescribes the jurisdiction of the courts for youth in a case when a young adult is an individual who, at the time of committing an act, is between the ages of 18 and 21. From this provision, we can see that Croatian legislator decided to divide child offenders into two categories. As children under the age of 15 are not criminally liable, the first category encompasses individuals aged 15 to 18, while the second category pertains to what are commonly referred to as young adults, up to 21 years of age. This extends the application of the law to individuals who, according to international standards, are considered adults.

Serbia

While Serbia is currently not a member state of the European Union, its legal system concerning juvenile offenders and the MACR will be analyzed as it falls within the scope of Eastern European countries. As per the Criminal Code of the Republic of Serbia, the *child* is defined as a person under the age of 14.[6] Therefore, taking into account the similarities resulting from years of shared social and legal frameworks, the age threshold for criminal responsibility and its approach to it closely resemble those of other former Yugoslavian countries (Marković, Spaić, 2022, p. 147). Furthermore, the distinction is made between individuals who have not yet reached the age of 18, referred to as *minor persons*[7] in a broader and more general sense, and another category including individuals between the ages of 14 and 18, who are referred to as *minors*.[8] On that note, Serbian Criminal Code states that criminal sanctions cannot be imposed on a person who was under 14 of age at the time the act was committed.[9] Taking into account the conditions that must be met

[3] Article 5, paragraph 1 of the Law on Youth Courts.

[4] Article 5, paragraph 2 of the Law on Youth Courts.

[5] According to the Croatian legislation, juveniles who have reached the age of fourteen but have not yet reached the age of sixteen at the time of committing a criminal offense may be subject to educational measures and security measures, while older juveniles who have reached the age of sixteen but have not yet reached the age of eighteen at the time of committing a criminal offense may be subject to educational measures and security measures, and under the conditions provided by this Law, juvenile prison.

[6] Article 112, paragraph 8 of Criminal Code of Republic of Serbia.

[7] Article 112, paragraph 10 of the Criminal Code of Republic of Serbia.

[8] Article 112, paragraph 9 of the Criminal Code of Republic of Serbia.

[9] Article 4, paragraph 3 of the Criminal Code of Republic of Serbia.

for an act to be deemed criminal, including guilt in relation to the act, [10] Vuković observes that besides insanity, an individual may lack guilt due to inadequate maturity (Vuković, 2021, p. 132). As the result, criminal act is deemed as non-existent. Consequently, it can be concluded that individuals under the age of 14 are permanently excluded from criminal prosecution and any form of sanction. Contrarywise, for the group referred as *minors*, comprising those between the ages of 14 and 18, various criminal sanctions and educational measures may be implemented under the conditions prescribed by a special law.[11] Once more, the special Law on Juvenile Perpetrators and Criminal Protection of Juveniles reaffirms the age of criminal responsibility by excluding every individual who has not reached the age of 14 at the time of committing a crime from the provisions of this legislation.[12] Comparable to certain other countries in this region, Serbian legislation also distinguishes between younger juveniles, typically aged between 14 and 16 years,[13] and older juveniles, typically aged between 16 and 18 years.[14] Namely, individuals under the age of 14 are exempt from any responsibility for their actions, whereas those between 14 and 18 can be held accountable through a specialized procedure focused on protection and assistance, rather than punishment (Baćićanin, Hubić Nurković, 2022, p. 302). Furthermore, the law offers the opportunity for a young adult who committed a criminal offense as an adult (after turning 18), but was still under 21 years of age[15] at the time of the trial, to be adjudicated under the provisions of this law if it is foreseeable that educational measures will accomplish the intended outcome that would have been achieved through sentencing.[16] From this, it becomes evident that the legal system employs broad interpretations of juvenile offenders and leans towards safeguarding and advocating for young offenders.

Slovenia

In 2020, Slovenia introduced the Liability of Minors for Criminal Offenses Act, but unfortunately, the legislation did not gather the necessary support.[17] While Slovenian criminal legislation does not explicitly outline the criteria for juvenile liabi-

[10] Other elements are: involvement of human action, a committed act must be prescribed by law as a criminal offense and act must be illegal; Article 14 of the Criminal Code of Republic of Serbia.

[11] Article 4, paragraph 3 of the Criminal Code of Republic of Serbia.

[12] Article 2 of Law on Juvenile Perpetrators and Criminal Protection of Juveniles.

[13] Article 3, paragraph 2 of Law on Juvenile Perpetrators and Criminal Protection of Juveniles.

[14] Article 3, paragraph 3 of Law on Juvenile Perpetrators and Criminal Protection of Juveniles.

[15] According to Marković and Spaić, 2022, p. 148, the purpose of such classification is to mitigate the penal policy according to these age categories for certain crimes.

[16] Article 41 of Law on Juvenile Perpetrators and Criminal Protection of Juveniles.

[17] See more in: https://rm.coe.int/case-law-analysis-slo-moj-revised-final/1680adde86 [Online] (Accessed: 22 August 2024).

lity, the Slovenian Criminal Code does specify age limits for criminal responsibility. In the provisions regulating the age of criminal responsibility, the law uses the term *child*, while in other provisions concerning individuals in that age group, it employs the term *juvenile*. Furthermore, according to Slovenian Criminal Code law, individuals under the age of 14 are not deemed offenders for committing unlawful acts.[18] Similarly to the Croatian legal system, Slovenia distinguishes between younger juveniles (ages 14 to 16) and older juveniles (ages 16 to 18). This differentiation is crucial as it influences the potential penalties that may be imposed later on. The provisions are structured to emphasize the rehabilitation and successful reintegration of juvenile offenders, shifting the focus away from punitive measures. In addition to the mentioned categories, the law recognizes *young adults* as those who have committed a criminal offense as adults but have not yet reached the age of 21.[19] Considering the prioritization of the rehabilitative approach, Slovenian legislation extends beyond the legally established age of criminal responsibility, including the other specifics of juvenile liability, such as assessing the intellectual maturity, psychological characteristics, motivations for the offense, prior education, and the juvenile's environment and living conditions (Filipčič, 2004, p. 495).

Hungary

In Hungary, Act C of 2012 on the Criminal Code[20] is the main legal document regulating the age of criminal responsibility. Section 16 of this act establishes the age of criminal responsibility at 14 as a general principle. Nevertheless, in contrast to previous regulations governing juvenile offenders, the new Criminal Code of 2012 lowered[21] the age of criminal responsibility for certain violent crimes to 12 years of age, opening the possibility for children between 12 and 14 to be held criminally responsible for specific offenses, including homicide,[22] voluntary manslaughter,[23] battery,[24] robbery[25] and plundering (Gönczöl, 2022, pp. 112-113). In light of this, it is important to emphasize that while the Committee on the Rights of the Child raised specific concerns about Hungary's significant breach of the UN Convention on the Rights of the Child through regulations that clash with UN standards on juvenile criminal justice, the Hungarian Ministry of Justice opposed saying they are not viola-

[18] Article 21 of the Criminal Code od Republic of Slovenia.
[19] Article 5, paragraph 3 of the Criminal Code of Republic of Slovenia.
[20] The act C of 2012 on the Criminal Code of Hungary.
[21] Section 160, subsections 1-2 of the Criminal Code of Hungary.
[22] Section 161 of the Criminal Code of Hungary.
[23] Section 164, subsection 8 of the Criminal Code of Hungary.
[24] Section 365, subsection 1-4 of the Criminal Code of Hungary
[25] Section 366, subsections 2-3 of the Criminal Code of Hungary.

ting the CRC's provisions arguing that the CRC does not specify the exact age of criminal responsibility but rather mandates State Parties to establish the limit (Balogh, 2014, pp. 259-273; Hollán, Venczel, 2021, pp. 381-398). Moreover, the age of 14 will stay as a general rule, whereas for the five crimes listed above, the presumption is that a child under the age of 14 lacks the capacity to comprehend they are committing a crime (Coufalová, 2018, p. 243). However, if the presumption gets rebutted any child above the age of 12 can face criminal prosecution for offenses from this exhaustive list, provided they possess the capacity to understand the nature and consequences of their actions. In addition to determined age, to be criminally responsible juvenile offenders must fulfill the condition of sanity and mental (moral) maturity.[26]

Like other countries in the region, the Hungarian legal system differentiates between various terms regarding children and their criminal liability within the realm of criminal law. Consequently, Hungary has enacted a separate Act on Child Protection,[27] which provides definitions of important terms. Accordingly, the Act on Child Protection defines a *minor* as a person under the age of 18. [28] Another term introduced by this legislation is *child*, which, according to criminal law, has a more restricted meaning. It refers to a person who has not yet reached the age of 14 and lacks the capacity to act or be responsible for their actions. [29] Furthermore, when we talk about *juveniles*, the law recognizes them as a separate category which includes individuals between the ages of 14 and 18.[30] Finally, Hungarian legislation recognizes the term *young adult* which includes every person who has not reached the age of majority and has not yet attained the age of 24 years.[31]

Slovakia

Following the ratified CRC, Slovakia defines a *child* as an individual under the age of 18.[32] Furthermore, in the subsequent paragraph, Slovakian Criminal Code[33] provides a term *person close to the age of minors* describing it as someone who has reached the age of 18 but has not yet turned 21. In that context, similar to other countries in the region, Slovakia also establishes special circumstances for the exclusion of cri-

[26] Act XXXI of 1997 on Child Protection.

[27] Article 5(a) of the Act XXXI of 1997 on Child Protection refers to the provisions of the Hungarian Civil Code which defines child as a person who has not yet reached the age of eighteen years.

[28] Article 5(a) of the Act XXXI of 1997 on Child Protection refers to the provisions of the Hungarian Civil Code which defines child as a person who has not yet reached the age of eighteen years.

[29] Section 16 of the Act C of 2012 on the Criminal Code of Hungary.

[30] Article 5(b) of the Act XXXI of 1997 on Child Protection.

[31] Article 5(c) of the Act XXXI of 1997 on Child Protection.

[32] Section 127, paragraph 1 of the Criminal Code of Slovakia.

[33] Criminal Code of Slovakia.

minal liability. According to Article 22 of the Criminal Code of Slovakia, the age of criminal responsibility is set at 14 years old.[34] This means that any person who has not reached the age of 14 at the time of committing a criminal offense, can not be liable and, thus, prosecuted for it. Additionally, Slovak regulation provides one exception to the general rule whereas it puts the limit to the age of 15. In cases involving specific criminal acts like sexual abuse, the law specifies that individuals aged 15 or younger who are victims of sexual intercourse or other forms of sexual abuse will not be held criminally responsible for those acts.[35] This provision serves to enhance the protection of children as they can often be vulnerable to manipulation by adults regarding sexual behaviors (Gwoździewicz, 2015, p. 167). Furthermore, it places greater responsibility on adults emphasizing their obligation to act responsibly and ethically, particularly in their interactions with minors when it comes to matters of sexuality. In Slovakia, the criminal law system recognizes the term *juvenile* defining it as an offender under the age of 15, lacking adequate intellectual and moral development to comprehend the unlawfulness of their actions or to control their actions, and as such is not subject to criminal responsibility.[36] In that context, the age of an individual becomes relevant when the court needs to establish whether the child has the capacity to recognize the unlawfulness of their actions or to control their behavior regarding the criminal offense. If a person aged 14 or 15 commits a criminal offense, the court must determine this through an independent expert assessment. Nevertheless, such assessment is initiated by the court solely in cases where doubts arise regarding the juvenile's fulfillment of the necessary criteria for ascertaining culpability in committing a criminal offense.[37]

The Czech Republic

The primary legal framework governing criminal law and penalties in the Czech Republic is provided by the Criminal Code.[38] Within the provisions of the mentioned legislation, a *child* is defined as a person under 18 years of age.[39] However, the Criminal Code's provisions defer to a separate law for matters concerning their criminal liability and penalties that could be imposed on juvenile offenders.[40] Act Concerning Youth Responsibility for Unlawful Acts and Justiciary in Suits of Youth

[34] Section 22 of Criminal Code of Slovakia.

[35] Section 22, paragraph 2 of the Criminal Code of Slovakia.

[36] Section 95 of Criminal Code of Slovakia.

[37] Study on the children's involvement in judicial proceedings, 2013 [Online] Available at: https://data.europa.eu/euodp/repository/ec/dg-justi/criminal-justice/contextual-overviews/Slovakia.pdf, p. 15 (Accessed: 23 August 2023).

[38] Criminal Code of the Czech Republic.

[39] Section 126 of the Criminal Code of the Czech Republic.

[40] Section 109 of the Criminal Code of the Czech Republic.

and Amendments to Some Acts[41] in Article 2 provides three different definitions. *Youth* is understood to include all children under the age of 15, as well as *juveniles*, who are defined as individuals who have completed the age of 15 but still have not yet attained the age of 18. Criminal responsibility commences at the age of 15, yet this responsibility is qualified by two additional conditions: mental capacity and attainment of intellectual and moral maturity (Coufalová, 2018, p. 240). Furthermore, an extra layer of protection for children's rights can be seen in the fact that this law allows for circumstances where a juvenile, who lacked the cognitive and ethical maturity to comprehend the danger of their actions at the time of committing an offense, shall not be held accountable under criminal law.[42] Instead, the law stipulates that procedures and measures outlined for children under 15 years old can be applied to those individuals.

Poland

Under the Polish Penal Code any person referred to as *juvenile*, who commits a criminal act after the age of 17 shall be liable.[43] While the general rule in the Polish legal system sets the age of criminal responsibility at 17 years old, some provisions allow minors who have reached the age of 15 to be held responsible for specific criminal acts they have committed.[44] In that regard, the Penal Code stipulates the potential for minors aged 15 and above to be held accountable for certain crimes, including an attempt on the life of the President of the Republic of Poland,[45] homicide,[46] grievous bodily harm,[47] crime of causing a life-threatening event,[48] piracy,[49] disasters, [50] rape,[51] active assault,[52] taking a hostage[53] and armed robbery.[54] This determination is dependent upon the circumstances of the case, the offender's level of mental development, personal characteristics, and situation, particularly if prior

[41] Act Concerning Youth Responsibility for Unlawful Acts and Justiciary in Suits of Youth and Amendments to Some Acts.

[42] Article 5, paragraph 1 of Act Concerning Youth Responsibility for Unlawful Acts and Justiciary in Suits of Youth and Amendments to Some Acts

[43] Article 10, paragraph 1 of Polish Penal Code.

[44] Article 10, paragraph 2 of the Polish Penal Code.

[45] Art 134 of the Polish Penal Code.

[46] Art 148, paragraph 1, 2 and 3 of the Polish Penal Code.

[47] Art 156, paragraph 1 and 3 of the Polish Penal Code.

[48] Art 163, paragraph 1 and 3 of the Polish Penal Code.

[49] Art 166 of the Polish Penal Code.

[50] Art 173, paragraph 1 and 2 of the Polish Penal Code.

[51] Art 197, paragraph 1, 3, 4 and 5 of the Polish Penal Code.

[52] Art 223, paragraph 2 of the Polish Penal Code.

[53] Art 252, paragraph 1 and 2 of the Polish Penal Code.

[54] Art 280 of the Polish Penal Code.

educational or corrective interventions have proven ineffective.[55] In that context, the Polish legislative body has chosen to incorporate an extra provision, designated as paragraph 2a of Article 10, which specifies that minors who commit homicide after turning 14 but before reaching 15 years of age are subjected to the same conditions. However, the same rationale as that for offenders above the age of 15 for specific criminal acts can be applied. This includes the importance of considering the circumstances of the case alongside the offender's stage of development, attributes, and personal circumstances (Klaus, Rzeplińska and Woźniakowska-Fajst, 2016, p. 796).

Considering the central focus of juvenile proceedings is the well-being of the child, the proceedings characterize the aim to educate and support juvenile offenders in managing their situations effectively (Bojarski, Kruk and Skretowicz, 2014, pp. 50-63). In this context, it is notable that the provision concerning juvenile offenders allows the court, if deemed suitable, to employ educational, therapeutic, or corrective measures specifically designed for young offenders rather than imposing penalties, if the individuals commit a crime between the ages of 17 and 18.[56]

Table 1

Age of criminal responsibility

Country	Age of criminal responsibility (juvenile criminal law must be applied)	Age at which juvenile can be subject to either juvenile or adult criminal law	Other requirements (e.g. moral maturity, intellectual maturity, psychological characteristics, living conditions)[57]
Croatia	14	18-21	no
Serbia	14	18-21	no
Slovenia	14	18-21	yes
Hungary	14 (12)	18	yes
Slovakia	14 (15)	18-21	yes
The Czech Republic	15	18	yes
Poland	17 (15)	18	yes

[55] Art 10, paragraph 2 of the Polish Penal Code.

[56] Article 10, paragraph 4 of the Polish Penal Code.

[57] It must be noted that without mental capacity, offenders (juvenile or adult) cannot be held accountable for their actions. However, it is worth mentioning that certain countries (indicated with a "yes" in this table) have specific provisions concerning juvenile offenders which require additional special criteria beyond simply being above the MACR.

The legal frameworks for juvenile justice in Eastern European countries exhibit both similarities and differences. Across all nations examined, there is a common acknowledgment of an age below which individuals are deemed incapable of full criminal responsibility, typically ranging from 14 to 17 years old. Moreover, each country distinguishes between juveniles and adults within their legal systems, with provisions often aimed at rehabilitation rather than punishment. However, differences emerge in the specific age thresholds for criminal responsibility and the categorization of offenders. Some countries delineate between younger and older juveniles, while others categorize offenders based on their capacity to understand the unlawfulness of their actions. Additionally, legal terminology varies, with terms like child, juvenile, or young adult having specific legal meanings in some jurisdictions, while others use broader terms like minor or youth. These variations reflect diverse legal traditions, societal norms, and legislative priorities within each country, underscoring the complexities of juvenile justice in the region.

The examination of legal frameworks across Croatia, Serbia, Slovenia, Hungary, Slovakia, Czech Republic, and Poland reveals both similarities and disparities in approaches to juvenile justice and the age of criminal responsibility within Eastern Europe. Despite variations in terminology and specific provisions, there is a shared emphasis on balancing accountability with the recognition of the developmental stage and immaturity of young offenders. These countries demonstrate a commitment to safeguarding the rights of juveniles while also promoting rehabilitation and reintegration into society. Understanding the diverse approaches taken by these nations allows policymakers and stakeholders to collaborate effectively in creating juvenile justice systems that are more equitable and efficient, with a focus on safeguarding the well-being and future prospects of young individuals involved in criminal legal proceedings.

Challenges

In defining the age at which individuals bear criminal responsibility, numerous challenges arise, reflecting a complex interplay of legal, developmental, and societal factors. Presently, two prevailing trends exist regarding the minimum age of criminal responsibility. One trend advocates for lowering the age limit and favors stricter punishment (Sontheimer, 2001, pp. 89–91), while the other approach supports raising the threshold with focus on the child and its rights.[58] Notably, the challenge is

[58] In this context, rehabilitative and restorative methodologies, including the implementation of teen or peer courts (e.g. the USA, Canada, Germany, Sweden) and specialized restorative justice programs designed for juvenile offenders who predominantly committed minor offenses, have already been

to establish a suitable age at which to set the boundary for criminal responsibility, balancing the need to provide children with the chance for rehabilitation through restorative methods due to their youth, while also avoiding setting the age limit too low. Within this framework, the Committee on the Rights of the Child highlights the importance of introducing diversion programs. These initiatives involve moving cases away from formal criminal proceedings towards alternative programs or activities, with the goal of avoiding stigmatization and the formation of a criminal record (General comment No. 24, 2019, para. 15-18).

Moreover, as there is currently no unified European or global agreement on the appropriate minimum age of criminal responsibility, signatory states of the CRC preserve the right to independently decide on this matter. However, allowing the discretion to potentially label pre-adolescent or early adolescent children as criminals could be viewed as an implicit acknowledgment of the belief that children have the cognitive capacity for criminal responsibility at an early developmental stage (Duncan, 2022, p. 628). Proponents of reducing the age of criminal liability often cite issues of non-compliance with international standards, but this argument is increasingly challenged as these standards generally leave the specific age limit to the discretion of each nation. This allows for significant variation and suggests that setting the MACR at a higher level is consistent with international norms. Despite the prevalent incorporation of a minimum age of criminal responsibility set at 14 years in the legal systems of most Central and Eastern European countries,[59] there are some recent examples of opposite opinions regarding the MACR. In some legal systems, the accelerated biological development of children in modern times is interpreted as if children nowadays mature earlier, leading to a perceived need for reducing the minimum age of criminal responsibility (Gönczöl, 2022, p. 267; Tanjug, 2019, [Online]). Comparable situation happened in Hungary a decade ago while passing a new Criminal Code. At the time Hungarian government opted to reduce the age of criminal responsibility for the selected, most violent crimes.[60] This decision faced loud critics, particularly from Hungarian UNICEF and the Ombudsman, which strongly objected to the proposed idea, seeing it as a serious violation of the CRC (UNICEF, 2012, [Online]; Child-friendly Justice from the Ombudsman's Perspective, 2012, [Online]). They highlighted the lack of an appropriate criminal legal framework, but also practical staff, capable of effectively addressing offenders of

initiated. For more information on this topic consult in: Butts, 2000; Braithwaite, 2002.

[59] It must be mentioned that the Czech Republic and Poland have established different age limits for criminal responsibility, whereas Hungary and Slovakia have set lower thresholds for certain crimes outlined in their domestic laws.

[60] Hungary made a groundbreaking move by introducing this for the first time, given that the minimum age of criminal responsibility in Hungary had remained at 14 years old from 1961 to 2013.

such a young age. Nevertheless, this provision was adopted and the law was passed with the proposed changes.

Another very recent example from this region was initiated by the shocking murder in Serbia. In May of 2023, a thirteen-year-old boy killed nine children and one adult in a school shooting.[61] Given the age of criminal responsibility in Serbia is set at the age of 14, the young perpetrator is not subject to criminal liability under the law and therefore will not face prosecution. That event caused heated discussion in the sphere of both, public and legal discourse. In such occurrences that seriously disturb society, we often witness penal populism, where legislators, influenced by societal pressures, endorse significant changes as a response to the event. The idea of lowering the MACR is often a quick response to high-profile incidents that are widely criticized as a reactionary approach that does not address the root causes of youth crime. On that note, research also shows that juvenile crime is generally not increasing, suggesting that harsher measures may be unnecessary and ineffective (Bajović, 2024, p. 102; Ćopić, 2023, p. 241). However, there are several key reasons to oppose lowering the age of criminal responsibility in Serbia, such as compliance with international documents setting standards for acting in the best interests of the child, comparative solutions, and the mere purpose of criminal-legal responses to juvenile crime (Ćopić, 2023, p. 237). Considering this, lawmakers often attempt to justify the potential reduction of the limit of juvenile criminal responsibility threshold by citing statistical data. As illustrated by these two examples, both Hungary[62] and Serbia[63] do not show any increase in the commission of criminal acts by juvenile offenders. This further weakens the justification for reducing the MACR, as the lack of a rise in juvenile crime contradicts arguments that tougher measures are required to deter minors from engaging in crime. In that context, some critics argue that reducing the age limit would result in more children being drawn into the criminal justice system, intensifying the issue rather than resolving it (Marković, Spaić, 2022, p. 133). On the contrary, other scholars claim that by lowering the MACR and introducing the possibility of actually facing the criminal responsibility might serve as a deterrent, discouraging them from engaging in criminal behavior (Bajović, 2024, p. 97). Furthermore, according to some authors (Bajović, 2024; Đokić, 2016; Drakić, 2010) the argument that lowering the age of criminal responsibility is incompatible with international standards lacks substantial support. Although international fra-

[61] Available at: https://www.bbc.com/news/world-europe-65468404 [Online]. (Accessed 24 August 2024).

[62] Hungarian Central Statistics Office [Online]. Available at: https://www.ksh.hu/stadat_files/iga/en/iga0004.html (Accessed: 24 August 2024).

[63] Statistical Office of the Republic of Serbia, 2023, [Online]. Available at: https://publikacije.stat.gov.rs/G2023/PdfE/G20235703.pdf (Accessed 24 August 2024).

meworks, such as the UN Convention on the Rights of the Child, recommend establishing a minimum age, they leave the specific age limit to each country's discretion, resulting in considerable global variation. The diversity of age limits among different legal systems indicates that compliance with international standards does not necessarily require a higher threshold, underscoring the need for a careful approach to setting these limits.

Furthermore, while all examined countries have set the MACR there is a noticeable development regarding the determination of an upper age limit within juvenile justice systems. This phenomenon can be attributed to criminological acknowledgment of the transitional phases individuals undergo as they move from adolescence to adulthood, considering contemporary societal contexts (Dünkel, F et al., 2010, p. 46). Recent neuroscientific research presents compelling evidence indicating that complete maturity and psychosocial development occur only by the third decade of life (Weijers and Grisso, 2009, pp. 45–67). As explained in the previous chapter, a child's brain undergoes growth during adolescence, whereby the prefrontal cortex, responsible for regulating behavioral control, planning, and risk assessment, develops (Torma, 2021, pp. 170-171; Marković, Spaić, 2022, pp. 149-150). Due to this, adolescents do not have a physiological capability for rationality and decision-making. In connection with this, current research in developmental neuroscience and psychology indicates that it would be reasonable to raise the minimum age of criminal responsibility to 15 years (Marković and Spaić, 2022, p. 146). An additional point to consider is that due to the ongoing development of adolescent brains (Midson, 2012, p. 700), which are not yet fully matured like those of adults, the law should prioritize the protection rather than the punishment of children who commit crimes while still minors. Nevertheless, while it is necessary to establish an upper limit for criminal responsibility, the individualized development and growth of each child, and later adults, pose challenges not only for academic discourse but also for legislators.

Lastly, a significant concern is the lack of clear direction regarding the MACR. When determining the age threshold for criminal liability, lawmakers should consider not only the age at which a child commits a crime but also other factors such as whether they have the ability to actively and effectively participate in criminal proceedings. Moreover, the decisions of the European Court of Human Rights (hereinafter: ECtHR) which plays a crucial role in interpreting the European Convention on Human Rights and adjudicating cases involving alleged violations of human rights by member states, had a great impact on the question of effective participation. Namely, the minimum age of criminal responsibility is significant in shaping the legal landscape and policies related to juvenile justice in Europe. The ECtHR has not directly stipulated a specific minimum age for criminal responsibility, but it has addressed this issue several times

in its decisions. The so-called Bulger case[64] in which the applicant at the age of ten, together with another ten-year-old[65] boy abducted a two-year-old boy from a shopping area and later brutally assaulted him to death and abandoned his body on a railway line, where he was struck by a train. Despite being minors, the trial was conducted with adult formalities, though some modifications like shorter hearing times and breaks were made to accommodate their age. In both instances, juveniles were not tried in a special juvenile proceeding, but in accordance with the same rules that govern adult trials as that is permissible under British law. This means that while procedural adjustments were present, the overarching approach did not differ significantly from adult criminal trials. During the trial, there was intense media attention when measures were taken to protect the identities of the boys. The focal point of the prosecution was to establish criminal responsibility by presenting evidence indicating their understanding of right and wrong at the time of the crime. Both boys were finally convicted of murder and abduction. This case raised questions not only about the appropriate age for criminal responsibility but also about the treatment of juvenile defendants in serious criminal trials. Importantly, the trial and subsequent rulings highlighted that under British law, the determination of the minimum age for criminal responsibility falls within the scope of national legislatures, reflecting domestic policy choices rather than explicit requirements set by the ECtHR. In the relevant case, the ECtHR emphasized the importance of considering the age of a child, maturity level, and cognitive abilities when dealing with their involvement in legal proceedings.[66] The ECtHR concluded that attributing criminal responsibility to the applicants did not constitute inhuman or degrading treatment, thus not breaching Article 3. However, the violation of the right to a fair trial guaranteed under Article 6(1) was confirmed since the applicant, due to his young age, could not participate effectively in the process. The ECtHR's findings underscored that while procedural adaptations were made, these adjustments were insufficient to ensure meaningful and effective participation by the juvenile defendants. Additionally, several judges issued dissenting opinions strongly advocating that trying such young offenders in adult courts inevitably infringes upon their rights.[67] Furthermore, it was noted that the application of adult trial procedures, even with modifications, inherently limited the capacity of young defendants to engage fully and effectively in their defense. The ECtHR asserted in both instances that the 10-year threshold was not established at a low level in British law, but rather was

[64] https://www.independent.co.uk/news/uk/crime/james-bulger-murder-jon-venables-parole-b2446946.html, [Online] (Accessed: 22 August 2024).

[65] A separate application to the ECtHR was submitted under the *Application no. 24888/94.*

[66] T. v. The United Kingdom, Application no. 24724/94, paragraph 29.

[67] T. v. The United Kingdom, Application no. 24724/94, pp. 41-60.

a matter for the legislature at the national level to determine. Moreover, in another case S.C. v. The United Kingdom[68] the violation of the applicant's right to a fair trial during criminal proceedings was examined. At the time of the trial, the applicant was 11 years old and had a low level of intellectual ability. Similarly to the previous case, the ECHR took the position that while holding an eleven-year-old criminally responsible is not inherently a breach of the Convention, it's crucial to consider the child's age, maturity level, and intellectual capacity.[69] The ECtHR emphasized that while children may not need to understand every legal detail, they should have a general understanding of the trial process and its implications, including potential penalties (General Comment No. 10, 2007, para. 46). This observation reinforced the idea that the procedural safeguards tailored for adults may be insufficient to address the specific needs and limitations of young defendants. Despite efforts to adapt the proceedings to the applicant's age, the ECtHR found a violation of Article 6 of the ECHR stating that he was unable to effectively participate in his trial. In that regard, the rulings of the ECtHR have influenced the Committee on the Rights of the Child which emphasizes the child's right to comprehend the charges, consequences, and penalties, enabling them to participate effectively in the trial and make informed decisions with the guidance of legal representation (General Comment No. 10, 2007, para. 46). Considering that these issues could have appeared in any other Member State, we can see that they stress the pressing need to advance the treatment of children in both judicial and non-judicial settings, emphasizing the best interests of the child is prioritized and that justice is administered effectively (Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 2020, p. 38).

Lastly, taking into account not only the decisions of the ECtHR, but also the previously examined research on the cognitive and emotional development of adolescents, the question arises: at what age does a juvenile offender possess the necessary skills and capability to adequately participate in criminal proceeding before the court.

Conclusion

The treatment of juvenile offenders throughout history reflects an evolving understanding of childhood, culpability, and societal responsibility. Over time, concepts like discernment emerged, emphasizing the important role of a juvenile's intellectual capacity when assessing criminal responsibility. This principle, incorporated into legal systems across the globe, aimed to ensure that young offenders were not merely punished for actions stemming from immaturity rather than malicious intent.

[68] S. C. v. The United Kingdom, Application no. 60958/00.

[69] S. C. v. The United Kingdom, Application no. 60958/00, paragraph 28.

Certainly, addressing minors within the realm of criminal law poses a significant challenge, given that their involvement in criminal activities and the state's response to such involvement can profoundly impact their lives and future prospects (Šimić, Kazić, 2017, p. 43). The direction of juvenile justice demonstrates a gradual movement towards more compassionate and individualized approaches, recognizing that children are still developing and can be positively influenced through supportive interventions. While challenges persist, particularly in ensuring consistent implementation of juvenile rights and protections worldwide, the historical progression highlights a commitment to improving outcomes for young individuals in conflict with the law. Namely, establishing a distinct justice system for children acknowledges the importance of prioritizing the best interest of the child, leading to a significant shift in global approaches towards juveniles (Duncan, 2022, p. 628).

Furthermore, international standards concerning the administration of juvenile justice and the establishment of the MACR represent a significant step forward in safeguarding the rights and well-being of young individuals in conflict with the law. These standards prioritize the best interests of the child, recognizing their developmental differences and vulnerabilities. They advocate for rehabilitative approaches over punitive measures, emphasizing the importance of non-institutional treatment and alternative forms of care for juvenile offenders. On that note, research shows that in all Central and Eastern European countries, it is becoming evident that there is a greater emphasis on adhering to the principle of using imprisonment as an *ultima ratio* resort (Dünkel, 2016, p. 42).

The examination of legal frameworks across Croatia, Serbia, Slovenia, Hungary, Slovakia, the Czech Republic, and Poland highlights the complexities and nuances involved in addressing juvenile justice and setting the age of criminal responsibility within Central Eastern Europe. Even though the MACR is still a disputed question in the European Union (Dünkel, 2014, pp. 43-46), there is a common recognition of an age below which individuals are deemed incapable of full criminal responsibility, typically ranging from 14 to 17 years old. This acknowledgment reflects an understanding of the developmental stage and immaturity of young offenders, aligning with international standards and best practices in juvenile justice.

Moreover, all examined countries demonstrate a commitment to balancing accountability with rehabilitation and reintegration into society. This is evident in various legal provisions aimed at providing educational, therapeutic, or corrective measures tailored for young offenders, emphasizing their well-being and future prospects. Considering that international law on this topic does not provide a conclusive age limit, it is worth mentioning the European Network of Children's Ombudspersons which advocates that the minimum age be raised to 18 in every Member States with focus on their reeducation, reintegration and rehabilitation (Guidelines of the Com-

mittee of Ministers of the Council of Europe on child-friendly justice, 2010, para. 79). On that note, there are already several initiatives to raise the age of criminal responsibility (Amnesty International, 2022, [Online]). UNICEF's statement reflected a similar viewpoint, stressing that "lowering the age of criminal responsibility is against child rights." (UNICEF, 2019, [Online]).[70]

The examination of developmental changes during childhood and adolescence highlights the complexity of determining the appropriate age for assigning criminal responsibility to juvenile offenders. In that regard, developmental psychology underscores notable cognitive and intellectual disparities between adolescents and adults, particularly in the early teenage years. Therefore, establishing the appropriate age for assigning criminal responsibility to juvenile offenders requires a comprehensive understanding of cognitive, psychological, and neurodevelopmental factors. In light of these considerations, the legal community must continue to engage with research from developmental psychology, neuroscience and related fields to create policies and practices that prioritize the well-being and rehabilitation of juvenile offenders. Notably, international law outlines that a higher MACR does not imply a lenient attitude towards crime, but it signifies the importance of alternatives to introducing children into the criminal justice system (Duncan, 2022, p. 624).

By taking a holistic approach that integrates scientific evidence with legal principles, societies can develop more equitable and effective juvenile justice systems that align with the evolving understanding of child and adolescent development. Such a holistic approach views juveniles who have committed a crime not as part of the problem, but as part of the solution, advocating for preventive measures that require the involvement of not only lawyers but also sociologists and medical professionals (Marković and Spaić, 2022, p. 149). Ultimately, the goal must be to promote the well-being and future prospects of young individuals involved in criminal legal proceedings while ensuring public safety and upholding justice.

[70] This opinion was created when the Congress of the Philippines indicated its intention to decrease the MACR from 15 to 9 to 12 years old.

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MINIMALNA STAROSNA GRANICA KRIVIČNE ODGOVORNOSTI U ZEMLJAMA SREDNJE I ISTOČNE EVROPE

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U članku se ispituju pravni okviri maloletničkog pravosuđa u Hrvatskoj, Srbiji, Sloveniji, Mađarskoj, Slovačkoj, Češkoj Republici i Poljskoj, sa fokusom na minimalnu starosnu granicu krivične odgovornosti (MACR), kategorizaciju maloletnih prestupnika i primenljive pravne mere. Iako se u odabranim slučajevima uočavaju sličnosti u fokusu na rehabilitaciju i razvojne aspekte, postoje značajne razlike u starosnim granicama i tretmanu maloletnih prestupnika. MACR ostaje aktuelno pitanje oblikovano pravnim, razvojnim i društvenim faktorima. Dva glavna trenda se izdvajaju: jedan zagovara snižavanje starosne granice i strože kazne, dok drugi stavlja akcenat na prava dece i rehabilitaciju. Međunarodni standardi, kao što su oni iz Komiteta za prava deteta, promovišu diverzione programe kako bi se izbegla stigmatizacija, ali ne postoji globalni konsenzus o MACR-u. Pritisak za snižavanje MACR-a, primećen u Mađarskoj i Srbiji, suprotstavlja se neurološkim nalazima da potpuna zrelost nastupa tek u trećoj deceniji života. Holistički pristup koji integriše pravne, psihološke i razvojne perspektive neophodan je kako bi se postigla ravnoteža između odgovornosti, rehabilitacije i zaštite dečjih prava u sistemima maloletničkog pravosuđa.

KLJUČNE REČI: maloletničko pravosuđe, minimalna starosna granica krivične odgovornosti, centralna evropa, prava dece.

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FEMICIDE-CERTAIN CONTROVERSIAL ISSUES AND COMPARATIVE LAW REVIEW*

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During the last decades, the phenomenon of femicide has attracted the attention of both the scientific community and the wider public. However, despite the willingness to address the problem of gender-based violence, the number of murdered women is not decreasing. As a result, there is growing discussion on whether or not femicide ought to be treated like a distinct crime. Hence, the paper is devoted to general considerations about femicide and issues related to its narrower and broader definition, with the aim of answering the question of whether it is necessary to criminalize femicide as a specific type of murder. The authors have applied normative, logical and comparative legal methods, in order to point out the existing solutions in some European countries and certain controversial issues. By analysing literature and selected legal documents, they conclude that the criminalization of femicide by criminal or other laws is welcome and useful, despite the fact that the suppression of this phenomenon cannot be achieved by the isolated application of normative measures. On the contrary, the fight against femicide necessitates learning about gender-based violence, dispelling myths and prejudices that enable violence against women, and creating a robust network of support for victims and those close to them.

KEYWORDS: femicide, gender-based violence, criminal law.

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Introduction and general considerations

Global sources suggest that approximately 89.000 women were murdered worldwide in 2022 (UNODC, 2023), although the statistics should be interpreted cautiously due to varying definitions and inconsistent methods. In contrast to women, in recent years, the rate of men who lost their lives due to homicide has been declining (UNODC, 2023). It is also important to note that research shows that men are the victims of homicide in 80% of all homicide cases. Simultaneously, in 56% of all homicides, women are killed by intimate partners or family members, compared to just 11% for men (UNODC, 2022).

The highest rate of women killed in 2022 was recorded in Africa, followed by North, Latin and Central America, and at the same time the fewest women were killed in Europe (UNODC, 2023). In Serbia, 20 cases of femicide were detected in 2021 (AŽC, 2022), while 26 women lost their lives in 2020 in the context of gender-based violence (AŽC, 2021). To date, there are no universally comparable or complete data on the prevalence of femicide in different parts of the world, and it can be said that most countries are characterized by the unresearched phenomenon of femicide (Cecchi et al., 2022). However, some states have allocated funds for femicide research, so some European nations already have their own femicide observatories, for example, Italy (Piacenti and De Pasquali, 2014), the United Kingdom, Spain and Portugal (Weil, 2018, p. 10).

Diana Russell coined the term "femicide" in 1976, at the first congress dedicated to crimes against women, held in Brussels (Coradi et al., 2016: 976). Russell states that the term "femicide" denotes the killing of women by men — because they are women (Russell, 2021). Mexican anthropologist Mariana Lagarde also drew attention to femicide, pointing to the crimes that victimized numerous women in Ciudad Juarez in Mexico (Cecchi et al., 2022). Further progress was made in 2013 when the UN Vienna Declaration defined femicide as "the killing of women and girls because of their gender", while at the same time also providing a very broad definition of femicide that included female infanticide or gender-based selection, known as foeticide, femicide as a result of genital mutilation and femicide related to accusations of witchcraft (Weil, 2018, p. 9).

The distinction between the concepts of gender and sex should be kept in mind when comprehending the idea of femicide. Namely, "sex" refers to the biological and psychological characteristics on the basis of which men differ from women, while "gender" implies a socially conditioned experience of masculinity and femininity, and specific and generally accepted social roles of men and women (Stojkovska-Stefanovska, 2018, p. 65).

The fundamental query is whether any killing of a woman should be classified as femicide, regardless of the perpetrator's gender or the nature of his relationship with the victim, or whether femicide should be limited primarily to cases in which the loss of life is a consequence of the escalation of gender-based violence (Kovačević, 2022, p. 149). Some authors define femicide as the killing of a woman by a partner after the escalation of intimate partner violence (EIGE, 2021, p. 4), which significantly narrows the use of this term. Others focus on the fact that femicide is caused by gender inequality and hatred, and that it is repeated due to inadequate sanctioning by the state (Pasinato and de Avila, 2023, p. 62). Examples include homicides as a result of intimate partner violence, as well as murder following rape, so-called "honor killings", dowry-related killings, killings of women accused of witchcraft and gender-motivated homicides connected with armed conflict or with gangs, human trafficking and other forms of organized crime (UNODC, 2023). Thus, the murder of a prostitute should also be included, given that female prostitutes are often victims of pimps and clients to whom they are subordinate, and that the state has an indisputable duty to protect the lives of all citizens (Kovacs, 2019, p. 123).

In Israel, Elisha and a group of authors defined femicide as three types of the homicide of a woman: by a "betrayed husband" due to jealousy, by an abandoned obsessive lover and by a tyrant who can no longer control the victim (EIGE, 2021, p. 14). Dobash and Dobash believe that femicide implies the killing of a woman in the context of sexual violence, which does not have to be preceded by a permanent partner relationship, but is characterized by anger and the desire for supremacy and control (EIGE, 2021, p. 15). Also, the literature points out that femicide is conditioned by rigid patriarchal patterns, gender discrimination and unequal power relations, which determines specific ways of its suppression and sanctioning (Beker and Vilić, 2022, p. 133). Femicide is also defined as the murder of a woman because she has violated the rules of the patriarchal order in a scale and manner that cannot be tolerated, whereby certain attitudes on this matter are not only fostered by the offender, but also by the wider community (Caicedo-Roa et al., 2020). Therefore, femicide can be a reflection of the inadequate actions of state institutions, and of the denial of women's human rights (Pasinato and de Avila, 2023).

Finally, broader definitions of femicide include female infanticide, which refers to the killing of female fetuses and newborn babies, because of their gender (Kouroutsidou and Kakarouna, 2021, p. 23), while the status of matricide, or the murder of a mother by her son, is still unclear (Miles et al., 2023). The phenomenon of femicide followed by the suicide of the perpetrator has also been recorded. In this instance, the male partner has usually been violent in the past, and an additional risk is embodied in the possession of firearms (EIGE, 2021, p. 15).

Femicide is also defined as a murder perpetrated because of a failure to recognize the victim's right to self-determination, so that the victim is killed because she has answered "no" to a request from the murderer, or because the desires or beliefs she wants to affirm do not coincide with those of the aggressor (Cacchi, 2022).

The motivation for committing femicide is very complex, but basically concerns the imposition of certain narrowly understood gender roles, and the maintenance of control over women (UNODC, 2023). Comparative research points out that femicide is often motivated by jealousy and the inability to accept the end of an emotional relationship (Sorrentino et al., 2020). Apart from personal motivation, the social context in which femicide occurs is also important. Thus, on the one hand, we have a perpetrator who believes in the supremacy of man, in respecting male authority and the obligation of a woman to obey a man, and on the other hand, a community that also mostly accepts patriarchal patterns of behavior, or at least tacitly agrees with them.

The dominant risk factors for femicide identified through meta-analytic studies are: age difference in favor of the perpetrator, unemployment of the perpetrator, mental illness, drug or alcohol abuse, living in a household with a child who is not a biological descendant of the perpetrator, a woman leaving her partner, immigration status, possession of weapons, pregnancy, previous violence acts and persecution and threats (EIGE, 2021, p. 20).

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2011), also known as the Istanbul Convention, is an essential international document when discussing violence against women and femicide. This document does not actually deal directly with femicide, nor does it mention the term explicitly. However, it is clear from the Istanbul Convention that states are obliged to take all measures to prevent and sanction gender-based violence. Thus, there is an obligation to criminalize all forms of physical violence against women (Art. 35). Additionally, even though the convention does not require femicide to be criminalized, it does insist that the fact that the crime was committed by a family member, someone who cohabitates with the victim, or someone who abused their authority against the former or current spouse or partner, is to be considered as an aggravating circumstance, in accordance with national legislation (Art. 46). The convention obliges states to make it impossible for customs, religion, tradition, or so-called "honor" to be considered a justification for criminal acts to the detriment of women. The above especially includes claims that the victim has violated cultural, religious, social or traditional norms and customs. In addition to the state's obligation to incriminate and sanction acts by which women are victimized, it is

particularly significant that the convention stipulates the responsibility of states to take a series of measures that will encourage women's equity and eradicate prejudices and stereotypes about women's social roles. The Istanbul Convention, in this sense, is essentially a continuation of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979), which stipulates in Art. 5 that parties shall take all appropriate measures to modify men's and women's social and cultural patterns of conduct in order to achieve the elimination of prejudices, stereotypes, and other practices that are based on the idea that one sex is superior to the other.

Criminalization of femicide and certain controversial issues

Although it cannot be denied that the feminist movement has rightfully focused on the topic of violence against women, and therefore on femicide as its most extreme form, it is also undeniable that the criminalization of femicide is an extremely complex legal issue. Specifically, it is difficult to convey the intricate cultural, social, political, and historical elements that define femicide in the technical vocabulary of criminal law. In addition to this, states are required by international law to govern in accordance with the principle of due diligence and to protect women from all types of violence. As a result, femicide is currently also seen through the lens of violations of human rights (Kovačević, 2019). Thus, the question arises whether it is necessary to reduce all the features of this intricate social phenomenon to a single criminal offense. It is also a question of general feasibility. At the same time, the criminal offense of femicide should be formulated in a concise and precise manner, which leaves no room for extensive interpretations and ambiguities.

Bearing in mind all the above-mentioned problems related to specifying the criminal offense of femicide, we should not forget that, without any doubt, the problem of femicide is present everywhere in the world, so there is no country that does not need to deal with this phenomenon systematically. Therefore, it is undeniable that governments must take proactive measures to protect women's lives and acknowledge the existence of social and cultural norms that support the violation of women's human rights and the need to eradicate them. However, it is not entirely clear whether or not it makes sense to separate femicide as a distinct criminal offense in this regard.

One reason femicide has not yet been criminalized worldwide is due to concern about the issue of legal equality of women and men, regardless of their gender or any other natural attributes. It cannot be denied that this objection carries a certain weight. Namely, every human life is equally precious, so the question could be raised

whether it is acceptable to define *a priori* the murder of a woman as a more serious crime than the murder of a man. In addition, it can be discussed whether by singling out femicide, the legislator actually underlines that women are a more vulnerable gender and that they should continue to be perceived as such, which logically does not contribute to affirming the equality of women and men (Messias et al., 2020). That is how Maltese Roderick Cassar, who is suspected of murdering his wife, has requested the Constitutional Court to review the constitutionality of criminalizing femicide in the context of equal rights for all citizens, regardless of their gender. However, we believe that this perspective on the issue of femicide is superficial because femicide should not be defined as any homicide of a woman, rather, it should be defined as a gender-based murder of a woman driven by misogynistic beliefs and the notion that women must always accept their inevitable subordination. It is undeniable that, to a lesser or larger extent, gender inequality exists practically everywhere in the world (Fortier, 2020). If the law recognizes the indisputable fact that women are exposed to violence in a specific way compared to men, and that their social position is special and complex, then criminalizing femicide shows that authorities are not willing to tolerate it. It may also be argued that the implementation of measures based on a vulnerable category that needs extra protection is what makes the application of additional protection different from discriminatory practices (Neumann, 2022). Instead, it is considered an application of affirmative action. Namely, in order to achieve not only equality in the form of guaranteeing identical rights, but also equity, the factual circumstances in which women perform their gender roles must be recognized. The gender roles of women and the stereotypes related to them are in close connection to women losing their lives, and the state should not turn a blind eye to this issue.

According to the literature, the homicide of a woman in the context of partner violence could even have been considered a crime of passion, or a privileged form of murder, prior to the separation and specific definition of femicide. This suggests that there was an institutional understanding of this kind of behavior, if not outright approval of it (Luffy et al., 2015, p. 107). Moreover, the literature points out that the British "doctrine of provocation", under which the subsequent American "doctrine of the heat of passion" originated and flourished, is known for interpreting the motivation of the perpetrator for murdering a woman in a specific way. Namely, a cheated or abandoned husband can not withstand an attack on his pride and masculinity, which can result in the homicide of a woman being treated as manslaughter, not murder, due to the specific emotional and psychological pressure under which a man reacts (Dayan, 2023). Of course, this kind of attitude about murdering women is completely unacceptable, and it may even encourage violence against women. In connection with the above, in Serbia, the murder of

a woman has often been qualified as ordinary murder, and it is also noted that among the mitigating circumstances there has been cited the termination of the marriage union, as well as the fact that the perpetrator was very angry due to broken relationships with his wife (Konstantinović-Vilić and Petrušić, 2021, p. 98). Thus, the criminalization of femicide would contribute to the impossibility of reducing the murder of a woman to a privileged murder.

It was also noted that it could be contentious to define femicide in correlation with the peculiar concept of "gender", as a category conditioned by societal norms and specific social roles of men and women. In this regard, the question arises as to whether trans-women and other persons of a specific sexual orientation could be victims of femicide, or whether only women who have undergone surgical interventions to change their gender from male to female come into consideration (Messias et al., 2020). This issue has significant practical implications, given that transgender people are known to be at enormous risk of being victimized (Messias et al., 2020; Lee and Kwan, 2014, p. 94). Therefore, opinions differ on whether femicide should be understood in a context where people of a particular sexual orientation have the right to the full range of human rights and appropriate protection from femicide, or whether it should be primarily associated with the domain of traditionally understood partnership and family relations.

Additionally, there is the issue of the right to privacy, family life and citizens' freedom to define their personal relations in a way that best suits them. When it comes to violence in intimate relationships and behind closed doors in one's household, the question of boundaries arises (Marcuello-Servos et al., 2016). It can be debated whether it is appropriate to assess and categorize partner and family relationships in a specific way, as investigating the reasons behind acts of femicide requires delving into their dynamics. However, there is no justification for the escalation of domestic violence —which includes killing a woman— to remain a private affair or taboo because it is undeniable that the issue goes beyond private boundaries. Moreover, it is necessary for the issue of domestic violence to become visible and to be proactively prevented. As eminent authors state: "Private violence is no longer a private business: it is a public and global issue" (Marcuello-Servos et al., 2016: 3).

Another interesting question concerns the gender of the perpetrator of femicide. Although in the vast majority of femicide cases perpetrators are male, it should not be disputed that the perpetrator can also be a woman (Messias et al., 2020). The killing of a woman by a woman in the context of femicide can be related to the protection of "family honor", dowry-related killings, female infanticide and the like, while it is undeniable that almost no attention has been paid to this type of femicide

(Muftić and Baumann, 2012). The problem of women as perpetrators of femicide points to unexplored issues, and to the fact that this phenomenon cannot actually be reduced to the escalation of violence in intimate partner relationships, because its social conditioning is far more complex.

We conclude that the standpoint that femicide needs to be criminalized is becoming more prevalent in scientific literature, notwithstanding the arguments against it. This is because it serves two purposes: protecting women and enabling the gathering of data for a thorough study of the phenomena (Beker, 2023, p. 93).

Femicide in comparative law

When it comes to the criminalization of femicide in comparative law, the situation is very uneven. Thus, the solutions range from criminalizing femicide as a separate criminal offense to not recognizing the peculiarity of homicide of a woman as a result of gender-based violence. Some countries define femicide within existing criminal legislation, while others dedicate separate laws to femicide.

At the current moment, a large number of Latin and Central American countries foresee the crime of femicide, while the same is not the case when it comes to North America and Europe. The national criminal codes provide specific provisions for femicide in Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Uruguay, and in Chile there is an increase of applicable penalties for this crime (Cacchi, 2021; Neumann, 2022; Padilla, 2022, p. 115). Nevertheless, the means through which these countries have recognized femicide/feminicide do differ. So, some countries chose to criminalize femicide/feminicide by amending their penal codes, other implemented special legislation dealing with all aspects of femicide/feminicide, but in all states, the problem was defined as woman-killing and named "femicide" or "feminicide" (Carrigan and Dawson, 2020). The first country to specifically criminalize femicide was Costa Rica in 2007 (Bradley, 2021). Over the years, some states have changed the original legal solutions related to femicide. Thus, in 2012, a special law was adopted in Nicaragua that defined femicide as "the crime committed by man, in the framework of unequal power relations between men and women, that causes the death of a woman in the public or private sphere", but afterward in 2014, the concept of femicide was narrowed by the new law, so that femicide is defined exclusively as the murder of a woman by a current or former emotional partner, husband, ex-husband, boyfriend and ex-boyfriend (Neumann, 2022). It turned out that in the years that followed, fewer femicides were detected in Nicaragua, which was most likely caused by the narrowing of the legal definition (Neumann, 2022).

In Germany, the criminal legislation does not recognize femicide, but in the case of killing a woman, it is a criminal offense of murder, which is punished according to the generally known aggravating and mitigating circumstances (Schröttle et al., 2021). However, numerous and complex measures for the prevention and suppression of violence against women have been applied in Germany for more than 20 years.

The USA also does not recognize femicide, but the killing of a woman falls under standard homicide (Lewis et al., 2024). Also, in the United States the term "femicide" is not commonly used. (Cacchi, 2022).

A certain number of countries foresee the possibility of harsher punishment if the crime is motivated by the personal traits of the victim, including gender. Thus, the European Court of Human Rights insists on determining whether the discriminatory attitude towards certain groups of citizens can contribute to their victimization (Kolaković-Bojović and Đukanović, 2023, p. 51).

Belgium

Law on the prevention and fight against feminicides, gender-based homicides and violence (Loi sur la prévention et la lutte contre les féminicides, les homicides fondés sur le genre et les violences)[1] was passed in Belgium in 2023. A protracted campaign to increase public awareness of the significance and frequency of violence against women took place prior to the law's passage. This law defines gender as roles, attitudes, activities and qualities that are socially formed and considered proper for men and women.

The new law defines four different categories of femicide: intimate femicide, non-intimate femicide, indirect femicide and gender-based homicide. The law generally defines femicide as the intentional killing of women because of their gender.

Intimate homicide is the intentional killing of a woman because of her gender, committed by a partner or family member in the name of culture, custom, religion, tradition or the protection of so-called honor.

Non-intimate femicide is the intentional killing of a woman committed mainly in the context of sexual exploitation, human trafficking and sexual violence and when there is a relationship of subordination and unequal power. This form of femicide mainly involves prostitutes as victims and victims of human trafficking.

Indirect femicide is the unintentional killing of a woman when the woman's death is the result of harmful actions against women, or the suicide of a vulnerable or

[1] Available at: https://etaamb.openjustice.be/fr/loi-du-13-juillet-2023_n2023044133.html (Accessed: 30 August 2024)

previously abused woman. This form of femicide may also be the result of an unprofessionally performed abortion or genital mutilation, or it may be the case of a woman who, due to her extreme vulnerability or subordination, committed suicide. It should be emphasized that Belgian law states that the following persons, among others, are particularly vulnerable: persons at risk because of social, economic and psychological reasons, drug addicts, prostitutes, illegal immigrants, homeless people, members of minority groups, pregnant women, nursing mothers, mothers and other persons. At the same time, femicide also exists when the perpetrator mistakenly believes that women belong to one of the aformentioned groups.

The fourth type of female homicide suggests that the victim was targeted because of their gender, while at the same time this is not an instance of indirect, non-intimate, or intimate femicide. Rather, it is the outcome of damaging activities directed towards victims because of their gender. This type of murder pertains to victims who identify as LGBTQ+ or who belong to a certain sexual orientation.

The law also establishes enhanced protection for victims of gender-based violence. It provides for the collection of data on the phenomenon of femicide, and constitutes training for police officers and judges to deal with cases of violence against women.

It is particularly noteworthy that the Belgian law on femicide does not deal with prescribing penalties for this type of murder, but that the punishment for murder is defined by criminal law. Actually, the law on femicide has three main components when it comes to femicide: defining, measuring and protecting (Schlitz, 2023). Currently, in Belgium various forms of murder are punishable by imprisonment of 20 to 30 years, or life imprisonment, according to Art. 393-397 of the Penal Code.[2] During 2026, the new Penal Code should enter into force (Belga News Agency, 2024).[3]

Cyprus

Cyprus's legal framework regarding protection against domestic abuse and violence against women underwent revisions and additions in 2022.[4] As a result, when a woman is murdered, the entirety of the circumstances surrounding the crime is

[2] Available at: https://legislationline.org/sites/default/files/documents/6e/BELG_CC_fr.pdf (Accessed: 30 August 2024)

[3] Available at: https://www.belganewsagency.eu/belgium-approves-comprehensive-reform-of-criminal-code (Accessed: 30 August 2024)

[4] Available at: https://www.olc.gov.cy/OLC/OLC.NSF/E05815D6C4BB3F3CC225887E003E0ADD/$file/The%20Prevention%20and%20Combating%20of%20violence%20against%20women.pdf (Accessed: 30 August 2024)

now taken into consideration. Femicide is therefore considered a unique crime whereby a woman dies as a result of increasing incidences of gender-based violence.

The Prevention and Combating of Violence Against Women and Domestic Violence and for Related Matters Law (*Official Gazette of the Republic of Cyprus*, Law no. 115(I) of 2021, as amended by Law no. 117(I) of 2022) provides that any person who, with an unlawful act or omission, causes the death of a woman, is guilty of the offense of femicide and is liable to life imprisonment, according to Art. 10a. When penalizing for femicide, the court may consider the following aggravating circumstances in addition to those specified by the criminal legislation: intimate partner violence; torture or the use of violence for misogynistic reasons; domestic violence; violence for honor reasons; violence for reasons of religious beliefs; violence for reasons of sexual orientation or gender identity; commission of the offense of female genital mutilation; violence with intent to or in the context of sexual exploitation and/or human trafficking and/or drug trafficking and/or organized crime; violence for the purpose of illicit sexual relations and targeted use of violence. Article 11 also states that the femicide committed by a partner, former or current spouse, member of the victim's family, person cohabiting or having cohabited with the victim, or person who has abused their position of authority, trust, or influence will be considered aggravating circumstances.

It should be emphasized that the legislator explains, in Art. 2, that the term "gender" denotes, in addition to the biological gender, socially formed roles, behaviors, activities and attributes that a given society considers appropriate and applicable to a man and a woman respectively, while "gender-based violence" covers violence that is directed against a woman, because of her gender, or violence that affects a woman disproportionately.

Furthermore, as stipulated in Art. 16, the perpetrator cannot use the victim's alleged transgression of cultural, religious, social, or traditional norms or customs of appropriate behavior, her sexual orientation or gender identity, or the fact that the offense was committed out of "honor" as a defense, mitigating factor, or justification for an offense involving violence against a woman.

The goals of this law are to enable the extensive collection of data on violence against women, including femicide, as well as to provide special protection for women, both in terms of social protection and meeting their needs, as well as in the context of criminal proceedings and prevention of secondary victimization.

Malta

Amendments to the Criminal Code of Malta[5] in 2022 have *de facto* criminalized femicide, although the term denoting the murder of a woman did not appear in the law. However, the murder of a woman based on gender-based violence is provided as a qualifying circumstance when sentencing for murder. Specifically, premeditated murder is covered by Art. 211, and those who commit it face a life sentence. Amendments to the law brought in Art. 211a, state that the court must consider the following as mandatory aggravating elements while suspending a sentence in cases of murder or attempted murder of a woman:

- the death occurred as a result of intimate partner violence between persons who are in an emotional relationship or were in such a relationship, i.e. persons who are or were married
- the death is the result of violence manifested towards the woman by one or more family members
- the murder was committed due to misogynistic motives
- the murder was committed to protect the family's honor or reputation, that is, in connection with cultural and religious values and customs
- the murder was committed because of gender or sexual orientation
- the murder was committed in the context of sexual violence or acts of a sexual nature
- the murder was committed because the victim engaged in prostitution, was sexually exploited or was a victim of human trafficking for the purpose of sexual exploitation.

Croatia

A new type of murder, known as aggravated murder of a female, was added to the Criminal Code of the Republic of Croatia, *Official Gazette of the Republic of Croatia,* no. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22, 114/23 and 36/24, through law amendments in 2024.

Art. 111a of the Criminal Code has introduced a new crime called "aggravated murder of a female". It is stipulated that whoever commits gender-based murder of a female person will be punished with imprisonment of at least ten years or long-term imprisonment. The sentence of long-term imprisonment is usually measured in the range of twenty-one to forty years, with the exceptional possibility of a sentence of 50 years in the cases of concurrence of crimes (Art. 46 of the Criminal Code).

[5] Available at: https://legislation.mt/eli/cap/9/eng/pdf (Accessed: 30 August 2024)

It is further stipulated that when determining the existence of a crime, it will be taken into account that the crime was committed against a close person, a person who was previously abused by the perpetrator, a vulnerable person, a person who is in a position of subordination or dependence, and that the crime was committed in circumstances of gender-based violence, a relationship that puts women in an unequal position or if other circumstances indicate that it is gender-based violence (Art . 111a). A "close person" is defined as a family member, former marital or cohabiting partner, former informal life partner, current or former partner in an intimate relationship, persons who share a child and persons living in a joint household, in accordance with Art. 87. Also, the Criminal Code, defines "gender-based" violence as violence directed at a woman because she is a woman or as violence that disproportionately affects women. Representation of gender-based violence will be taken into account as an aggravating circumstance, except in cases where it is already covered by the essence of the criminal act.

In the Croatian scientific literature, it is emphasized that the introduction of femicide was justified and that it was necessary. Thus, it was accentuated that it was not unusual for criminal offenses that are distinguished by the characteristics of femicide to be legally qualified as ordinary murder (Maršavelski and Moslavac, 2023, p. 316). Moreover, it is pointed out that long-term broken relationships between a man and a woman and similar circumstances are often taken into account as mitigating circumstances, and that the significantly reduced sanity of the perpetrator often resulted in a reduced sentence for femicide (Maršavelski and Moslavac, 2023).

North Macedonia

In North Macedonia, amendments to the criminal legislation in 2023 have *de facto* criminalized femicide. In the general provisions of the Criminal Law, *Official Gazette of the Republic of Macedonia*, no. 37/96, 80/99, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/11, 135/ 11, 185/11, 142/12, 166/12, 55/13, 82/13, 14/14, 27/14, 28/14, 115/14, 132/14, 160/14, 199/14, 196/ 15, 226/15, 97/17, 248/18 and 36/23, in Art. 122, which defines the meaning of certain terms, "domestic violence" is defined in a broader way, which includes: bullying, wounding, insulting, endangering safety, physical injury, sexual, psychological, physical or economic violence that causes feelings of insecurity and making threats or causing fear to the spouse... or other persons living in marriage or cohabiting union or joint household, as well as the current or former spouse. It is then specified that "gender-based violence" denotes violence directed at women due to belonging to the female gender that results in physical, sexual, psychological or economic endangerment or injury to women, including direct and indirect threats

and intimidation, as well as coercion or deprivation of liberty. Any woman or girl under the age of 18 who has suffered the described violence is considered a victim of gender-based violence.

Although the term "femicide" is not used, a new form of qualified murder has been foreseen in Art. 123, para. 2 of the Criminal Code, which criminalizes aggravated murder. Therefore, anyone who kills a woman or girl under the age of 18 while engaging in gender-based violence will be held accountable for severe murder, a crime for which the maximum penalty is life in prison or a minimum of 10 years in jail.

It should be noted that in circumstances where the passive subject is a woman or a female person under the age of 18, due to gender-based violence, qualified forms of other crimes, such as severe bodily harm, have also been established. In line with Art. 125, the lawmaker has also created a new form of privileged homicide, which is the homicide of a person who has previously committed acts of gender-based violence against the offender.

Conclusion

It is indisputable that states must protect women's lives as best they can and that femicide is a phenomenon that warrants greater attention. This requirement is established by national and international regulations, and it can be said that it represents a civilizational standard that modern society must not ignore. What can be disputed are the forms and procedures that will be applied to prevent and sanction femicide.

We believe that, in the end, it is of little practical significance if femicide is officially recognized as a distinct crime, rather, it is crucial that women are recognized as a group that is overwhelmingly exposed to gender-based violence. Law and practice must acknowledge the unique vulnerability of women as well as the pattern-consequential relationship between gender-based violence and societal inequality of men and women. Out of all the remedies outlined in legislation, the most crucial is that judicial practice identifies and accurately assesses the particular motivations that underlie femicide. Additionally, certain stereotypical concepts of male-female relationships and women's inherent subordination cannot be disregarded in sentencing, nor should they be treated as extenuating circumstances.

The issues surrounding the factual inequality of women, which persists throughout the world, cannot be resolved by merely declaring that femicide is a special type of crime. Sometimes it is forgotten that criminal law defines prohibited behaviors starting from generally accepted values in a given social and historical context, and not the other way around. Therefore, certain behavior is not condemned by society

because it is criminalized, but on the contrary, it is criminalized because citizens agree that it is unacceptable and should be forbidden. The declaration of new crimes that are intended to safeguard women is a reflection of hypocrisy, if the inferiority of women is accepted as a frequent and normal occurrence in the community, and if there are no resources available to assist victims of domestic abuse and intimate partner violence in all the appropriate ways.

Therefore, we are of the opinion that the criminalization of femicide is useful, but by no means sufficient, in order to put an end to violence against women. On the other hand, it is necessary to studiously detect and study the phenomenon of femicide, in favor of devising effective strategies for its prevention and support for victims and their families. The criminalization of femicide as a separate criminal offense undoubtedly enables the collection of data on this phenomenon, but data can also be collected without constituting a new crime, which is already the case in many countries. Furthermore, to raise awareness of the terrible situation of femicide, political impetus must be created so that it is regularly brought up in public discourse. It is not necessary to enact new laws or offenses for the sake of doing that.

Finally, the question arises whether it is appropriate to reduce femicide only to cases of death of women in the context of intimate and domestic violence. We believe that femicide should be defined more broadly to include homicide of women who are victims of human trafficking and sexual exploitation, as well as transgender people, keeping in mind that femicide can be conditioned by all situations in which women are in a particularly vulnerable position due to their gender and gender-based roles. Of course, it is crucial in this case to educate people about the rights and status of citizens who belong to marginalized groups.

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FEMICID-KOMPARATIVNOPRAVNI PREGLED I ODREĐENA SPORNA PITANJA

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Tokom poslednjih decenija fenomen femicida privlači pažnju kako naučne javnosti, tako i javnog mnjenja. Međutim, i pored toga što postoji volja da se deluje povodom problema u vezi sa nejednakošću žena, rodno zasnovano nasilje i femicid, kao njegov najekstremniji oblik, ne jenjavaju. Tako se sve češće polemiše o tome da li femicid treba inkriminisati kao posebno krivično delo. Otuda su izlaganja u radu posvećena opštim razmatranjima o femicidu i pitanjima u vezi sa njegovim užim i širim definisanjem, a sa ciljem da se ponudi odgovor na pitanje da li je nužno uvođenje posebne inrkiminacije u nacionalnim zakonodavstvima. Potom su putem upotrebe normativnog i logičkog metoda predstavljena rešenja koja se odnose na femicid u uporednom pravu. Autorke zaključuju da je inkriminisanje femicida krivičnim ili drugim zakonskim tekstovima doborodošlo i korisno, s tim što se suzbijanje ovog fenomena ne može postići izolovanom primenom normativnih mera. Naprotiv, naučna literatura ukazuje da borba protiv femicida iziskuje proučavanje rodno zasnovanog nasilja i iskorenjivanje predrasuda i steroptipa koji pogoduju različitim oblicma rodno zasnovanog nasilja, te ustanovljavanje kompleksnog sistema podrške za žrtve i njima bliska lica.

KLJUČNE REČI: femicid, rodno zasnovano nasilje, krivični zakon.

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THE HUNGARIAN PRISON SYSTEM IN THE LIGHT OF AI AND SMART TOOLS*

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Artificial intelligence, or AI, is already present in many areas of our lives, such as medicine, engineering, business, banking, etc., but you only need to reach into your pocket and your phone's virtual assistant is powered by AI. Therefore, we cannot afford to ignore AI, to „ignore it", because it is part of our everyday lives, even if it goes unnoticed, and it is likely to become more and more prevalent in our world in the future, both in our professional and private lives. Hungary is one of the first countries in the world to build a smart prison in Csenger, which will use several types of artificial intelligence. The smart prison being built is a curiosity in the history of the Hungarian penitentiary system, and perhaps we do not even realise how much this innovative technology will take the burden off the shoulders of the staff working in penitentiary institutions. However, we believe that there are many challenges, even risks, that AI could bring (especially in learning to manage it well and to accept it).

KEYWORDS: prison, artificial intelligence, smart prison, innovative technology.

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Introduction objectives and research methods

About artificial intelligence in general

To understand the impact of AI on the prison system, we must first start from the basics and explain what AI is, what its specific definition is, what types it is and how it has been developed throughout history. In this chapter, an attempt is made, after defining AI, to briefly describe the stages of its development, its advantages, disadvantages and areas of application. Artificial intelligence (AI) is a computing discipline that aims to develop systems capable of performing tasks similar to human intelligence. These tasks may include learning, problem solving, language processing, decision-making, etc.

Artificial intelligence, as a technical factor, therefore makes people's everyday lives easier in many areas. Without being exhaustive, its specific benefits are multiple: AI can analyse and interpret vast amounts of data and extract useful information for business, scientific or other purposes. Also, AI-based systems are able to perform their tasks with high speed and efficiency, enabling high-speed data processing and complex problem solving. Nevertheless, AI allows routine or repetitive tasks to be automated, freeing up human resources to focus on other tasks. Human fatigue and error can also be avoided with the technology, as the machine will not make mistakes if it has been programmed with due care. AI can also be used to provide users with personalised content, offers and experiences, for example when shopping online or through content recommendation algorithms. This can already be seen in our everyday lives, with social media algorithms optimising advertising ads for us based on our search history. In addition, it can help us make better decisions by being able to process and compare large amounts of data and recognise complex patterns. With the support of AI, we are able to predict diseases earlier and diagnose them more accurately, which can improve the efficiency and effectiveness of healthcare. And continuous improvement opens up new areas of innovation that will help technological and societal progress. The use of AI can help to use energy more efficiently, monitor the environment and meet sustainability targets. It is a great advantage for scalability, for the application of small and large problems, or for increasing the number of users or the amount of data. Intelligent virtual assistants (e.g. Siri, Alexa) can help people with everyday activities such as weather reports, calendar management, reminders, etc. AI is also capable of creative tasks (for example: creating music and image noise, participating in painting or writing) that can lead to new forms of artistic expression. It is useful in cybersecurity, helping to predict and identify threats and detect and fix vulnerabilities faster. AI can also be used in areas such as

helping people with disabilities (for example: blind, partially sighted or deaf people) to facilitate their integration into society and increase their independence. Precision agriculture enables farmers to better understand and optimise the production processes of plants and animals, thereby increasing yields and reducing environmental impacts.

In addition to the many advantages of artificial intelligence, there are also disadvantages, which are important to recognise and somehow eliminate in the future. For example. the introduction of automation and AI could lead to job losses or restructuring in some industries. Jobs in which routine tasks are performed may be particularly at risk. AI-based systems often deal with large amounts of sensitive data, which can pose data security risks. This can raise privacy concerns when used in the prison sector. It is important to ensure data security and compliance in such (closed) systems. AI systems may be prone to reproducing certain kinds of social biases or patterns of discrimination that are built into the algorithms used in their development. In addition to these, their application raises a number of ethical and liability issues, including the need for autonomous systems to make decisions or human intervention. The performance and reliability of AI systems can remain a challenge, especially when the system operates in complex and changing environments. Inappropriate programming can lead to chaotic situations, a malfunctioning algorithm or a technical failure can cause significant damage. These incidents can be (for example: data distortion, badly taught models or other technical problems). Also, AI can contribute to increasing social inequalities if certain groups or regions are excluded from the benefits of new technologies, or if AI-based decision-making is discriminatory or unfair. It can change human relationships and social bonds, and increasingly lead to interactions with machines and algorithms rather than human interactions. By using „deepfake" technology in violation of someone's privacy rights, artificial intelligence can „create" images or videos whose authenticity is difficult to question. The technology can thus be used for manipulation, even blackmail, rather than entertainment, and many countries are trying to legally sanction this phenomenon[1] .

Historical overview of the development of AI legislation

The legal regulation of artificial intelligence is a complex and evolving area, which seeks to keep pace with the rapid changes in technology to preserve people's rights and security. The legal framework needs to take into account a wide range of issues,

[1] What is artificial intelligence? Available at: https://www.sap.com/hungary/products/artificial-intelligence/what-is-artificial-intelligence.html, Retrieved 3 August 2024.

including privacy, ethics, liability and regulation. In terms of data protection, as already mentioned above, it is important to ensure that data generated by the use of AI is adequately protected and that people are fully aware of what data is being collected about them and how it is being used by these systems. This description provides the basis for a number of dilemmas in the discourse on AI, including the question of liability (who is liable if such technology makes wrong decisions or causes harm?). Legal clarification of liability issues is necessary to ensure that society is adequately protected. Equal treatment is also an important aspect in the discussions, to avoid extreme decisions. Transparency of algorithms can ensure that they do not reproduce existing prejudices or discriminatory patterns, in line with ethical guidelines. These guidelines can help ensure that AI systems benefit people and society and do not cause undesirable effects. People have a right to know how this technology affects their lives and choices, so it is important to ensure transparency and adequate information about the operation and effects of AI in terms of user rights. Sector-specific regulation is also unavoidable in certain industries (e.g. health or autonomous vehicles). Specific legislation and guidelines on deployment are available to promote respect for social norms and human rights. It should be stressed that the legal framework must be sufficiently dynamic to keep pace with technological developments and societal changes. Regulation must therefore strike a balance between innovation and the protection of human rights.

Regulation of artificial intelligence in the European Union

EU rules on AI must be designed to boost innovation, guarantee social welfare and protect fundamental rights. The European Union (EU) is currently preparing the world's first comprehensive regulation to address the potential and threats of artificial intelligence. The aim is to make the EU a trusted global centre for AI. On 20 October 2020, MEPs adopted three documents aimed at stimulating the development of AI, while strengthening trust in ethical standards and technology. According to MEPs, the rules should be people-centred, and the first recommendation addresses, among other things, how to ensure security, transparency, accountability, respect for fundamental rights and non-discrimination. The second recommendation focuses on liability in the event of damage. The third report focuses on the development of an appropriate IPR regime, with French expert and MEP Stéphane Séjourné saying that one of the most important issues to be addressed is the definition of the ownership of innovations created by artificial intelligence. On 19 May 2021, the EP adopted a report on the use of artificial intelligence in the education, culture and audiovisual sectors. The report called for such technologies to be designed in a way that is free from, inter alia, gender, social or cultural bias and protects diversity. On

6 October 2021, MEPs called for strict safeguards in cases where AI tools are used in law enforcement. They called for a definitive ban on the automatic recognition of people in public places, and called for anti-discrimination and transparency of algorithms. On 14 June 2023, the European Parliament declared its negotiating position on the AI law. The priority for the Parliament is to ensure that AI systems used in the EU are safe, transparent, traceable, non-discriminatory and environmentally friendly[2]. Following the general EU directives, the following is a brief overview of the national regulation of artificial intelligence and a brief description of the framework.

Legal regulation in Hungary

Regarding the Hungarian regulations, from the beginning, the EU has been working towards a coordinated implementation of AI regulations agreed with Member States, which is why EU Member States are creating strategy documents and sector-specific rules to address specific problems (e.g. national rules on medical research). On 9 October 2018, the AI Coalition was established, bringing together state actors, IT companies and universities to implement a comprehensive AI strategy. [3]In April 2018, Hungary signed the EU Declaration on Artificial Intelligence, which builds on the cooperation of 24 Member States to increase the EU's global competitiveness in this field. The Hungarian Government has also developed an AI strategy for the period 2021-2030, which aims to transform Hungary into a competitive AI ecosystem. It focuses on health, transport, agriculture and public administration. (Stefan, 2020).

A historical overview of artificial intelligence in prisons

The development of security technology started in the 1990s in the national penitentiary system. Reflecting on the evolution of artificial intelligence from a security point of view, it is necessary to briefly touch upon the importance of camera systems, telecommunication devices, metal detectors. The CCTV closed circuit television camera system initially showed only live images, no video recording was possible, but with a little development video recordings could be viewed and saved for documentation purposes. Staff work was greatly facilitated by the replacement of frequent patrols by microwave motion and penetration detectors, and the introduction of gantry and hand-held metal detectors improved the efficiency of clothing

[2] Artificial intelligence regulation: the EP's position. https://www.europarl.europa.eu/pdfs/news/expert/2020/10/story/20201015STO89417/20201015STO89417_hu.pdf, Retrieved 16 February 2024.

[3] Artificial intelligence regulation: the EP's position. https://www.europarl.europa.eu/pdfs/news/expert/2020/10/story/20201015STO89417/20201015STO89417_hu.pdf, Retrieved 16 February 2024.

screening. In telecommunications, initially only analogue systems were available, providing closed, internal communications. However, in the 2000s, mobile phones, EDR radios, computers with Internet connection and, in recent years, SAFE telephones have been introduced. These devices represented a major leap forward in fast and two-way communication, helping to prevent and respond to incidents. They have thus laid the foundations for one of the most important backgrounds for dynamic security. (Czenczer-Sztodola, 2019). There were also developments in software (e.g. digital control logs, remote monitoring systems). By the 2020s, the camera system was no longer only applicable within the closed prison, but the National Prison Service Command had access to the camera images of all the prisons in the country, and could check and monitor their operation at any time. By 2024, the technology had progressed to the point where smart cameras would be installed in the Chisinau Prison. These devices will already be capable of biometric identification as well as behavioural analysis and automatic alarms.

The impact of the evolution of security devices on the performance of personnel duty

Technological innovations are taking the administrative burden off staff over time. In the early days, all records and administration were paper-based and time-consuming, which did not facilitate the smooth running of the institutions. The first software for electronic registration systems was released in 1995, the FAR (Prisoner Subsystem), followed by the FANY (Prisoner Master File) and finally the FŐNIX system (currently in use is FŐNIX3), which not only contains the prisoner register but also facilitates the work of staff with a number of other functions (Horváth, 2022). Although detainee applications and requests for hearings are still paper-based, this is being replaced by the FNIX system, which allows detainees to submit applications, complaints, request a hearing, read their case files and other relevant information electronically. All this is of great help to the prisoners concerned in their administrative procedures. Electronic administration systems can help staff to keep track of prisoners' records, reduce bureaucracy and manage administrative tasks more efficiently. Communication tools allow staff to communicate quickly and efficiently to ensure smooth working, especially in the event of emergencies. (Bogotyán, 2016)

Innovations to support the reintegration of prisoners

At the turn of the century, prisoners were able to communicate with their relatives and lawyers via wall-mounted telephones. At the end of the 2010s, the prisoner mobile phone was introduced, allowing prisoners to be contacted by phone in the cell under certain conditions. In 2020, controlled electronic video calls, commonly

known as SKYPE calls, were introduced as part of the management of the COVID epidemic. Through this, detainees could now receive live pictures of their family members and contacts. This form of communication has become more popular and cost-effective than face-to-face interviews. It is also important to mention the e-learning platforms that have emerged in the field of reintegration, through which prisoners can be trained without the presence of a teacher. Through these programmes, prisoners can participate in online courses and training to support their return to the labour market.

Artificial intelligence and Prison nowadays

Artificial intelligence is by design linked to the security domain in a number of ways. Security systems include sensors and camera systems. AI systems apply analytical algorithms in institutions, analysing detainee behaviour patterns or incident statistics. These analyses help to monitor detainees and prevent incidents. Automated systems perform access control, registration, screening and other security tasks that reduce the workload of staff. Artificial intelligence is not perfect; if it is programmed incorrectly, it can cause adverse aspects in the areas it monitors. AI systems can be vulnerable to security attacks or misuse that can compromise the security and integrity of data. Without being exhaustive, some cardinal tools are described below. (Bogotyán, 2018.)

Use of camera

Camera systems have been one of the most important security tools in the prison system for decades. Cameras provide continuous surveillance in prisons, helping to prevent incidents and ensure safe detention. Surveillance can help detect activities, abuse or other irregularities that threaten prison security. Thanks to camera systems, recorded evidence can help in the investigation of disciplinary or criminal offences and in the identification of offenders. This evidence can help to hold prisoners accountable and increase the effectiveness of law enforcement. Cameras allow for more effective monitoring and management of prisons, provide staff with the ability to monitor wider sectors and help them to respond quickly and effectively. The images recorded by the devices provide detailed documentation of events in the institutions. This documentation can be important in legal and administrative processes (for example: in judicial proceedings or in the follow-up of incidents). Cameras not only record events in the institutions, but can also guarantee staff and detainees the legal handling of possible incidents, attacks, health crises (for example: epidemiological measures, etc.). In the following, we will outline the camera systems present in pri-

sons and the areas in which they can be usefully applied. In most places, general surveillance cameras are installed (e.g. in corridors, cells, workplaces, common areas, outside guard posts, etc.). They allow continuous monitoring, providing live and recorded images for staff. This includes special cameras that provide a 360-degree field of view, which help to ensure full surveillance and recording of events. IR (Infrared) cameras use infrared technology to monitor in dark or low light conditions. IR cameras allow for night-time monitoring and recording without the need for an artificial light source. Similarly, night vision cameras allow surveillance and monitoring of institutions in dark or low light conditions. Pan-Tilt-Zoom (PTZ) cameras are capable of horizontal and vertical movement, as well as zoom function, with remote control. The latter allows the supervisor to flexibly adjust the camera's direction and zoom according to the situation. Network (IP) cameras communicate via a network connection, allowing remote monitoring and access to cloud storage or monitoring centres. Semiconductor cameras are small in size and low in power consumption, making them an ideal solution for discreet surveillance or for locations where the use of traditional cameras is limited. Mobile cameras are portable and easy to move, allowing for flexible deployment, tailoring surveillance to specific circumstances (e.g. external work, emergency response, etc.). License plate recognition applications can identify and record the unique identification of vehicles, with specific privileges assigned. Staff can also wear body cameras or other customised surveillance devices to support the execution of security tasks, documentation of incidents, protection of staff (Schmehl, 2020). The innovations described will provide staff with great assistance and efficiency. Facial recognition software is able to identify biometric features on live or captured images and videos. Facial recognition allows to check detainees and staff in a database, generating automatic alerts in case of anomalies. Behavioural analysis can identify unusual or suspicious activities (e.g. dangerous objects, abnormal behaviour). The detection of unusual activities or objects can trigger automatic alerts, helping to react quickly to possible incidents. Cameras combined with environmental sensors can detect weather parameters (e.g. temperature or air quality) and send alerts via AI in case of related risks or hazards. They can also monitor and record environmental impacts (e.g. air pollution, noise levels, etc.) and send warnings of abnormalities (Schmehl, 2020, pp. 51.). In summary, a number of camera systems are available to the prison service and can be used to support secure detention.

Robot application

Robots already exist in the world, in some museums, hospitals and factories. The use of technology in many areas can make the work of staff and the daily lives of prisoners easier. Security robots are specially designed and equipped to meet the

security needs of prisons. They can assist staff with supervision or even perform guarding and control activities. Automated robots can patrol, monitoring conditions other than normal operation (for example: entry of prohibited objects). Some patrol robots are equipped with cameras or sensors, detecting suspicious activities or abnormal events. Transport and transport robots can assist in the movement and transport of detainees, other persons and goods. Cleaning robots can help to maintain and improve cleanliness, for example in common areas or holding cells. Firefighting robots can help carry out firefighting tasks and deal with potential fires, such as extinguishing fires or removing smoke. Drug-sniffing robots can detect psychoactive substances in institutions, such as lock-ups, detention centres or post offices, using special sensors. Automated food service robots can help the work of food inspectors. Rescue and assistance robots can handle potential emergencies (e.g.: treating injured or endangered persons, first aid). Data collection and analysis robots can improve institutions' data collection and analysis (e.g.: identifying safety trends and patterns or assessing efficiency). Robots can also be useful in training and education, as they can help prisoners in training and education processes and support their reintegration into the labour market - concrete examples of which are given in the chapter on the outlook abroad. It also provides staff with the opportunity to improve their professional skills and monitor their knowledge through training. Virtual assistants and chatbots are digital systems that assist prisoners and staff in communicating and accessing information (for example, by providing automated answers to questions or information on institutional services. (McKay, 2022)

Predictable impacts from the human aspect

Artificial intelligence can significantly assist staff with features such as automated data processing or document management, which indirectly allow staff to devote more time to more relevant tasks (e.g. reintegration of detainees or other security activities). Intelligent monitoring and analysis systems help to identify risk factors and prevent incidents. AI-based training systems allow staff to continuously train and develop themselves. Online courses or simulation tools can help them acquire new skills and develop. AI can also perform administrative tasks with a low error rate. It has also been shown previously that AI can monitor not only inmates but also the work of supervisors, giving management a comprehensive picture of staff work patterns and habits. In addition to the considerable positive impact, AI can also have some negative consequences. Staff, especially older staff, may not easily learn to use these systems or may not necessarily cooperate with them. They may also feel that automated processes can replace their work or create a sense of redundancy. Howe-

ver, these problems can be addressed through sensitivity training to help people to accept, understand, use and love new technologies. It is important to note that people have skills such as creativity, empathy and more sophisticated decision-making abilities that are currently difficult or impossible to replicate. Human presence and interaction can remain key to the rehabilitation of prisoners and the effective functioning of institutions. Artificial intelligence will be present in the daily lives of prisoners, which may raise a number of questions. A significant question is how these systems will be received. To what extent will they be liked and used, or, on the contrary, will they provoke dislike? AI can make life easier for prisoners, helping them in education, training and the labour market. It can make health and psychological care more high-quality, more accessible and easier to organise, and create more new reintegration and leisure activities. Technology can help to motivate prisoners and make communication quicker and easier. The monitoring of persons placed in reintegration custody can be made even more effective, with considerable improvements (e.g. the integration of surveillance drones, etc.). A modern, up-to-date environment can not only make detention more bearable, but also make it possible to reduce the disconnection of the persons concerned from the outside world. By learning about modern education and electronics, the detainee will not feel left behind and unable to keep up with civilian life. Once released, he can become a full member of society again.

Dilemmas related to the use of AI

Some important ethical issues have been briefly discussed above, but will be discussed in more detail below. The cardinal issue - mentioned earlier - is prejudice and discrimination. AI algorithms may be prone to categorisation on the basis of ethnicity or social origin. Reinforce unfair or unequal treatment of detainees. Data protection and privacy is perhaps one of the most important concerns, and the biggest area of scepticism towards AI.

Ethical dilemmas

AI systems often handle large amounts of personal data that need to be protected. Protecting the privacy and rights of detainees in relation to their detention is particularly important and must comply with the standards. AI-based decision making can often be difficult to understand and opaque, which can mean difficulties in establishing responsibility and detecting possible errors or abuses. Moreover, AI systems can be prone to distort self-organising systems, calling into question the objectivity and fairness of decision-making. Automated surveillance and monitoring by AI systems may violate the fundamental rights of staff members and detainees.

While automated decision-making helps to speed up certain processes, the extent to which it infringes human autonomy is questionable. The responsible and ethical use of AI is also inevitable in the field of prisons. The consideration of ethical aspects in its design, development and application is essential to respect the human dignity of staff and prisoners, to uphold legal and ethical standards and to uphold the principles of justice and equality. (Négyesi, 2023)

Feasibility and applicability dilemmas

In our country, AI and its applications in public life and in law enforcement are developing at a rapid pace. The development and operation of systems in this field requires significant technological infrastructure and resources, including computing capacity, expertise and financial resources. Providing an appropriate technological infrastructure and managing costs can be a challenge for prison institutions. The architectural characteristics of most institutions do not allow for the development of these technical solutions, and major adaptations would be required. A simpler solution would be to create new institutions where the focus would be on a design that is already fundamentally adapted to the technology. The science of artificial intelligence and other high-tech elements is not yet fully developed, so it is worthwhile for the time being to use tried and tested tools and, where possible, to introduce innovative mechanisms. The reliability and accuracy of AI-based decision-making is critical for the safety of detainees and staff. Poorly designed or flawed algorithms can have a detrimental impact on the fairness and efficiency of the system. The success and effectiveness of systems depends on user acceptance and appropriate training. Providing staff and other stakeholders with appropriate education and training to understand and use systems effectively may be necessary (Négyesi, 2023).

Summary and proposals

In our study, we have attempted to illustrate the complexity of the systems involved. We believe that many other aspects could be illuminated in addition to those described, as the above exploration is by no means exhaustive, and the subject provides a number of possibilities for analysis and interpretation for researchers. We can see where artificial intelligence has developed from, where it is now and where it still has great potential for the future in many areas of life. It has become clear that the technology can be applied in many areas, not only in civilian life but also in the field of law enforcement, and this list is likely to grow. From a security point of view, camera systems, robots, data collection and analysis software are the most prominent. It can be argued that these tools can help to prevent incidents and

support their lawful eradication. The workload of inspectors is expected to be reduced and therefore more focused in certain areas. In the field of reintegration, it is also possible to see how AI can positively support and boost related professional activities (e.g. employment, education and contact). Thanks to these, prisoners will not feel left behind in their life on the outside and will be just as useful members of society after their release. In the area of education, these innovative systems can offer a range of training opportunities not only for prisoners but also for staff, thus indirectly helping to retain and motivate staff. We believe it is important to integrate and legally regulate AI. Both national and foreign literature reflects on the ethical and feasibility dilemmas of the disadvantages AI may cause to staff and detainees, but it can be said that with proper legal regulation and technical programming, these concerns need not be feared. But ethical dilemmas should always be kept in mind regardless if the aim is to support everyday work with increasingly sophisticated and complex technology. It can be argued that, with due precautions, AI can facilitate progress, make the prison service more efficient, and support the achievement of the desired goals of sentencing, interventions and reintegration processes.

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SEXUAL CORRUPTION IN BOSNIA AND HERZEGOVINA – PREVALENCE AND LEGAL NORMS

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Sexual corruption is a socially unacceptable behavior that is extremely widespread in society, while at the same time not recognized as such, nor is it directly treated by the positive legislation. The reason for such an attitude can be found in the "normalization" of these behaviors, and consequently their toleration and non-reporting to the responsible authorities. This is a global phenomenon that has a pronounced impact on women and other vulnerable groups, and as such is also present in Bosnia and Herzegovina (BiH). The first question that arises is how widespread this phenomenon is and the ways in which it can be determined. The second question concerns the legal regulation of sexual corruption in the positive legislation, more precisely looking at provisions that already exist in the laws in BiH. In addition, the objective of this analysis is to examine the possibility of integrating the concept of sexual corruption into relevant laws and policies, while establishing a clear distinction compared to other forms of sexual violence. In this way, the awareness of the harmfulness of the mentioned behavior would be raised and the attitude adopted that no one is obliged to suffer sexual corruption and "exercise their rights" or "avoid harmful consequences" in that way.

KEYWORDS: sexual corruption, sextortion, sexual harassment, corruption, Bosnia and Herzegovina.

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Introduction

Sexual corruption is a phenomenon that has been present in society from before (in all its segments[1]), but not considered, nor were its harmful consequences highlighted as such (Feigenblatt, 2020). A gender-specific form of corruption was mentioned, which includes a component of sexual harassment, and as such represents a violation of human rights and "is a serious public health problem due to the impact on the physical, emotional and mental well-being of a person who has experienced sexual corruption" (Coleman et al., 2024, p. e1209).

This means that the person entrusted with the authority abuses this power in order to obtain a benefit for oneself or another, having that the "benefit" is manifested in the form of sexual abuse of the victim. However, unlike money, as the object of corrupt behavior, the extorted sexual intercourse or other sexual activity are rarely recognized as the "expected currency in corrupt transactions" (Eldén et al., 2020; Bjarnegård et al., 2024) and the likelihood that this behavior will be reported as such is low (Bigio and Hoffmann, 2016; OSCE 2021).

In fact, in those cases, it is treated as sexual harassment, not as a form of corruption. Because of this, the awareness of the existence of sexual extortion, as a form of corruption, is extremely low, and an additional problem is the lack of documentation on the practice of proving and institutional mechanisms for determining sexual extortion. This is precisely why the United Nations, at the end of 2023, adopted the first Resolution (CAC/COSP/2023/L.14/Rev.1) calling on states to recognize and raise awareness of the fact that demanding sexual relations or acts of a sexual nature can be considered a special form of corruption. UN also called on states to take further measures and fill gaps in legislation to effectively prevent and prosecute sexual corruption (United Nations, 2023).

The available research on sexual corruption is very limited, and the scientific understanding of this phenomenon is conceptually and empirically underdeveloped (Sundström and Wängnerud, 2021). One of the first investigations into sexual corruption was carried out by the International Association of Women Judges in 2012, the results of which were presented in the publication entitled: "Stopping the Abuse of Power through Sexual Exploitation: Naming, Shaming, and Ending Sextortion" (International Association of Women Judges [IAW], 2012). We can also mention the report of the International Bar Association entitled: "Sextortion: A crime of corrupti-

[1] Sexual corruption is manifested in public sector, working environment, education, sport, diplomacy etc. (See more: Leach, 2013; Towns, 2015; Feigenblatt, 2020; Sundström and Wängnerud, 2021; OSCE 2021).

on and sexual exploitation" (Carnegie, 2019) from 2019, and the publication entitled: "Breaking the silence around sextortion: The links between power sex and corruption" can also be cited (Feigenblatt, 2020), as published by Transparency International in 2020. Research on the specifically mentioned problem was not represented to a greater extent in BiH either. We can distinguish two researches, one entitled "Prevalence of sexual extortion (sextortion) in society" (Šikman and Ivić, 2023), carried out in 2023, and the other entitled "Sextortion - covert corruption: case study of Bosnia and Herzegovina" (Divjak, 2021) implemented in 2021, as well as the Handbook entitled "Combating sexual extortion from a position of power" from 2011 (Zahiragić et al., 2011), as one of the first publications of this kind in our country. On a somewhat larger scale, research into sexual harassment and sexual violence in Bosnia and Herzegovina has been represented (Agencija za ravnopravnost polova Bosne i Hercegovine, 2013; OSCE, 2019; OSCE, 2022; Rakanović - Radonjić, 2023;), as well as corruption in general (Transparency International, Bosnia and Herzegovina, 2021), which can certainly be useful when considering the observed research problem.

According to the above, it follows that more detailed data on the presence of sexual corruption in the public and private sector is necessary, in order to demystify this phenomenon which, according to all available data, is deeply rooted in domestic society. This would also be the basis for initiating activities in order to recognize sexual corruption in the appropriate laws and policies. In this sense, the subject of this paper is to determine the prevalence of the phenomenon of sexual corruption in BiH, as a combination of sexual harassment and abuse of entrusted authority (corruption), in order to gain benefits for oneself or others. To that end, the results of available research on this issue, which have been carried out in BiH so far, will be used. Subject of the paper also includes an analysis of norms in positive legislation that can be linked to the term "sexual corruption", and an examination of the possibility for integrating this term into relevant laws and policies, with a clear distinction in relation to other forms of sexual harassment and violence, on the one hand, and corruption, on the other.

The term "sextortion" or "sexual corruption"

Several different terms are used to describe this phenomenon, including "corruption involving sexual exploitation", "sex coercion", "sex extortion", "sexual bribery", "sexual forms of corruption", "sex-related bribery", "sextortion" and finally "sextortion" and "sexual corruption" (Sundström and Wängnerud, 2021, p. 4)

Etymologically, the word "sextortion" comes from the English language, as made up of words "sex" and "extortion" - which in translation would mean extortion or blackmail based on sexual content (IAW, 2012, p. 34). Accordingly, sextortion is a

combination of sexual harassment and abuse of entrusted authority (corruption) that includes two components: the component of sexual benefit and the component of corruption (IAW, 2012). On the one hand, we have those entrusted with some kind of executive authority with the capacity of certain decision-making power, and on the other hand, we have vulnerable categories that are usually in a subordinate position (Šikman and Ivić, 2023, p. 5). In those cases, when entrusted power is misused to achieve personal benefit for oneself or another, and where that benefit takes the form of sexual favors, we can consider it to be sexual extortion (Carnegie, 2019; Hendry, 2021). On the other hand, some narrower understandings of "sextortion" are limited to behaviors related to photo abuse, defining it as the act of forcing others to send explicit photos of themselves and subsequently blackmailing victims by publicly publishing said photos, in order to influence a person to do something and/or for other reasons, such as revenge or humiliation (Wolak and Finkelhor, 2016; ensteHong et al., 2020; Patchin and Hinduja, 2020). The development of modern technologies, and increased access to social media and smartphones, has changed the ways in which perpetrators commit these behaviors, which gives sexual extortion a rather different dimension compared to the earlier period (O'Malley and Holt, 2022).

The term "sexual corruption" is beeng used in recent research. In our context, this syntagm can be considered in terms of the conceptual meaning of the two words combined, namely the word "sexual" in the sense of an adjective, which describes the noun "corruption". It describes the form of corruption in which a person abuses entrusted powers in exchange for sexual favors, in order to achieve some benefit for oneself or another (Bjarnegård et al., 2024). Therefore, all the negative effects of corruption in general can be manifested in this form as well (Rose-Ackerman, 2004; Kombako, 2007; Enste and Heldman, 2017), while the victims, as in other forms of corruption, agree to its execution in order to achieve certain "benefits" or "avoidance" of any harmful consequences. Therefore, when persons in positions of entrusted authority deviate from the principles of good management, such as impartiality, integrity and justice, it represents an abuse of entrusted power[2] (Rothstein and Teorell, 2008), and when an "offer" of obtaining a certain benefit is added to that, as another recognized characteristic of corruption (Bjarnegård et al., 2024), then it is clear that sexual corruption is a form of corruption and not typical sexual harassment. At this point, a distinction can be made between sexual extortion and sexual corruption.

[2] The abuse of entrusted power should be viewed in a broader sense, including the performance of external influence on authority stakeholders, in order to make decisions that would enable them to achieve certain goals, usually the realization of some privileges. In this context, the relationship between lobbying and corruption is significant, and these phenomena should not be equated, "but it is a fact that due to the nature of the activity and the goals it understands, lobbying can easily acquire all the necessary characteristics of a corrupt relationship." (Stevanović, 2018, p. 124).

As the word itself says, "sextortion" includes a type of sexual extortion, while "sexual corruption" implies the "consent of the will" of the parties, namely the party abusing power and the other party agreeing or offering sexual services in exchange for some benefit. However, it should be noted that in these cases the asymmetry of power is even more pronounced and has clear gender attributes, regardless of the gender of the person requesting the service, because sexual corruption does not only involve the abuse of authority, but also the abuse of this authority for the sexual exploitation of the victim (Lindberg and Stensöta, 2018). In this sense, the physical integrity of the victim is violated, because the actual person is understood as a transactional currency. This violation of bodily integrity affects ones psychological and physical health, which basically distinguishes this phenomenon from corruption when the object of the action is the requested money or a gift (Bjarnegård et al., 2024).

Accordingly, sexual corruption is a form of corruption in which sexual benefits are demanded or offered rather than money, as a way of obtaining benefits (bribery). "Sexual use" can be considered as any explicit or implicit request to engage in sexual activity, which does not necessarily include sexual intercourse, or even physical contact, but can be any form of unwanted sexual activity, such as revealing private parts of the body or abuse of photographs (IAW, 2012, p. 9). This means that the term "sexual corruption" is broader than the term "sextortion" because it includes sexual corruption when it is extorted, not only when it is bribed (Bjarnegård et al., 2024, p. 9).

In the above sense, we are of the opinion that in the context of the described phenomenon, the term "sexual corruption" is more applicable than the term "sextortion". In addition, the word "sextortion" is an English word, which does not have an adequate translation, being used and pronounced in its original form, which is not usual in professional language.

The prevalence of sexual corruption in Bosnia and Herzegovina

According to the findings of the research conducted by the Agency for Gender Equality in 2013, more than a half of women from the sample in BiH (47.2% in BiH, 47.2% in FBiH and 47.3% in RS) experienced at least some form of violence after turning 15 years old[3]. Sexual violence was experienced by 6% of women during their adult life, while 1.3% of women had this experience in the last year (Agencija za

[3] The research was conducted on a sample of 3,300 households and adult women in Bosnia and Herzegovina, with appropriate representative sub-samples for the Republic of Srpska and the Federation of Bosnia and Herzegovina. Data were collected not only about women, but also about the characteristics of their households, which made it possible to analyze some important determinants of domestic violence or violence committed by a partner (The Agency for Gender Equality of Bosnia and Herzegovina, 2013, p. 18).

ravnopravnost polova Bosne i Hercegovine, 2013, p. 19). In the next survey, conducted by OSCE, from 2019, it can be seen that the proportion of sexual violence has increased dramatically. Thus, 28% of women respondents experienced some form of sexual harassment by the age of 15 (26% in the Federation of BiH and 31% in the Republic of Srpska), out of which 10% experienced such a form of violence in the last year (OSCE, 2019). In this sense, sexual harassment is marked as more frequent than other forms of non-partner violence (physical or sexual), but less frequent than violence perpetrated by intimate partners, which is the most widespread and harmful form of violence, as presented by this research.

When it comes to the observed issue of determining the prevalence of sexual corruption, as a specific form of sexual harassment and corruption, we can look at it based on available research, media reports, statistical data, etc. However, it is necessary to point out the limitations in this regard, because as we have stated, sexual corruption is not recognized as a separate phenomenon, but the prevalence of this phenomenon is determined by recognizing the elements of sexual corruption in other observed phenomena. In this sense, one of the results of the research carried out by Šikman and Ivić (2023) can be evaluated as positive[4] as it shows that over 90% of respondents are familiar with the concept of sexual corruption, while 95% of them fully agree with the statement that such phenomenon can be considered as socially unacceptable behavior (Šikman and Ivić, 2023, pp. 13 and 14), as well as the personal experiences of respondents, of which the largest number, over 85% of respondents, can recognize situations related to sexual corruption[5]. Furthermore, sexual extortion in Bosnia and Herzegovina most often affects women, it manifests itself in all spheres of life (work, education, sports, etc.) and confirms the view that sexual extortion most often occurs in the workplace (which is supported by the opinion of as many as 76% of respondents), and it manifests itself by putting a person in a disadvantageous position and "putting pressure on a person" (e.g. threat of disciplinary action, extension of employment contract, etc.), i.e. by blackmailing with assignment to a workplace and/or promotion and advancement (Šikman and Ivić, 2023).

Very often, informal meetings are used to manifest sexual extortion, and sometimes it is done in a subtle way, by giving the appearance of various benefits and

[4] This research was performed on the sample of 274 persons, mostly women with over 80% participants, while 42 participants were men (Šikman and Ivić, 2023).

[5] From the participant's statement: "I know men colleagues who are aware of their power and position, their opportunity to do something, close the deal, ad to constantly use that. That is terrifying. These are people high up on the social ladder. This is usual, normal and acceptable form of behavior for them, and they often use it. Their perception is: I have the power and I abundantly use it, I don't need to be beautiful, smart or handsome" (Šikman and Ivić, 2023, p. 29).

conveniences, access to resources, use of free time, etc.[6] A large number of respondents, 46.5% of them, believe that the abuse of a position for the purpose of sexual extortion is the most common way in which this behavior is performed, while it is manifested mainly verbally and in a direct way through the relationship between the perpetrator and the victim (Šikman and Ivić, 2023). Furthermore, the largest number of respondents, two-thirds of them, believe that sexual extortion is rarely or never reported to law enforcement authorities, which is fully expected. The distribution of respondents' points to the conclusion that there is awareness of this phenomenon, but it is not sufficiently perceived as unacceptable behavior. In this sense, the distribution of the respondents in relation to the question about reasons for not reporting this behavior shows that one third of respondents did not report this behavior because they did not trust the prosecution authorities, 22.8% of them believed that they would deal with sexual extortion on their own, while 11% of respondents were afraid of consequential problems (Šikman and Ivić, 2023).

The stated research results fully match the available statistical indicators. Namely, the statistical data for criminal offenses against sexual freedom show that their share in the total crime rate is extremely low. In the case in Bosnia and Herzegovina, for example. in the period from 2015 to 2020, a total of 31 reports were submitted for the criminal offense of Sexual act by abuse of position (Article 168 CC RS, and analogous criminal offenses from Article 205 CC FBiH and Article 206 CC BD BiH), 23 orders were issued on conducting the investigation, while 11 indictments were brought, and 15 convictions were handed down, of which one was with a penalty order, seven were conditional, and seven were prison sentences (Divjak, 2021, pp. 33-35). In most of the analyzed cases, there is a recognizable power relationship between the victim and the accused, where the victim is in some kind of subordinate relationship with the accused, who is in a position of power or authority. In certain cases, victims were blackmailed by recording sexual intercourse and publishing it, or by signing an employment contract and continuing to work (Divjak, 2021, p. 41).

Therefore, the available research fully confirms the thesis that sexual corruption is present and widespread, but is not recognized as such, which is particularly reflected in the small number of initiated criminal proceedings and convictions in these cases.

[6] The highest number of participants, 16,3% of them, had an experience related to sexual extortion for advancing at their work place, followed by 14,9% of participants with the personal experience of sexual extortion related to start at the work position, while 5% had such experiences while obtaining some labor rights, such as the rights to a paid annual leave. Certain number of participants, 8,5% of them, had an experience of sexual extortion in order to pass the exam at the faculty, or passing the driving test or specialist exam (Šikman and Ivić, 2023, p. 20).

Legal regulation of sexual corruption in positive legislation in BiH

Sexual corruption as a socially negative phenomenon and incriminated behavior is not formally and legally recognized in the laws of Bosnia and Herzegovina, as well as in comparative legislation and international documents[7]. The given legal solutions cover many elements of sextortion; however, it is important to note that it is not recognized as a gender-based form of corruption, which does not encourage public awareness that such actions can be considered as acts of corruption. This makes it impossible to enforce criminal provisions and reduces the importance of these crimes (Divjak, 2021, p. 17). By a broader interpretation of certain norms in criminal law, labor law or in legislation against discrimination, provisions can be found under which this behavior, or some of its elements, could be observed (See more: Zahiragić et al., 2011).

In this regard, in the criminal laws in BiH (Criminal Code of Bosnia and Herzegovina (2003) [CC BiH], Criminal Code of the Republic of Srpska (2017) [CC RS], Criminal Code of the Federation of Bosnia and Herzegovina (2003) [CC FBiH] and Criminal Code Brčko of the District of Bosnia and Herzegovina (2020) [CC BDBiH]), in the group of criminal offenses against sexual integrity, the group of criminal offenses against official duty, the group of criminal offenses against the freedom and rights of citizens, the group of criminal offenses against rights based on work, in certain criminal offenses elements of sexual corruption can be observed, while other elements are missing, which leads to the conclusion that this behavior has not been fully recognized. For example, the criminal offense of sexual blackmail (Article 166 of the Criminal Code of the RS and analogous criminal offenses from Article 206 of the Criminal Code of the FBiH and Article 203 of the Criminal Code of the BD BiH), i.e. Sexual acts by abuse of position (Article 168 of the Criminal Code of the RS, and analogous criminal offenses from Article 205 CC FBiH and Article 202 CC BD BiH) or sexual harassment (Article 170 CC RS and Article 200a CC BD BiH) protect the sexual integrity of a person, which includes ones right to sexual self-determination (Stojanović, 2018), while

[7] Along with the mentioned UN Resolution (CAC/COSP/2023/L.14/Rev.1) from 2023, interrelation between sexual harassment and corruption has been recognized in several additional international documents, adding the gender dimension to the corruption phenomenon. This was highlighted at the Special session of the General Assembly of the United Nations against corruption (United Nations, 2021a), during which the member states were called to promote gender equality and empowerment of women by integrating them in legislation, policies, research, projects and programs. During the same year, at the Ninth session of member states of the UN Convention against Corruption, dedication was confirmed to understand relations between gender and corruption, and member states were called to introduce gender issues in the mainstream and in accordance with domestic legislation (United Nations, 2021b). Importance of gender sensitive approaches have been recognized by other bodies as well, such as UN Commission for prevention of crime and criminal judiciary, Group of countries against corruption (GRECO) and G20 (Kirya, 2024).

the criminal acts of Abuse of position or authority (Art. 220 of the CC of BiH and analogous crimes of blood from Art. 315 of the CC of the RS, Art. 383 of the CC of FBiH and Art. 377 of the CC of BD BiH), Unscrupulous work in the service (Art. 224 of the CC of BiH and analogous crimes of blood from Art. 322 CC RS, Article 387 CC BiH) or Violation of human dignity by abuse of official position or authority (Article 329 CC RS) by unlawful use of an official position or the authority derived from it (Babić, 2008, p. 293) by official or responsible persons. Labor legislation in BiH (Law on Labor in the Institutions of Bosnia and Herzegovina (2004), Labor Law of the Republic of Srpska (2016), Law on Protection from Harassment at Work (2021), Labor Law of the Federation of BiH (2016)) criminalizes sexual harassment, as well as the Law on Gender Equality (2010) and the Law on Prohibition of Discrimination (2009).

If we accept the concept of sexual corruption that includes three cumulatively set conditions: first - abuse of authority, second - Quid pro quo - service for service that includes sexual benefit as an element of the transaction, and third - psychological coercion, which is based on asymmetry of power (IAW, 2012, p. 9; Feigenblatt, 2020, p. 8;), then we can determine that these three elements are absent in the aforementioned acts of sexual harassment, which means that these acts do not fall under the category of corruption of under the concept of sexual corruption (IAW, 2012). Sexual corruption is distinguished from other types of sexual violence and exploitation precisely because it involves an element of transaction (Coleman et al., 2024). "This element can portray a person who has experienced sexual corruption as actively involved in the sexual act, thereby legitimizing the sexual favors received and serving as a risk reduction strategy for the perpetrator" (Bjarnegård et al., 2024, p. 9). Therefore, in these cases, it is most important to keep the focus on abuse of entrusted authority as a way of obtaining benefits. On the other hand, sexual corruption is different from monetary corrupt transactions, because the latter does not violate the physical integrity of the person seeking the service in the same way as the former (Bjarnegård et al., 2024). Therefore, it is clear that the criminal, labor or anti-discrimination legislation in Bosnia and Herzegovina does not recognize the behavior covered by the term sexual corruption.

Conclusion

Based on the review of earlier research and available knowledge, we can state the following conclusions when it comes to sexual corruption:

- We are talking about the phenomenon that is present in society, recognized as socially unacceptable behavior, but insufficiently "visible" by the prosecution authorities. We can consider the above to be absurd, because even a superficial review of media captions is enough to convince ourselves of the widespread nature of this phenomenon. In support of this is the fact that these behaviors are

still tolerated, the consequences of their manifestations are ignored, which often represents the basis and/or introduction to more severe forms of sexual violence,

- Current (BiH) legislation, such as criminal, labor and anti-discrimination legislation, does not recognize sexual corruption as a specifically incriminated behavior. It is evident that certain elements of this behavior are included in the descriptions of other criminal acts, while others are not recognized as such.
- Accordingly, when it comes to taking action, a clear distinction between sexual violence and harassment in relation to sexual corruption has not yet been defined, as a form of behavior dominated by the element of abuse of entrusted authority or power,
- On the other hand, the difference in relation to other forms of corruption is not sufficiently highlighted, namely the fact that as a "transactional currency" sexual benefit is required, and manifested in the form of sexual intercourse or other types of sexual activity. In this way, these behaviors can be considered as "more severe" forms of corruption, because the object of the action is directed towards the physical and psychological integrity of the victim.
- In accordance with the aforementioned conclusions, certain recommendations can be defined (and directed at the academic and the professional public). In this regard, we consider the following necessary:
- Clear and precise definition of the concept of sexual corruption, with special reference to establishing the distinction in relation to other sexual ofences, on the one hand, and corrupt criminal acts, on the other. In this sense, it is necessary to determine the elements of sexual corruption in terms of defining the protective object, the object of the action, the perpetrator and the passive subject,
- Determining the distribution of sexual corruption in society, through the implementation of empirical research. For this purpose, qualitative research (expert interviews, focus groups, etc.) can be useful, as well as quantitative through a survey on victimization and a self-report survey, with an emphasis on repeated victimization (see: Vasiljević-Prodanović, 2012; Ignjatović, 2023).
- Developing awareness about the harmfulness of sexual corruption and its distribution in society, through public campaigns with the key message that this form of behavior is not socially acceptable. At the same time, in this way, it is necessary to encourage victims to report sexual corruption, in order to provide them with adequate protection.

Finally, and the most importantly, it is imperative to provide the institutional and legal structure necessary to counteract sexual corruption (see: IAW, 2015). This task is also the most difficult, which is why an argumentative and scientifically-founded approach is necessary.

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CONCLUSIONS

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

Zlatibor, 19-21 September 2024

The Serbian Association for Criminal Law Theory and Practice, in cooperation with the Institute of Criminological and Sociological Research, the Ministry of Justice of the Republic of Serbia, and the Judicial Academy, and with the support of the OSCE Mission in Serbia, organized the LXIII Regular Annual Conference of the Association on the following topic: "Penal Policy and Adequacy of the Reaction to Crime". The Conference was held from September 19 to 21 in Zlatibor.

As a result of the presented papers and the expert discussion, the following conclusions have been adopted:

Criminal substantive legislation:

1. The preventive dimension of punishment must be prioritized in the acceptance of mixed theories regarding its purpose. This necessitates limiting the quantum of punishment by introducing proportionality in its imposition.
2. The ultimate retributivist approach results in counter-effects. The ultima ratio dimension is the primary characteristic of criminal law, and it is essential not to disregard it. Additionally, the state employs other methods of social control and reaction.
3. It is imperative to establish a definitive stance concerning the legal-dogmatic and legislative-technical approaches, as each reform creates distinct dilemmas. The fundamental principles of criminal law must be prioritized. Hypertrophic incrimination, casuistic approach, and persistent aggravation of penalties are considered as the negative dimensions.

Criminal procedural legislation

1. In general, the proposed amendments to the current text of the Code of Criminal Procedure will enhance its text and eradicate or enhance certain normative solutions that are fundamentally flawed. This is the case, for instance, with rulings regarding the initiation of the investigation, the type and control of the public pro-

secutor's act on the initiation of the investigation, the status of the injured party, the principle of the opportunity of criminal prosecution, regulation of the main hearing, the preparatory hearing, the system of legal remedies, and similarly.

2. The participants of the Conference noted with satisfaction the fact that in the preparation of the working version of the planned amendments to the Code of Criminal Procedure, the positions taken at the Conference and expressed in the conclusions were taken into account after the adoption of the Code of Criminal Procedure from 2011.
3. The upcoming planned amendments to the Code of Criminal Procedure are only one step in a process that should ultimately lead to the adoption of a new Code of Criminal Procedure. The text of the new Code of Criminal Procedure should be much more in line with the continental European tradition of Serbian criminal procedural law.

Juvenile criminal legislation

1. The Law on juvenile offenders and criminal protection of juveniles has been in force since 2006, without any amendments. It was in accordance with the international standards of the period and accommodated the advancements in juvenile criminal law in the Republic of Serbia at the time of its adoption. Two decades post-adoption and in light of acknowledged issues in its implementation, the evolving nature of juvenile delinquency necessitates the enhancement of the normative framework through the enactment of a new law aligned with both national and international legal standards.

2. The new "criminal law for juveniles," encompassing material, procedural, and enforceable aspects, must strike an optimal balance between maintaining effective existing solutions and addressing identified deficiencies, as well as prescribing new and more effective forms of reaction concerning the current needs of harmonization with the Constitution of the Republic of Serbia, the Criminal Code, the Code of Criminal Procedure (taking into account the amendments expected by the end of 2024).

Criminal executive legislation:

The state of executive criminal legislation has been unsatisfactory for an extended period. This is primarily due to the inconsistency of various regulations in this field, the inadequate development of specific enforcement rules, and the systemic inconsistency of the entire penal legislation. The announced changes to substantive and procedural criminal legislation, like certain previous modifications, necessitate interventions in the field of enforcement of criminal sanctions. The purpose of

execution of the life sentence and special norms of execution should be prescribed in light of the increasing prevalence of life imprisonment. It is important to bear in mind that life imprisonment is a distinct punishment from a prison sentence, both formally and essentially. Special interventions are required in the field of alternative sanctions and measures execution in order to improve the conditions for their application, which would have a positive effect on the increased participation of certain measures and sanctions in public prosecution and court practice. Ultimately, this improves the efficiency of criminal proceedings and relieves the prison system by reducing the number of short prison sentences imposed.

Misdemeanor legislation

1. In order to enhance trust in the judiciary and unify judicial practice, it is imperative to monitor the official statistics on the imposed misdemeanor sanctions in misdemeanor proceedings.
2. It is deemed necessary to set up gatherings of judges of misdemeanor courts to establish positions on the type and duration of misdemeanor sanctions that should be imposed, with a particular emphasis on the imposition of protective measures.
3. It is necessary to create preconditions for the practical application of the punishment of Community service in misdemeanor proceedings.
4. It is imperative to commence the process of amending the Law on Misdemeanors.
5. It is necessary to ensure the normative compliance of the Law on Misdemeanors with the Law on juvenile offenders and criminal protection of juveniles.

ZAKLJUČCI

LXIII REDOVNOG GODIŠNJEG SAVETOVANJA SRPSKOG UDRUŽENJA ZA KRIVIČNOPRAVNU TEORIJU I PRAKSU

Zlatibor, 19–21. septembar 2024. godine

Srpsko udruženje za krivičnopravnu teoriju i praksu u saradnji sa Institutom za kriminološka i sociološka istraživanja, Ministarstvom pravde Republike Srbije i Pravosudnom akademijom, a uz podršku misije OEBS u Srbiji, organizovali su LXIII redovno godišnje savetovanje Udruženja na temu „Kaznena politika i adekvatnost reakcije na kriminalitet". Konferencija je održana od 19. do 21. septembra na Zlatiboru.

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

Krivično materijalno zakonodavstvo:

1. U prihvatanju mešovitih teorija o svrsi kazne neophodno je da preventivna dimenzija kazne bude u prvom planu, a to podrazumeva ograničenje kvantuma kazne uvođenjem proporcionalnosti u njenom izricanju.

2. Ultimativno-retributivistički pristup dovodi do kontraefekata. Ne treba zanemariti glavnu osobinu krivičnog prava, a to je ultima ratio dimenzija. Država raspolaže i drugim oblicima reakcije i socijalne kontrole.

3. Svaka reforma izaziva određene dileme, pa je u pogledu pravno-dogmatskog i legislativno-tehničkog pristupa potrebno imati jasan stav. U prvom planu treba da budu osnovna načela krivičnog prava. Hipertrofija inkriminacija, kazuistički pristup i permanentno zaoštravanje kazni spadaju u negativne dimenzije.

Krivično procesno zakonodavstvo:

1. Planiranim izmenama i dopunama važećeg teksta Zakonika o krivičnom postupku načelno posmatrano poboljšava se njegov tekst, otklanjaju se i poboljšavaju neka od suštinski loših normativnih rešenja. To je slučaj, na primer, sa rešenjima vezanim za pokretanje istrage, vrste i kontrole akta javnog tužioca o pokretanju istrage, statusom oštećenog lica, načela oportuniteta krivičnog gonjenja, uređenja glavnog pretresa, pripremnog ročišta, sistema pravnih lekova i slično.

2. Učesnici savetovanja sa zadovoljstvom konstatuju činjenicu da su u izradi radne verzije planiranih izmena i dopuna važećeg teksta Zakonika o krivičnom postupku uzeti u obzir stavovi zauzeti na savetovanju i izraženi u zaključcima usvojenim nakon donošenja Zakonika o krivičnom postupku iz 2011. godine.

3. Predstojeće planirane izmene i dopune Zakonika o krivičnom postupku predstavljaju samo jedan korak na putu čiji cilj treba da bude donošenje novog Zakonika o krivičnom postupku čiji bi tekst trebalo da bude znatno više u skladu sa kontinentalno-evropskom tradicijom srpskog krivičnog procesnog prava.

Maloletničko krivično zakonodavstvo:

1. Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih oštećenih lica, bez ijedne izmene i dopune, u primeni je od 2006. godine. U momentu kada je donesen, uvažavao je tadašnji razvoj maloletničkog krivičnog prava u Republici Srbiji i bio je usklađen sa međunarodnim standardima tog vremena. Dvadeset godina nakon njegovog usvajanja i prepoznatih problema u njegovoj primeni, promenjenoj strukturi kriminaliteta maloletnika, nameće se kao neophodnost unapređivanje normativnog okvira donošenjem novog zakona usklađenog sa nacionalnim i međunarodnim pravnim okvirom.

2. Novo "krivično pravo za maloletnike", materijalno, procesno i izvršno, mora da ostvari dobar balans između potrebe da se zadrže u praksi dobra i proverena rešenja i da se otklone uočeni nedostaci, kao i da se propišu novi i efikasniji oblici reakcije u odnosu na trenutne potrebe usklađivanja sa Ustavom Republike Srbije, Krivičnim zakonikom, Zakonikom o krivičnom postupku (imajući u vidu izmene i dopune koje se očekuju do kraja 2024. godine).

Krivično izvršno zakonodavstvo:

Stanje u izvršnom kaznenom zakonodavstvu se duže vreme ne može oceniti kao zadovoljavajuće zbog, s jedne strane, neusaglašenosti različitih propisa u ovoj oblasti i nedovoljne razrađenosti pojedinih pravila izvršenja kao i zbog sistemske neusaglašenosti kompletnog kaznenog zakonodavstva. Najavljene izmene materijalnog i procesnog krivičnog zakonodavstva, poput pojedinih ranijih izmena, iziskuju intervencije i u oblasti izvršenja kaznenih sankcija. Zbog sve šire primene doživotnog zatvora trebalo bi propisati svrhu izvršenja te kazne i posebna pravila izvršenja, imajući u vidu da se kako formalno tako i suštinski radi o drugačijoj kazni u odnosu na kaznu zatvora. Posebne intervencije su potrebne u oblasti izvršenja vanzavodskih sankcija i mera kako bi se poboljšali uslovi za njihovu primenu a što bi se pozitivno odrazilo i na veće učešće pojedinih mera i sankcija u javnotužilačkoj i sudskoj prak-

si. U krajnjoj liniji, tako se poboljšava efikasnost krivičnog postupka i rasterećuje zatvorski sistem smanjenjem broja izrečenih kratkih kazni zatvora.

Prekršajno zakonodavstvo:

1. Neophodno je praćenje zvanične statistike o izrečenim prekršajnim sankcijama u prekršajnom postupku radi ujednačavanja sudske prakse, radi jačanja poverenja u sudstvo.
2. Smatra se potrebnim održavanje skupova sudija prekršajnih sudova na kojim bi bili usvojeni stavovi o vrsti i visini izrečenih prekršajnih sankcija, sa osvrtom na izricanje zaštitnih mera.
3. Neophodno je stvoriti preduslove za praktičnu primenu kazne rada u javnom interesu u prekršajnom postupku.
4. Potrebno je pristupiti radu na izmenama i dopunama Zakona o prekršajima.
5. Neophodno je obezbediti normativnu usaglašenost Zakona o prekršajima sa Zakonom o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih oštećenih lica.

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