International scientific thematic conference

The Position of Victims in the Republic of Serbia

THEMATIC CONFERENCE PROCEEDINGS
OF INTERNATIONAL SIGNIFICANCE

Palic, 12-13 June 2024.

Institute of Criminological and Sociological Research

Belgrade, Serbia, 2024

Publisher
Institute of Criminological and Sociological Research
Belgrade, Gračanička 18

For Publisher
Ivana Stevanović, PhD
Director of the Institute of Criminological and Sociological Research

Editors
Milica Kolaković - Bojović, PhD
Ivana Stevanović, PhD

Reviewers
Prof. Đurađ Stakić, *PhD Professor Emeritus*
Pennsylvania State University, US
Academician Prof. Stanko Bejatović, PhD, Faculty of Law,
University of Kragujevac, Serbia
Prof. Gál István László PhD, University of Pécs, Faculty of Law, Hungary
Prof. dr. sc. Elizabeta Ivičević Karas, University of Zagreb, Faculty of Law, Croatia

Prepress
Milka Raković

Cover design
Ana Batrićević, PhD

Tehnical Editor
Milka Raković

ISBN: 978-86-80756-66-0
DOI: 10.47152/Palic2024

Print
Birograf comp d.o.o., Beograd

Impression
200 copies

International scientific thematic conference and the printing of this publication were supported by

MINISTRY OF SCIENCE, TECHNOLOGICAL DEVELOPMENT AND INNOVATION
OF THE REPUBLIC OF SERBIA

INTERNATIONAL SCIENTIFIC THEMATIC CONFERENCE – PALIĆ 2024

The Position of Victims in the Republic of Serbia

PROGRAMME COMMITTEE

Prof. Zoran Stojanović, PhD, Faculty of Law, University of Belgrade, Serbia
Prof. Claus Roxin, PhD, Faculty of Law, University of Munich, Germany
Prof. Vid Jakulin, PhD, Faculty of Law, University of Ljubljana, Slovenia
Prof. Milan Škulić, PhD, Judge of Constitutional Court of the Republic of Serbia, Faculty of Law, University of Belgrade, Serbia
Ivana Stevanović, PhD, Director of the Institute of Criminological and Sociological Research in Belgrade, Serbia
Milica Kolaković-Bojović, PhD, Institute of Criminological and Sociological Research in Belgrade, Serbia
Prof. Slađana Jovanović, PhD, Faculty of Law, Union University in Belgrade, Serbia
Ana Batrićević, PhD, Institute of Criminological and Sociological Research in Belgrade, Serbia
Prof. Laura Maria Stanila, PhD, Faculty of Law, Western University of Timișoara, Romania
Prof. Zoran Pavlović, PhD, Faculty of Law for Commerce and Judiciary, University Business Academy in Novi Sad, Serbia
Prof. Rok Svetlič, PhD, Science and Research Centre in Koper, Slovenia
Prof. Gordana Lažetić, PhD, Faculty of Law "Iustinisnus Primus", Ss. Cyril and Methodius University in Skopje, North Macedonia
Prof. Mile Šikman, PhD, Faculty of Security Studies, University of Banja Luka, Bosna and Hercegovina
Prof. Horacio Ravenna, PhD, School of Social Sciences, University of Buenos Aires, Argentina

ORGANIZING COMMITTEE

Ivana Stevanović, PhD, Director of the Institute of Criminological and Sociological Research in Belgrade, Serbia
Milica Kolaković-Bojović, PhD, Institute of Criminological and Sociological Research in Belgrade, Serbia
Nenad Vujić, Director of Judicial Academy in Belgrade, Serbia
Milka Raković, Institute of Criminological and Sociological Research in Belgrade, Serbia
Maša Marković, MA, Institute of Criminological and Sociological Research in Belgrade, Serbia

TABLE OF CONTENTS

THEMATIC SESSION 4: CHILDREN AS VICTIMS OF CRIME

THEMATIC SESSION 5: VICTIMS OF HATE SPEECH AND HATE CRIMES

THEMATIC SESSION 6: RIGHTS OF VICTIMS OF OFFENSES AGAINST PUBLIC TRAFFIC SAFETY

FOREWORD

The Institute of Criminological and Sociological Research, with the support of the Ministry of Science, Technological Development and Innovation of the Republic of Serbia and the Judicial Academy in Belgrade, is organizing this year the 35th international scientific thematic conference "The Position of Victims in the Republic of Serbia". Traditionally, the conference will this year as well be held in Palić, on 12 and 13 June 2024, and the papers to be presented at the conference are published herein (thematic collection).

Bearing in mind the importance of this topic for society as a whole, the accelerated development of international legal standards in the field of protection, support and assistance to victims of criminal offences, the intense social changes at the national and regional level, as well as the changes in the phenomenology of criminal offences, initiate consideration and analysis with the aim of improving the normative and institutional framework, but also practices focused on the exercise of victims' rights and access to justice. Numerous challenges in this field are additionally increased by the accelerated development of information and communication technologies, generating the need for the development of new protection mechanisms for particularly sensitive categories of victims, especially children and victims of hate speech.

Negotiations for accession of the Republic of Serbia to the EU for years now have represented a key reform framework in numerous segments of the state and society, including criminal legislation. More or less successfully, legislators have repeatedly aligned the provisions of substantive and procedural legislation with the EU acquis. The development of international standards in the field of due process of law proceeded unevenly with regard to the protection of the rights of defendants and victims of criminal acts. For this latter, only the beginning of the 21st century brought an accelerated development of standards aimed at improving their position. The Council of Europe and the European Union provided significant contribution to this process concurrently.[1] Adoption of the EU Directive establishing minimum standards on the rights, support and protection of victims of crime and strengthening the position of victims in the criminal justice system in 2012 gave effect to the obligation of the EU Member States and the EU membership candidate countries to align their national legislation with the provisions of the Directive (Serbia took the first steps towards fulfilling this obligation in 2016 by adopting the Action Plan for Chapter 23, which provided for the adoption and implementation of a comprehensive strategic framework that would regulate in detail the process of alignment with the provisions of the Directive). Although with some delay, in 2020, the National Strategy for Exercising the Rights of Victims and Witnesses for

[1] See more: Kolaković-Bojović, M. (2017) *Usklađivanje krivičnog zakonodavstva Republike Srbije sa EU standardima u okviru poglavlja 23.* In: International Scientific and Professional Conference "Criminal Legislation between Practice and Regulations and Harmonization with European Standards" 20 and 21 April 2017, Milići. Serbian Association for Criminal Law Theory and Practice; Ministry of Justice of the Republic of Srpska, Belgrade; Banja Luka; Stevanović, I. Vujić, N. (2020) *Međunarodnopravni standardi o krivičnopravnim instrumentima zaštite oštećenih lica i razlozi neophodnosti njihove inplementacije u nacionalno krivično zakonodavstvo.* In: Victim and criminal protection instruments (international legal standards, norms and practice): LX Regular Annual Counseling of the Association. Serbian Association for Criminal Law Theory and Practice; "Intermex", Belgrade, p 88-108.

the period 2020-2025 was adopted, setting the trajectory of legislative and institutional reforms in this field.[2]

The development of public policies in this field, as well as the practice of their application, is largely conditioned by the process of the EU accession negotiations, i.e. the need to incorporate relevant international standards into the legal and institutional system of the Republic of Serbia. Bearing this in mind, the current activities of the United Nations, the Council of Europe and the European Commission on the further development of these standards, as well as the comparative legal experiences of other countries that are candidates for membership in the European Union, are of great importance for defining public policies in the Republic of Serbia.

After four years of implementation of the new strategic framework, and in response to the announced amendments to the Directive (2012)029, it is time for the achievements made so far in the field of implemented reforms to be objectively reviewed, both in respect of establishing minimum standards for all victims of crimes, and with regard to the need for harmonization with the standards of additional protection of particularly sensitive categories of victims, such as women, children, victims of domestic violence, as well as victims of hate crimes. The development of modern technologies put the spotlight on the digital environment as a new context of victimisation, but also raised the issue of the position of victims of criminal offenses against public transport safety.

Starting from thus defined framework, the work at the upcoming international scientific thematic conference, as well as the thematic collection itself, is structured around six thematic sessions, whereby each includes scientific papers by prominent experts from the country and abroad in the relevant field: International Legal Standards and Strategic Approach to Protecting Victims' Rights, Domestic Violence Victims' Rights, Women's Victimisation, Child Victims of Crime, Victims of Hate Speech and Hate Crimes and Rights of Victims of Offenses Against Public Traffic Safety.

Belgrade, 20 May 2024

Milica Kolaković Bojović, PhD
Ivana Stevanović, PhD

[2] Kolaković-Bojović, Milica (2020) *Direktiva o žrtvama (29/2012/EU) i kazneno zakonodavstvo Republike Srbije.* In: Victim of crime and criminal protection instruments (international legal standards, regional criminal law, implementation and measures for improvement of protection). OSCE Mission to Serbia, Belgrade, p 41-5.

Thematic Session 1: International Legal Standards and Strategic Approach to Protecting Victims' Rights

Milan ŠKULIĆ*
Ivana MILJUŠ**

Original Scientific Paper
DOI: 10.47152/Palic2024.1

THE IMPACT OF BASIC VICTIMOLOGICAL CONCEPTIONS AND THE IDEA OF RESTORATIVE JUSTICE ON THE POSITION OF THE INJURED PARTY IN CRIMINAL PROCEDURE: A REVIEW OF INTERNATIONAL STANDARDS

Abstract: In this paper, the basic elements of the position of the injured party in criminal proceedings are explained, as well as the ratio legis for introducing appropriate criminal legal instruments for the protection of victims of crimes. A relevant victimological approach is important in both substantive and procedural criminal law. Modern criminal procedures include an appropriate restorative component, as a characteristic of so-called restorative justice. It is particularly important in criminal proceedings to ensure an adequate position for the injured party and to enable effective protection of victims who belong to the category of especially vulnerable persons.

The authors highlight the basic normative solutions contained in EU Directive 2012/29, as well as in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, aimed at improving the position of victims in the criminal justice system. Special attention is paid to analyzing the position of the injured party in Serbian criminal procedure. The aim of the paper is to explain possible problems arising from certain rules of the Criminal Procedure Code of Serbia, as well as recommendations in the de lege ferenda sense, through which it is possible to relatively easily align Serbia's criminal procedural system with the requirements of the relevant EU Directive 2012/29. The three main requirements regarding the position of the victim in criminal proceedings arising from international and European standards are the removal of identified barriers to victim access to justice, protection of the victim in criminal proceedings, and the need to find a careful balance between the rights of victims and the defendant.

Key words: injured party, victim, victimology, restorative justice, criminal procedure.

INTRODUCTION

The criminal procedural system of Serbia, originating from the tradition of criminal procedural law of the former Yugoslavia, although significantly modified by the Criminal Procedure Code of 2011/2013[1], traditionally recognizes the term "injured party". This broad term "covers" the concept of victim in a broader sense. The injured party has numerous functions in criminal proceedings. In the Serbian Criminal Procedure Code, it is defined very broadly. Such a defined concept of the injured party in the criminal procedure law sense would es-

* PhD, Full Professor at the University of Belgrade – Faculty of Law and Judge of the Constitutional Court of the Republic of Serbia, https://orcid.org/0000-0002-4515-1852. E-mail: skulic@ius.bg.ac.rs.

** PhD, Assistant Professor at the University of Belgrade – Faculty of Law, https://orcid.org/0000-0001-8147-4061. E-mail: ivana.miljus@ius.bg.ac.rs.

[1] Criminal Procedure Code, *Official Gazette of RS*, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 - decision of the Constitutional Court and 62/2021 - decision of the Constitutional Court – CPC

sentially correspond to the concept of victim in the broader sense, which is prevalent in the majority of victimological doctrine, as well as in certain international legal acts and in relevant EU legal sources, such as the definition of victim contained in EU Directive 2012/29.

The criminopolitical reasons for introducing special instruments of criminal protection of injured parties, as well as victims of criminal offences in the criminal law sense, are primarily based on the fundamental idea of criminal law grounded in its dominant protective function. It should be noted here that criminal procedure law can be defined in a functional sense, directly related to its purpose, with immediate reference to the goals of substantive criminal law.

Today, it is common to attribute a utilitarian character to criminal law, with its goal being defined as the effective protection of the most significant goods and values from behaviors that injure or threaten them, hence the assertion that the "protective function of criminal law is its primary and most important function", and that "it is the reason for its existence" (Stojanović, 2020: 65). In order for this fundamental goal of criminal substantive law to be achieved, it is necessary to have legal rules determining the purpose, manner, form, and course of criminal proceedings. When it comes to the protective function of criminal law, it logically primarily concerns the protection of potential/actual victims of criminal offences. It is of particular importance to minimize the secondary victimization of the injured parties in criminal proceedings.

Primarily due to the need to protect certain categories of victims or victims of specific criminal offences, the Criminal Procedure Code of 2011 introduces the status of a especially vulnerable witness, as well as special protective measures that can be ordered in criminal proceedings (See Miljuš, 2022a: 92-96). This category of witnesses primarily includes children, juveniles, elderly individuals, persons with serious serious health impairments, individuals with disabilities, and victims of criminal offences that inherently lead to significant secondary victimization in the proceedings. Scholars and professionals emphasize the need for normative development of these rules in order to effectively protect victims in accordance with international legal and European standards (See: Miljuš, 2022b: 410-412, 414-416).

1. THE BASIC ELEMENTS OF THE VICTIMOLOGICAL APPROACH IN FULFILLING THE PROTECTIVE FUNCTION OF THE CRIMINAL LAW/CRIMINAL PROCEDURAL SYSTEM

Victimology is commonly considered a part of criminology, which specifically focuses on the study of victims of criminal offences. Victims are examined from the perspective of etiology, which is dedicated to analyzing the fundamental factors that act as causes of victimization. Additionally, from the perspective of phenomenology, which is focused on studying the basic manifestations of victimization, defining the types of victims, as well as theoretical explanations and all other relevant phenomenological aspects related to victims of criminal offences. Here, we can also include the criminological perspective on the response of competent state authorities, ranging from the police to judicial bodies, regarding victims of criminal offences.

Although the term had been used earlier[2], such as in the study of "victims of crime" (*Die Lehre vom Verbrechensopfer*), it is considered that the term "victimology" itself was finally "established only from the 1970s" of the 20th century (Neubacher, 2014: 123). In criminology, it is also noted, with the observation that it is not overly significant, that the introduction

[2] Sometimes it is stated that Hans von Hentig used the term "victimology" in a newspaper article in 1934, but this is uncertain, and it seems that the term "victimology" was first used by Mendelsohn in 1947 (According to: Mayenburg, 2009: 128).

of the term "victimology" is generally attributed to Benjamin Mendelsohn, who first used it in 1947. However, there is also an opinion advocated by Fattah that the term "victimology" was first used by Wertham (Newburn, 2007: 344). Under the victimological approach or in general "victimology", it is very briefly explained as the "study of victims of criminal offences", as a group that has been historically neglected by the criminal justice system (Hagan, 2008: 215). Victimology is particularly characterized by specific victimological "typologies", which amounts to defining certain typical categories/types of victims of criminal offences, primarily based on studying specific relationships between offenders and victims (*Täter-Opfer-Beziehung*) (Markus, 2009: 86). The theoretical classification of victims formulated by Mendelsohn, often referred to as the "father of victimology", is considered classic.[3] However, in critically oriented victimological works, there is sometimes expressed a certain skepticism towards such theoretical categorizations of victims, including some of the "classics/pioneers of victimology", such as in Germany, Hans von Hentig. For him, among other things, it is particularly noted: "The criminologist Hentig, born in Berlin in 1888, was both a political and scientific adventurer" (Mayenburg, 2009: 123). It is considered that Hentig's view on the role of the victim in criminal law and criminal procedural law sense was sometimes one-sided, which is particularly illustrated by his statement (in the article "The Victim as Judge") that "the legal order would be on the wrong path if it were to leave the final decision to the feelings of the victim or their legal successors instead of objective assessment". In fact, Hans von Hentig arrived at this conclusion by opposing the death penalty, as during the Weimar Republic, some advocates of "justice for victims", who supported the death penalty in this sense, argued that abandoning such a capital criminal sanction would be a form of humanity towards perpetrators of the most serious crimes, but at the same time, it would be a manifestation of inhumanity towards the victims of such crimes[4]. The fundamental criticism of Hentig boils down to the assertion that some victims of criminal offences contribute to their own victimization in an appropriate manner, i.e., through their own behavior or even "status" (which in itself is inherently very controversial). Particularly contentious is the assertion that "if there are born criminals, then surely there are born victims" which is considered highly controversial.

2. THE MAIN ELEMENTS OF RESTORATIVE JUSTICE

In recent decades, the term "restorativna pravda" has commonly been used, which seems to be a rather literal translation of the "restorative justice". It appears that "restorativno pravosuđe" would be more appropriate than restorativna "pravda" in this context. However, the terminology in this case is not of crucial importance. Namely, the English word "justice" has

[3] Critics of victimological typologies, especially opponents of defining victim categories that are considered "culpable" for the criminal act committed against them or are believed to have contributed to their own victimization, particularly emphasize that Mendelsohn himself was a attorney who often had the role of defence counsel in criminal proceedings. Therefore, it is argued that he acquired a tendency to attribute part of the "blame" ("culpability") to the victims in order to achieve a more successful defense, thus engaging in the "relativization of responsibility of the perpetrators" he defended (Mayenburg, 2009: 144).

[4] Hans von Hentig illustrated this stance with an example from the contemporary German practice when a lover of a second lieutenant's wife attempted to kill him by shooting, but the victim forgave the attempted murder and refused to testify "to the detriment of the perpetrator", which subsequently led to the acquittal of both the immediate perpetrator and the woman as an incitement. The work emphasizes that the primary motive for the specific forgiveness of the victim was that the lieutenant's wife "was both ugly and unusually rich" (Mayenburg, 2009: 131).

multiple meanings, with two primary ones: 1) justice, or fairness, and 2) justice system. In the context of denoting the type or model of procedure being discussed, it refers to the second meaning of this English word. Therefore, the entire model can also be referred to as a model of restorative justice system, whose essence is to create conditions within it, within the framework of criminal proceedings, for the maximal satisfaction of the interests of the injured party/victim of the criminal offence.

The elements of defining "restorative justice" are provided in the meaning of the term ("definitions") in the recent Recommendation of the Committee of Ministers to member States of the Council of Europe on the rights, services, and support to victims of crime from March 15, 2023. It is defined as a procedure ("process") that provides the opportunity for those harmed by criminal offence and those responsible for that harm to actively participate, if they freely consent, in resolving issues arising from the criminal offence, through the help of a trained and impartial third party (Article 1, paragraph 1, point 6 of the Recommendation CM/Rec(2023)2). States are encouraged to stimulate in criminal proceedings that the "perpetrator" compensates the damage resulting from the criminal offence to the victim by determining compensation based on the decision of the public prosecutor in the early stages of the proceedings (preliminary investigation). This would correspond to imposing on the suspect the obligation to compensate for the damage or fulfill other reparative obligations based on the principle of opportunity.[5]

The most comprehensive affirmation of the restorative justice model in some Western European countries has primarily been experienced in proceedings involving juveniles (Škulić, 2011: 133). Additionally, concerning the protection of witnesses/injured parties in criminal proceedings, juveniles fall into the category of especially vulnerable witnesses, who have a special need for protection in criminal proceedings (Stevanović, Vujić, 2020: 105). The restorative justice model is essentially based on a rational, but often overly idealized concept. According to this concept, in every criminal proceeding, especially in proceedings involving juvenile offenders, the primary priority is always the resolution of the conflict between the offender and the victim of the crime in a primarily extrajudicial manner. The primary conflict is resolved in a manner that is not "classical" from the perspective of conventional rules of criminal procedure.

The goal of the restorative justice model is for the offender to be *socially reintegrated*, through measures involving the appropriate participation of the following key stakeholders: 1) victims of the crime, 2) the offender themselves, and 3) the broader societal community. In countries whose legal systems contain strong elements of the restorative justice model and consider such a so-called restorative approach particularly significant, certain specific activities are of particular importance. These may include mediation, or appropriate intervention between the offender and the victim, the implementation of so-called family conferences, as

[5] Additionally, states are encouraged to stimulate the fulfillment of restitution claims for compensation based on a court judgment. Considering that victims face difficulties in enforcing a court decision on restitution claim and that the perpetrator pays the matured claim to them, best practices have been explored. Thus, a situation is highlighted in which the state advances the monetary amount to the victim for compensation and subsequently recovers it from the perpetrator. See: European Committee on Crime Problems (CDPC), Recommendation CM/Rec(2023)2 of the Committee of Ministers to member States on rights, services and support for victims of crime, Explanatory Memorandum, para 99, *https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680aa1f4c*

well as other approaches that involve and imply strengthening the bond between members of the local community (Cavadino, Dignan, 2013: 206-207).

In adversarial criminal proceedings, particularly emphasized are the following positive attributes of mediation: 1. adversarial proceedings often leave one side as the "winner" and the other as the "loser", resulting in a worsened relationship between them, whereas the goal of mediation is to achieve an outcome acceptable to both parties; 2. it is not necessary to establish facts because the aim of mediation is not to assign guilt for the past but to reach agreement on future behavior; 3. the "community" is strengthened by recruiting mediators from the local population (Wright, 1996: 137-138).

According to a relatively recent categorization of types of justice based on their goals and intentions, there are three types of justice: 1. *Retributive justice*, which is grounded in punishment; 2. *Distributive justice*, which is based on therapeutic treatment of the perpetrator of the criminal offence/unlawful act provided under law as a criminal offence; 3. *Restorative justice*, which is based on restitution, involving an appropriate relationship between the victim and the perpetrator of the criminal offence. In fact, these three types or models are not mutually exclusive, but rather they typically exist concurrently in modern criminal justice systems, and sometimes they are even combined. When the victim 's restitution claim is realized in criminal procedure (which is relatively rare in practice, as the defendant is most often referred to civil proceedings), then restorative justice is manifested. Nevertheless, restorative justice effectively predominates when the obligations of a restorative nature are imposed on the suspect as a condition within the principle of conditional opportunity of criminal prosecution, and it is similar with some educational measures when dealing with proceedings involving juveniles.

3. THE TERM "INJURED PARTY" IN THE CRIMINAL PROCEDURE LAW OF THE REPUBLIC OF SERBIA

Criminal Procedure Law in Serbia traditionally, like the majority of other countries in continental Europe, uses the term "injured party". The injured party is a natural or legal person whose personal or property rights have been violated or threatened by the commission of a criminal offence. This is a very broad definition, which is significantly broader than the usual concept of a victim in criminology and partly from the criminal law perspective, or the passive subject in terms of criminal substantive law.

The injured party can appear in several basic procedural roles, which can also be combined. For example, the injured party can be both a potential prosecutor and a witness, and can also file restitution related claims, and similar. In criminal proceedings, the injured party can assume the following procedural roles: 1. *Potential prosecutor* in criminal proceedings for an offence prosecuted *ex officio* and concerning whom the public prosecutor primarily prosecutes; 2. *Subsidiary prosecutor* in criminal proceedings for criminal offences prosecuted *ex officio*; 3. *Injured party with a motion for criminal prosecution* regarding a special category of criminal offences prosecuted *ex officio* and with a motion; 4. *Private prosecutor* in proceedings for criminal offences prosecuted by private lawsuit; 5. *Individual who has filed a restitution claim*; and; 6. *Witness*.

From this, it follows that the term "injured party" is significantly broader than the term "victim of a criminal offence". When the law establishes protection for the injured party in criminal proceedings, it means that a wider/expanded circle of individuals is protected than those who fall exclusively within the category of victims of a criminal offence, or passive subjects of the criminal offence, when it comes to classical criminal law terminology.

4. THE DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER AND IMPLEMENTATION OF LEGAL STANDARDS FROM THE DECLARATION IN THE CRIMINAL PROCEDURE LEGISLATION OF THE REPUBLIC OF SERBIA

Today, in modern criminal procedure, it is almost a trend to provide for special measures for the protection of witnesses and victims (compare with Habel *et al.*: 2002, 117).[6] Although the witness and the victim, i.e., passive subject of the criminal offence, are not always synonymous, it is often the case that the victim (if not eliminated by the committed act) has the role of a witness in the proceedings.

The victim should, in fact, as a rule be a witness in the proceedings, because logically, they possess a series of important insights into the criminal offence and the potential perpetrator, or the person against whom the criminal proceedings are being conducted. When it comes to protecting the injured parties in criminal proceedings, or protecting the victims of criminal offences in general, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which was adopted by United Nations General Assembly Resolution 40/34 on November 29, 1985 holds significant principle importance in the legal system. It essentially, in a fundamentally declarative manner, requests that states incorporate rules into their legal systems, allowing victims of criminal offences and victims of abuse of power to obtain certain rights, such as: 1. defining the victim in a very broad manner; 2. ensuring that the victim has *access to justice* and receives *fair treatment* in criminal proceedings; 3. granting victims the *right to restitution*; 4. granting victims the *right to compensation*; 5. ensuring that victims have *access to legal assistance* in criminal proceedings (Škulić, 2020: 61). The Declaration highlights the victim's right to receive information about their rights in criminal proceedings. The victim has the right to be treated with compassion and to have their dignity respected. Specifically, certain defence rights are restricted in order to minimize discomfort for the victim in criminal proceedings, to protect their privacy if necessary, and to provide protection for the victim from intimidation and retaliation.

The Constitutional Court of the Republic of Serbia interpreted the scope of the right to a fair trial, particularly one of its aspects, the right to trial within a reasonable time, concerning the injured party as subsidiary prosecutor, and the injured party as a potential prosecutor in criminal proceedings. Referring to the case law of the European Court of Human Rights (ECtHR), it concludes that the application is limited to the court's decision on a "civil claim" (Decision of the Constitutional Court of the Republic of Serbia Už 4949/14 from September 29, 2016).[7] The "civil" /restitution claim of the injured party is protected by stipulating in the Criminal Procedure Code the rights of these procedural subjects to submit a motion for realizing a restitution claim in criminal proceedings, which can be realized exclusively based on a court decision in criminal proceedings, exclusively in civil proceedings, or partially in criminal proceedings while the remaining part in civil proceedings. When it comes to criminal offences prosecuted *ex officio*, the

[6] Compare: (Habel, *et al.*: 2002, 117).

[7] It is important to note that in its decisions, the Constitutional Court, referring to the case law of the ECtHR, pointed out that the injured parties do not have a guaranteed right by the Constitution or the law that third parties, against whom a criminal proceeding may be initiated and who are accused, or against whom a criminal complaint has been filed, will subsequently be convicted or that a certain criminal sanction will be imposed on them in the further course of the proceedings.

civil law claim as well as other legitimate interests of the injured party are indirectly protected by establishing the right of the injured party to challenge the decision of the public prosecutor not to prosecute/to abandon further criminal prosecution. This essentially provides the strongest guarantee of the injured party's right to access justice and fair treatment in criminal proceedings. When it comes to certain criminal offences prosecuted upon the motion of the injured party for prosecuting criminal offences, the injured party's motion is both a condition and a procedural prerequisite for initiating criminal proceedings, thus it has both an initiating and sustaining effect on the criminal procedure. However, despite the numerous procedural safeguards provided for the protection of the rights of the injured party in the Criminal Procedure Code, the procedural position of the injured party in criminal proceedings is significantly weakened compared to their procedural position established by previous legal solutions (involvement of the injured party in the procedure of deferring criminal prosecution, in the procedure of deciding on a plea agreement, and the possibility for the injured party to become an authorized prosecutor in the investigation phase and to file an indictment).

It is important to emphasize that there are cases where the Constitutional Court has upheld constitutional appeals of certain categories of injured parties, concluding that the right to a fair trial of the appellants has been violated, especially concerning constitutionally guaranteed rights of children. In one case, the public prosecutor conditioned the suspect, in the context of applying the principle of opportunity, to pay a certain amount of money for the benefit of flood victims, without considering that it would be fairer for that amount to be paid to the injured party, who was a child at the time of the commission of the criminal offence, only twelve years old (See: Constitutional Court, Уж-9956/2016).

Granting victims the right to compensation, which is one segment of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, does not constitute a demand for official compensation for the victim in every case. Namely, for a relative long period of time in victimological-oriented works, there has been insistence on the principle-based regulation of the right to appropriate compensation for victims of criminal offence by the state, rather than merely enabling the victim to seek compensation either through civil proceedings, which is always possible and otherwise governed by general principles of law of obligations, or through a separate procedure (such as the one in our country for realizing restitution claims), which is adhesional in nature with respect to the criminal procedure. However, there are still not many countries where such compensation to victims is allowed, especially not for every type of criminal offence, although there is a general tendency towards this, particularly at the EU level. For example, in Germany since 1985 (last amended in 2009), a special Law on compensation for victims of violent crimes has been in force, enabling compensation for damages to victims in cases where the damage is caused by certain intentional criminal offences and provided that it does not concern damage relating to demage of object. There is a limited amount available for health rehabilitation needs, payment of a pension as a form of compensation, or compensation for heirs due to the death of the deceased (Roxin, Schünemann, 2017: 512).

In Article 1 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, a victim is defined as: "a person who, individually or collectively has suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through an act or omission that constitutes a violation of criminal law within Member States, including those laws proscribing criminal abuse of power". Article 2 of this Declaration then determines that "the term "victim" also encompasses, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. However,

the concept of a victim in the mentioned declaration is still too broad and not entirely adequate in all aspects compared to the usual definition of an injured party in criminal proceedings.

According to the Criminal Procedure Code, one of the basic rights of the injured party is to engage a proxi, which must be an attorney (Article 50, paragraph 1, point 3 of the CPC). The injured party, acting as a subsidiary prosecutor or a private prosecutor, as well as the accused, have the right to legal assistance during criminal proceedings. Subsidiary prosecutor and private prosecutor have parallel right to engage a proxi from amongst attorneys (Article 58, paragraph 1, point 3 of the CPC, Article 64, paragraph 1, point 3 of the CPC) and subsidiary prosecutor has additional right to request the appointment of a proxi (Article 58, paragraphs 3 and 4 of the CPC, and Article 59 of the CPC).

International legal standards emphasize the importance of right to advices in criminal procedure. Advice of rights, according to the Declaration, includes informing victims of their right to seek compensation and their role in the proceedings. It is connected with the right of victims to be informed, which occupies an important place among European legal standards. The Code specifies this right by prescribing the victim's right to be informed about the public prosecutor's decision to abandon charges, followed by instructions on the right to be advised about the possibility of assuming criminal prosecution and representing the charge, as well as the deadline for making a statement. In practice, the private prosecutor is instructed on the content of the private lawsuit within the framework of the court's notice to correct a private lawsuit. The victim, acting as subsidiary prosecutor or private prosecutor, given his/her status of the victim, is instructed on the right to present facts and propose evidence, as well as the right to engage a proxy from amongst attorneys.

Therefore, if the victim is a party in the criminal procedure, the court's activity in maintaining the balance of the parties' procedural positions is directed towards both parties by ensuring equal advices/cautions are provided (assessing throughout the proceedings whether both parties are capable of understanding their procedural rights and duties, as well as the consequences of their omission to perform an procedural action/failure to exercise a right due to ignorance). The Code devotes equal attention to the rights of victims acting as authorized prosecutors as it does to the rights of the defendants. This creates an equally sufficient and adequate opportunity for the victim as an authorized prosecutor and the defendant to realize their interests in the criminal proceedings.

5. POSSIBLE IMPACT OF EU DIRECTIVE 2012/29 ON THE CRIMINAL LAW/ CRIMINAL PROCEDURE SYSTEM OF SERBIA – A SUMMARY OVERVIEW IN TERMS OF DE LEGE LATA AND DE LEGE FERENDA

The Directive of the European Parliament and of the Council 2012/29 of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime, lays down a series of obligations for EU member states concerning the improvement of the position of victims of crime in criminal proceedings. Directive EU 2012/29 is aimed, as its title indicates, at establishing *minimum standards* for the protection of victims of crime at the EU level, both in criminal proceedings and from the perspective of the criminal law system, as well as in the legal system of EU member states in general. By the very fact that we are dealing here only with "minimum standards", it is clear that each EU member state may, within its legal system, provide victims of crime with a higher level of standards if it deems it legitimate and adequate, than those prescribed as minimum in EU Directive 2012/29. It is considered that this Directive, in theoretical terms, represents an "expression of the tendency observed since

the mid-1980s when criminal policy began to move towards the legalization and legitimization of a continuous enhancement of the victim's perspective, which means a constant expansion, or strengthening, of the normative and factual position of the victim, especially in criminal proceedings" (Arnold, 2019: 138).

The essential content of EU Directive 2012/29 is directed towards ensuring that the victim/injured party receives appropriate treatment/status within the criminal law/criminal procedure system. This is primarily manifested through *access to criminal proceedings* and the appropriate position within the criminal proceedings and the legal system in general. This includes the right to relevant information, the right for the victim to receive appropriate factual and legal support in criminal proceedings, as well as the right to respect for the personality of the injured party/victim during the criminal proceedings, from which arise the correlative duties of certain official actors in the criminal proceedings, primarily the public prosecutor, criminal court, and police[8], which are explained by the right "for the victim to understand and to be understood" (Marks, Steffen, 2015: 240). Part of the provisions contained in this Directive relate to elements of so-called restorative justice (See: Škulić, 2015: 529-531). There are still significant differences in this regard among the criminal law systems of EU member states. It can be noted that by the prescribed deadline (Article 27, paragraph 1 of the Directive), which was October 16, 2015, a very small number of EU member states managed to fully harmonize their legislation with the requirements of the Directive. However, this deadline is somewhat "instructive" in character, as the Directive itself (Article 28) stipulates that from October 16, 2017, member states will be obliged to inform the Commission of the measures taken and, from that date, they will have to submit new reports on the "progress" in implementing the rules every three years.

The rules contained in EU directives fall under the so-called "soft European law" (Fletcher, Lööf, Gilmore, 2008: 58-59) when it comes to the legal space outside the EU itself.[9] However, for political reasons, it is expected that even from candidate countries for EU membership, within a foreseeable period and in accordance with specific action plans, their legislation will be harmonized with such rules. This also applies to Serbia, whose legal system, as is generally characteristic of states inheriting the criminal law/criminal procedural tradition of the former SFRY, tends to pay significant attention to the interests of protecting victims of criminal offences. It is necessary, or rather useful (since this is still not a formal obligation of Serbia, which is not an EU member but only a "candidate country"), to introduce certain relevant elements from the Directive 2012/29 EU.

Directive EU 2012/29 is, by definition, "victimological" in nature, which means that its content mainly concerns one of the essential segments or tasks of victimology, namely, "establishing a system of measures to reduce primary and secondary victimization". The Directive fundamentally, in its introductory section, points to the appropriate *ratio legis* for improving the position of victims of crime, particularly highlighting a series of *anti-discriminatory* principles of a fundamental nature. The Directive requires that victims of crime be recognized and treat-

[8] This applies to criminal procedural systems in which the police have the status of a subject in the criminal proceedings or have a relevant role in certain phases of the criminal proceedings, such as in the pre-investigation phase in our country, i.e., before the formal criminal proceedings. However, and according to the logic of things, in all legally regulated states, the police, in the vast majority of cases, are the first to come into contact with the actors of the criminal act, both the perpetrator and the victim/injured party.

[9] This concerns the so-called secondary (derivative) sources of EU law, which include acts prescribed by Article 288 of the Treaty on the Functioning of the European Union.

ed with respect, sensitivity, and professionalism without discrimination of any kind based on any grounds such as race, color, ethnic or social origin, genetic features, language, religion or belief, political or other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status, or health.

In all interactions with the competent authority acting within the framework of criminal proceedings and all services coming into contact with victims, such as victim support services or compensation services, the personal situation and immediate needs of the victim should be taken into account, including age, gender, possible disability, and maturity of victims of crime, while fully respecting their physical, mental, and moral integrity. Victims of crime should be protected from secondary and repeated victimization, intimidation, and retaliation; they should receive appropriate support to facilitate recovery, and they should be granted effective access to justice.

The right to be informed of their rights from the first contact with the competent authority and the specification of the information that the victim should receive (Article 6 of the Directive) holds significant importance in the Directive. It is to a large extent already incorporated into positive criminal procedural law, but not entirely and not in a sufficiently systematic manner. The simplest and most effective solution would be to introduce a separate formal template that would contain all relevant information about the rights available to the injured party/victim in criminal procedure, explained in simple language.

The injured party would receive all relevant information from the first contact with the competent authority, which would typically be the police in the pre-investigation procedure, by being handed a short brochure whose content would be regulated by a subordinate legal act. It is also possible to introduce a separate provision into our Criminal Procedure Code that would systematically enable timely and comprehensive informing of the injured party about their rights, including incorporating some "new" rights contained in EU Directive 2012/29 into the corpus of those rights. Such a provision could have the following content: "*When the criminal complaint is submitted by the injured party, the public prosecutor shall provide the injured party with a written instruction explaining the rights and duties of the injured party in criminal proceedings, the detailed content of which is regulated by the act of the minister responsible for justice affairs*". This rule would aim to fulfill the rights of the injured party in criminal proceedings and would meet the standard of *ex officio* delivery of instructions to the injured party from the moment of the first contact with the authority conducting proceedings. It is tied to the earliest phase of the procedure, when the public prosecutor receives the criminal complaint from the injured party in one of the manners provided by the Code (in writing, orally, electronically). Additionally, it represents a significant normative guarantee for meeting the standard of informing the victim without undue delay.

It is necessary to introduce new normative content within Article 50 of the CPC (or by formulating a separate new article of the Code), specifying the rights of the injured party in criminal proceedings. It should establish the right of the injured party to receive written instructions from the authority conducting proceedings explaining the rights and duties of the injred party in criminal proceedings, the detailed content of which is regulated by the act of the minister responsible for justice affairs. The content of the written instructions would be the same in both situations (i.e., regardless of the phase of the criminal proceedings in which it would be provided), and it would be determined by a subordinate legal act issued by the minister responsible for justice affairs. The instructions would entail listing and briefly explaining all the rights that the injred party has in criminal proceedings, as well as certain duties, especially when acting as a witness. This would be explained in a manner understandable to a layperson.

The instructions would contain the following basic information: 1) *a set of all rights and duties that the injured party/victim has in accordance with the provisions of the CPC, or other laws,* in the case of juveniles, or participants in protection programs[10]; as well as 2) *a set of specific rights that the injured party/victim should have in accordance with the Directive* (Article 3), including the following rights: a) basic information about accessing medical assistance, specialist support, including psychological support, as well as information about the possibilities of necessary accommodation, if required by the injured party; b) notices about the possibilities of obtaining protection and the conditions under which it can be obtained; c) information about the conditions and possibilities of obtaining free legal aid; d) notification about the procedures for obtaining compensation for the committed criminal offence and the services dealing with these matters (this notification actually falls within the previous corpus of procedural rights, i.e., concerns the possibility of enforcing restitution claims in criminal proceedings), but it is also of broader significance, considering the possibility of establishing a victim compensation fund, which should be pursued in the future; e) information about the possibility of translation, if the injured party/victim does not speak or understand the language of the proceedings; and f) providing necessary data enabling the injured party/victim to have insight into their case.

It should be included in a relevant source of our law, primarily referring to the Criminal Procedure Code, as well as the Law on Execution of Criminal Sanctions, rules regarding the official notification of the victim/injured party about the flight/escape of the defendant/convicted person, and defining a specific exception in accordance with the rules contained in EU Directive 2012/29. This would be reduced to the following normative content: "*The injured party of a sexual criminal offence or another criminal offence with the element of coercion or abuse, who requests it, has the right to be informed about the flight of the suspect remanded in custody in pre-investigation or about the flight of the defendant to whom detention is ordered, as well as about the escape of the convicted person serving custodial criminal sanctions*".[11] Furthermore, it should be specifically stipulated that if the injured party is a minor, such a request shall be submitted to the authority conducting proceedings by the legal representative of the injured party or the guardianship authority. In addition, an appropriate exception should be prescribed here in relation to this general right of the injured party, which could be imple-

[10] This includes primarily all rights that the injured party has in accordance with the provisions of the CPC and other relevant laws, which would be listed in the Instructions in an appropriate language. From the perspective of the Directive, there is a special importance placed on issues such as the manner of filing a criminal complaint, procedural costs, provision of translation, and the issues concerning procedural and factual protection of witnesses.

[11] Recommendation CM/Rec(2023)2 of the Committee of Ministers on rights, services and support for victims of crime within the framework of victims' rights highlights the recommendation to provide victims with the opportunity to be promptly informed, at least upon their own request, "when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released or escapes from detention". The scope of application is broadly defined. It is not limited to specific nature of criminal offences or a certain category of criminal offences. Notification applies to any case where there is an assessment of danger to victims or an identified risk of harm to them. In addition to assessing the risk to the victim, before making a decision on notification, there is a need to identify the potential risk to the "perpetrator" arising from this notification. Furthermore, the subject of the notification also pertains to relevant measures for their protection. Encouragement is given to allowing the victim to express their opinion/stance on protective measures. The duty to provide information, beyond request, concerns determining the threat of immediate harm to the victim.

mented in the CPC, with a provision of the following content: „*Exceptionally, the authority conducting proceedings shall reject the request of the injured party under paragraph 1 of this Article when it assesses that otherwise an immediate danger to the life or body of the accused or convicted person, or persons close to them, would arise*".

It would be necessary to introduce a specific provision in the Criminal Procedure Code which, in line with the rules of EU Directive 2012/29, would enable the notification of certain categories of injured parties/victims about the release of the convicted person serving a custodial criminal sanction, typically imprisonment, which would be reduced to the following normative content: „*If the accused, who has been found guilty of a sexual criminal offence or another criminal offence with the element of coercion or abuse, has been sentenced to imprisonment, the president of the panel or the individual judge shall, upon the request of the injured party, as well as ex officio when deemed necessary for the protection of the injured party against whom the criminal offence was committed, include in the sentence the requirement that the injured party be informed of the release of the convicted person*". Besides this provision, which would be contained in paragraph 1 of the new article of the CPC, it would be necessary to formulate an appropriate exception regarding this rule, which could be done as follows: „*Exceptionally, regarding the rule from paragraph 1 of this article, the request of the victim shall be rejected when it is assessed that otherwise an immediate danger to the life or body of the convicted person or persons close to them would arise*."

6. DE LEGE FERENDA RECOMMENDATIONS AND FUNDAMENTAL AMBIGUITIES IN THE DOMAIN OF CRIMINAL PROCEDURAL PROTECTION AND STRENGTHENING THE PROCEDURAL POSITION OF THE INJURED PARTY

When it comes to the Criminal Procedure Code, which is undoubtedly the key law in the field of injured party/victim protection, it is primarily necessary to eliminate certain elements of the adversarial criminal procedure, which generally have a negative impact on the position of the injured party of a criminal offence, especially certain categories of injured parties, such as children and minors in general. This primarily concerns the elimination of certain anomalies in the system of direct and cross-examination of witnesses, especially when dealing with especially vulnerable witnesses (where, of course, the importance of injured parties/victims of criminal offences is emphasized), and when children and minors are witnesses.

The enhancement of protection for especially vulnerable witnesses, along with guarantees of the realization of the principles of immediacy in evidence presentation and the right to defense, can be observed through three main potential directions of development of criminal procedural legislation: 1. *introducing a judicial evidence hearing* during the investigation for the examination of especially vulnerable witnesses, during which these witnesses will be examined with special care and thoroughness, with audio-video recording; 2. *further regulation of the use of technical devices for transmitting images and sound* during the questioning of especially vulnerable witnesses (conditions for questioning, absence of defense subjects in the same room, questioning procedures, regulation of recording of this questioning, as needed) (see: Škulić, Miljuš, 2021: 152-156); 3. *the explicit exclusion of confrontation between especially vulnerable witnesses and the defendants* in court[12], cross-examination and leading questions; 4. *limiting the number of hearings of minor victims* of specific criminal offences.

[12] According to the CPC, the possibility of confrontation between an especially vulnerable witness and

Additionally, the literature emphasizes the need for explicit formulation of the prosecutor's duty to, regarding the deferring of criminal prosecution, evaluate the interests of the injured party, determining the fulfillment of one/more obligations by the suspect, and prescribing informing the injured party about the hearing for deciding on the plea agreement (Miljuš, 2023: 540).

The Constitutional Court considered the issue of adequacy of restrictions on the right of the injured party to prosecute – legal provisions introducing a novelty in the manner of realizing the right of the injured party to review the decision of the public prosecutor not to prosecute/discontinue further criminal proceedings before the confirmation of the indictment through the right of the injured party to object to the immediately higher public prosecutor against the decision of the public prosecutor pursuant to Article 51 of the CPC. Furthermore, it considered whether the objection is a legal remedy and an effective legal remedy. In the normative practice of the Constitutional Court, we highlight one example and the dissenting opinion of the author of the article, as a judge of the Constitutional Court, regarding the specific decision of the Court (See: Decision of the Constitutional Court of the Republic of Serbia ІУз-62/2018 from April 18, 2019).

The rights and position of the injured party are considered with regard to the legal norms of the CPC – in their entirety. The injured party is treated as an active participant in the proceedings, and a "series of new rights and guarantees" are prescribed to them, "regardless of whether they have the status of subsidiary prosecutor", which is why it is found that claims that the rights of the injured party previously prescribed have been diminished by the provisions on objection are unfounded. When it comes to the right to judicial protection, it is emphasized that restitution claims can be realized in civil proceedings, based on the principles of civil liability, which is broader than criminal liability, and that in civil proceedings, "privileged deadlines for the realization of restitution claims' are provided". It is not interpreted that the "right of the injured party to prosecute the perpetrator of a criminal offence" is a constitutional guarantee of the right to a fair trial. The right to a fair trial is not linked to any right or protection of the injured party, even in a specific, limited manner and indirectly, in terms of interpreting the right to a fair trial from the practice of the European Court of Human Rights. It is concluded that the right to a fair trial does not directly relate to the injured party, but to the accused, and therefore the assessment of a possible violation of the injured party's right to access to court is not analyzed in a separate, specific manner.

In the dissenting opinion, it is noted that it is not contrary to the public-prosecutorial concept of investigation to enable the injured party to lodge a legal remedy to the court against the decision manifesting the prosecutor's abandonment of prosecution and the court's role in protecting the rights of the injured party. The *ratio legis* in regulating the possibility for the injured party to prosecute under certain conditions is "a certain 'correction' regarding the function of

---

the defendant is not absolutely excluded. This is contrary to the fundamental measure for the protection of an especially vulnerable witness – questioning the witness through the court. As a rule, confrontation is not allowed, but an exception allows the court, upon the request of the defendant, to permit it, considering the vulnarability of the witness and taking into account the rights of defense (Article 104 paragraph 4 of the CPC), which has been disputed in our legal theory when it comes to this category of witnesses. Confrontation has an 'inherently conflicting character' and it 'intentionally creates a certain "conflict" among providers of opposing statements, so that under the influence of such created psychological pressure, the one who gives a false or inaccurate statement corrects their testimony (See: Škulić, 2011: 358).

criminal prosecution" by the public prosecutor and it simultaneously provides integrity to the public prosecutor. It is legitimate to appropriately limit the possibility and right of the injured party to become a subsidiary prosecutor, due to the subjectivity emphasized in practice. However, it is necessary for the limitations to be adequate and constitutionally acceptable. The Constitution provides the injured party with a certain implicit guarantee of criminal prosecution of individuals for criminal offences prosecuted *ex officio*, specified by provisions establishing the principle of legality of official criminal prosecution. Thus, the injured party is essentially ensured the right to judicial protection, which is conditioned by the stance of the public prosecutor. It is explained that the right of access to court needs to be analyzed in connection with the right to a legal remedy of the injured party, as they are directly linked. The right to a legal remedy of the injured party arises from Article 36 paragraph 2 of the Constitution. The objection is regarded as a "type of specific initiative by the injured party to the higher public prosecutor". It is not "realistic" nor effective legal remedy, as follows from: 1. "the rights and duties of the higher public prosecutor to exercise hierarchical supervision", unrelated to the objection of the injured party; 2. the disputed impartiality of the higher public prosecutor in decision-making;[13] 3. the instructive nature of the public prosecutors' duty to inform the injured party that he is not prosecuting/discontinuing prosecution; 4. failure to inform the injured party by the public prosecutor about the reasons for the decision. It is concluded that considering the above, "the objection neither has the character of a legal remedy nor can it be considered effective".

In this context, it is important to bear in mind that according to the Recommendation of the CM to member states of the Council of Europe on the rights, services and support for victims of crime, Article 10 paragraph 5e, states are encouraged to ensure that the right of the victim to express their views encompasses "any decision which may be presumed to have a significant impact on the interests of the victims", and this encouragement applies to the decision not to initiate criminal proceedings against the "perpetrator" and the decision on awarding compensation to the victim during the course of criminal proceedings.

CONCLUSION

Positive criminal procedural law in Serbia still pays considerable attention to the position of the injured party in criminal proceedings and the affirmation of their interests in criminal procedure, although the rights of the injured party have been unnecessarily restricted in terms of the possibility of becoming a subsidiary prosecutor, which is contrary to our criminal procedural tradition. It should be noted that in many countries, there is not even the possibility for the injured party to become an authorized (subsidiary) prosecutor, nor is such a requirement contained in any international source of law, "European standards", etc.

The concept of the injured party in the Criminal Procedure Code is formulated very broadly. Such breadth enables effective protection in criminal proceedings for a wide range of individuals who have been directly or indirectly "affected" by the committed criminal offence.

[13] It is explained that it is possible to imagine a situation in which the lower public prosecutor consulted with the immediate superior public prosecutor before making a decision, who agreed with his decision not to prosecute/discontinue prosecution of the suspect, or that precisely the immediate superior public prosecutor ordered the lower public prosecutor not to prosecute/discontinue prosecution before the indictment is confirmed. In general, the impartiality of the higher public prosecutor in deciding on the objection is questioned, because it would mean that he "indirectly" acknowledges his failure in hierarchical supervision (See: Decision of the Constitutional Court of the Republic of Serbia ИУз-62/2018 from April 18, 2019).

Therefore, there is no need to introduce the term "victim" separately in criminal proceedings, which would encompass individuals who are (also) passive subjects of the criminal offence, because if only that category of injured parties were specifically protected, it would then imply that other categories of injured parties could no longer be protected in the same way. This would practically mean narrowing the rights of that category of individuals, which would be very detrimental, especially when it comes to injured parties who belong to vulnerable categories, such as minors, pregnant women, persons with disabilities, etc.

When considering the issues of restorative justice and the corresponding standards that indicate the need to improve the position of the victim/injured party, it is sometimes overlooked that the entire concept of restorative justice, and subsequently derived standards regarding the protection of victims of criminal offences, originated in Anglo-Saxon doctrine and in the conditions of classical adversarial criminal procedure, which traditionally viewed the victim almost exclusively as a witness, so that no special rights to the victim in the criminal proceedings themselves are given by procedural rules.

The essence of the adversarial type of procedure lies in a unique "evidentiary duel" between the parties before a evidentially passive court – a jury that needs to be "impressed" and a professional judge who focuses solely on creating conditions for a *fair trial* and respecting procedural rules. It is absolutely inconceivable that evidence in such proceedings is presented by anyone other than the parties themselves, so that the victim in this type of criminal procedure can only and exclusively be a witness. In the classical adversarial criminal procedure, it is completely inconceivable for the victim to directly exercises evidentiary initiative and activity in the criminal proceedings, for example, by questioning other witnesses, proposing evidence, exercising other forms of procedural initiative, filing restitution claims, etc., which has always been possible when it comes to the victim in Serbia, or in the former Yugoslavia.

In traditional adversarial criminal proceedings, the victim could only seek eventual compensation in a classic civil litigation, during the criminal proceedings or after its conclusion. However, it is essential to consider the crucial fact that in most countries belonging to the Anglo-Saxon legal world, particularly the United States, conducting a civil litigation is exceedingly expensive. The victim must finance it themselves by paying for legal representation. In these countries, there is generally no rule that the losing party in the litigation bears the costs of the opposing party. Almost exclusively, except for certain rare exceptions, each party bears their own costs.14 This essentially was the main reason for the development of the "mediation movement" in those countries because there, conducting civil litigation is so expensive for the majority of average citizens that they give up on initiating them from the start. This ultimately led to the emergence of special funds in some countries for compensating victims of criminal offences, official compensation, etc., which, of course, is all good in itself. However, the fact remains that today there is no state that always and absolutely compensates victims. Therefore, the basic idea is to take certain measures to achieve what is realistically possible on that front.

[14] In theory, it is emphasized that "in the USA, it is generally recognized that the absence of a cost-compensation system entails deficiencies and abuse", so "the introduction of such a system is being considered", but now "since as a rule, there is no cost compensation, winning in the process is in some smaller cases a Pyrrhic victory", so for example: "A judgment of $10,000 associated with attorney fees of $10,000 is obviously not worth the effort", and in practice, it is considered that "depending on the region of the court and the difficulties in evidence in a particular case, there is a lower limit of the cost-effectiveness of a lawsuit , which "probably ranges between $10,000 and $100,000" (See: Maxeiner, 2018: 19).

The injured party in the criminal procedure in Serbia, as it is in the majority of continental-European criminal procedural systems, is not just a witness but rather performs a whole range of procedural functions. Although the realization of restitution claims in criminal proceedings is not ideal in practice, such a right has always existed and has its purpose, just as subsequently initiating civil proceedings, for the injured party, is incomparably simpler in Serbia than, for example, in the USA and in most countries belonging to the Anglo-Saxon legal world. This is a good "legacy" of our earlier multi-decade criminal procedure. Therefore, these achievements of our criminal procedural system, as well as the legal system in general, need to be consistently preserved and further developed.

In line with the previously detailed suggestions and proposals in the *de lege ferenda* sense, it is possible to relatively easily align the criminal law/criminal procedure system of Serbia with the requirements of the relevant EU Directive 2012/29. This would be important for principled reasons, as both Serbia and former Yugoslavia have traditionally paid significant attention to the protection and affirmation of the position of the injured party in criminal proceedings through their legislative solutions.

LITERATURE

Arnold, J. (2019) *Entwicklungen der Strafverteidgung.* Rechtsgeschichte und Rechtsgeschehen, Paperback Bd. 3, Berlin: Lit Verlag.

Cavadino, M., Dignan, J. (2013) *Understanding Crime and Social Policy.* London: Policy Press

Fletcher, M., Lööf, R., Gilmore, B. (2008) *EU Criminal Law and Justice.* Cheltenham UK: Elgar European Law.

Habel, U. *et al.* (2002) Prävention sekundärer Traumatisierungen bei Opferzeugen. U: Barton, S. (Hrsg.), *Verfahrensrechtigkeit und Zeugenbeweis*. Baden-Baden: Nomos Verlagsgesellschaft, Baden-Baden, str. 117-128.

Hagan, F. E. (2008) *Introduction to Criminology – Theories, Methods and Criminal Behavior.* 6th Edition. Thousand Oaks: Sage Publications.

Marks, E., Steffen, W. (Hrsg.) (2015) *Prävention rechnet sich. Zur Ökonomie der Kriminalpröventi-on,* Mönchengladbach: Forum Verlag Godesberg.

Markus, M. (2009) *Stalking – Phänomenologie und strafrechtliche Relevanz*. Baden-Baden: Nomos.

Maxeiner, J. (2018) Opasnost prenošenja nemačkog pravnog razmišljanja na američki (SAD) parnični postupak. *Kontinentalno pravo – časopis za održiv i skladan razvoj prava – KoPra, Kontinentales Recht – Zeitschrift für nachhaltige und zweckmäßige Rechtsentwicklung*, Stiftung für rechtliche Zusammenarbeit – IRZ, no. 2, str. 13-20.

Mayenburg, D. (2009) „Geborene Opfer" – Bausteine für eine Geschichte der Viktimilogie – Das Beispiel Hans von Hentig. *Rechtsgeschichte – Zeitschrift des Max-Planck-Institut für Europäische Rechtsgeschichte*, Rg 14, str. 122-147.

Miljuš, I. (2022) „Audio -video link kao sredstvo zaštite posebno osetljivog svedoka i faktor uravnoteženja položaja okrivljenog", *Revija za kriminologiju i krivično pravo*. Srpsko udruženje za krivičnopravnu teoriju i praksu – Institut za kriminološka i sociološka istraživanja, no. 2, 77-104.

Miljuš, I. (2022) *Načelo jednakosti „oružja" u krivičnom postupku.* Beograd: Univerzitet u Beogradu – Pravni fakultet

Miljuš, I. (2023) Načelo oportuniteta krivičnog gonjenja i druge pojednostavljene forme postupanja (iskustva i pouke dosadašnje primene). U: Turanjanin, V., Čvorović, D. (ur.) *Dve decenije reforme kaznenog zakonodavstva: iskustva i pouke*. LXII redovno godišnje savetovanje Srpskog

udruženja za krivičnopravnu teoriju i praksu, Zlatibor – Beograd: Srpsko udruženje za krivičnopravnu teoriju i praksu – Intermex, str. 518-543.

Neubacher, F. (2014) *Kriminologie.* 2. Auflage. Baden-Baden: Nomos.

Newburn, T. (2007) *Criminology*. London: Willan Publishing.

Roxin, C., Schünemann, B. (2017) *Strafverfahrensrecht*. 29. Auflage, München: C.H. Beck

Stevanović, I., Vujić, N. (2020) Maloletno lice i druge posebno osetljive kategorije žrtava krivičnih dela (međunarodni pravni standardi i krivično procesno zakonodavstvo Srbije. U: Bejatović, S. (ur.) Žrtva krivičnog dela i krivičnopravni instrumenti zaštite – međunarodni pravni standardi, regionalna krivična zakonodavstva i mere unapređenja zaštite, Beograd: Misija OEBS-a u Srbiji, str. 95-106.

Stojanović, Z. (2020) *Krivično pravo – opšti deo.* Beograd: Pravni fakultet Univerziteta u Beogradu.

Škulić, M. (2011) *Maloletničko krivično pravo*. Beograd: Pravni fakultet Univerziteta u Beogradu – Službeni glasnik.

Škulić, M. (2015) National Report – Serbia. U: Dünkel, F., Grzywa-Holten, J., Horsfield, P. (eds.) *Restorative Justice and Mediation in Penal Matters – A stock-taking of legal issues implementation strategies and outcomes in 36 European countries,* Schriften zum Strafvolzug, Jugendstrafrecht und zur Kriminologie, Vol. 2, Band 50/2. Greifswald: Forum Verlag Godesberg, str. 529-549.

Škulić, M. (2020) Krivičnoprocesno zakonodavstvo Srbije i žrtva krivičnog dela (Direktiva 2012/29 EU) i drugi međunarodnopravni standardi – stepen usaglašenosti, iskustva primene i mere unapređenja, regionalna konferencija OEBS-a. U: Bejatović, S. (ur.) Žrtva krivičnog dela i krivičnopravni instrumenti zaštite – međunarodni pravni standardi, regionalna krivična zakonodavstva i mere unapređenja zaštite. Beograd: Misija OEBS-a u Srbiji, str. 55-78.

Škulić, M., Miljuš, I. (2021) Učešće procesnih subjekata u krivičnom postupku putem tehničkih sredstava za prenos slike i zvuka. U: Simović M. N. (ur.) *Adekvatnost državne reakcije na kriminalitet i upotreba tehničkih sredstava u krivičnom postupku*, Dvanaesta međunarodna naučno-stručna konferencija, Bijeljina: Srpsko udruženje za krivičnopravnu teoriju i praksu – Centar za edukaciju sudija i tužilaca Republike Srpske, str. 137-177.

Wright, M. (1996) *Justice for Victims and Offenders A Restorative Response to Crime*, Winchester: Waterside press

INTERNET SOURCES

European Committee on Crime Problems (CDPC), Recommendation CM/Rec(2023)2 of the Committee of Ministers to member States on rights, services and support for victims of crime, Explanatory Memorandum,
https://search.coe.int/cm/Pages/result_details.spx?ObjectID=0900001680aa1f4c

LEGAL SOURCES

Criminal Procedure Code of Republic of Serbia of 2011, *Official Gazette of RS*, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 - decision of the Constitutional Court and 62/2021 - decision of the Constitutional Court

Recommendation of the Committee of Ministers to member States of the Council of Europe on the rights, services, and support to victims of crime from March 15, 2023

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

The Directive of the European Parliament and of the Council 2012/29 of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime

CASE LAW OF THE CONSTITUTIONAL COURT

Decision of the Constitutional Court of the Republic of Serbia Už 4949/14 from September 29, 2016

Decision of the Constitutional Court of the Republic of Serbia IУз-62/2018 from April 18, 2019

Decision of the Constitutional Court of the Republic of Serbia, Už 9956/16

Marina MATIĆ BOŠKOVIĆ*
Teresa RUSSO**

Original Scientific Paper
DOI: 10.47152/Palic2024.2

NOVELTIES PROPOSED BY THE EUROPEAN COMMISSION ON VICTIMS' RIGHTS PROTECTION AND ITS RELEVANCE FOR SERBIAN AUTHORITIES

Abstract: An estimated 75 million people in the European Union fall victim to crime every year reflects the significant impact of criminal activities on considerable portion of the population. Crime victims may experience a range of physical, emotional, and financial consequences, underscoring the importance of effective legal frameworks, support services, and policies to address their needs. The protection of victims' rights is a crucial aspect of the criminal justice system in the EU. The EU has taken steps to enhance the right and protection of victims through initiatives such as the Victims' Rights Directive and the EU Strategy on Victims' Rights. The Victims' Rights Directive, adopted in 2012, establishes minimum standards for the rights, support, and protection of victims of crime across the EU. The Directive aims to ensure that victims are recognized, treated with respect, and have access to information, support services, and fair treatment throughout the criminal justice process. In June 2022, the European Commission conducted and evaluation of the Victims' Rights Directive as part of its commitment outlined in the EU Strategy on Victims' Rights 2020-2025. The Strategy focuses on enhancing victims' rights, ensuring their effective implementation, and addressing emerging challenges in this area. Following the evaluation, on July 12, 2023, the European Commission proposed amendments to the Victims' Rights Directive. The objective of the revision is to contribute to a well-functioning area of freedom, security, and justice, emphasizing efficient recognition of judgements, improved crime reporting, and victim-centered justice, including the improved access to compensation from the offender. In the article the evolution of victim protection in European Union law, the impact of the Victims' Rights Directive, as well as proposed amendments to the Directive will be assessed. Since, Serbia is in the EU accession process and aligning of the national framework with the EU acquis, the article will focus on implications of proposed amendments on Serbian policy and legislation. The proposed amendments will be analyzed against National Strategy on the Rights of Victims and Witnesses of Crime in the Republic of Serbia and accompanying Action plan for 2023-2025 and its implementation results, highlighting some criticisms of the new directive's proposal also raised by some Member States.

Key words: victims' rights, protection, access to compensation, victim-centered justice

* PhD, Senior Research Fellow, Institute for Criminological and Sociological Research in Belgrade, https://orcid.org/0000-0003-1359-0276. E-mail: maticmarina77@yahoo.com. The current paper is part of a research endeavor funded by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia, conducted by the Institute of Criminological and Sociological Research, 2024, number 451-03-66/2024-03/200039.

** PhD, Department of Legal Sciences (School of Law), University of Salerno in Italy. E-mail: trusso@unids.it. Author of paragraphs 2 and 6.

1. INTRODUCTION

Historically, international law has paid little attention to the needs of crime victims, or crime in general. The unique nature of international law can help to explain this. As is well known, and as a result of the international community's predominantly interstate structure, international norms are developed to address state interests and objectives. In this context, states' attention to persons or individuals has been limited to specific areas of international law. This is true, for example, of human rights, international criminal law (in terms of individual criminal responsibility), and international humanitarian law. However, the treatment of victims appears to differ across these branches. Thus, in terms of fundamental human rights, victims are recognised when a state violates an international obligation; however, this branch of international law does not consider violations of international obligations by non-state actors. Individuals can be considered victims in international criminal and humanitarian law as a result of acts committed by other individuals (including those performing public functions) and non-state actors. In both cases, international responsibility is solely on individuals, and the victims are identified as such. As a result, despite the importance of the topic, international standards have ignored or failed to adequately consider the victims.

Therefore, the recognition and protection of victims' rights in international law have seen significant developments since the 1980s (Braun, 2019: 2).[1] The focus on victims' rights is crucial for ensuring a fair and just criminal justice system that recognizes and addresses the needs of those who suffered harm.[2] The challenge lies in translating these international norms into national laws and practices (Holm, 2022: 529). Different countries may implement these norms in various ways based on their legal traditions and systems (Groenhuijsen, 2013: 32).

While the European Commission states that an estimated 15 percent of Europeans, or 75 million people of the European Union,3 fall victim to crime every year, it does not provide specific details about the nature of the crimes or the experiences of the victims. In the context

[1] United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985). This Declaration contains several concepts of 'victim' (Arts. 1 and 18), as well as a list of rights to which victims are entitled, primarily the right to access justice and fair treatment, which is linked to reparation (specifically Art. 12-13), as well as the establishment and strengthening of judicial and administrative mechanisms to enable victims to obtain redress (Arts. 4–7). See, also, more recently the UN Commission on Human Rights Resolution 2005/35 of April 19, 2005, which establishes 'Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law'. There is still no general international treaty on victims. In fact, there is only one treaty on victims within the framework of the United Nations relating specifically to victims of enforced disappearance - in force since 23 December 2010 - namely the 2006 International Convention for the Protection of All Persons from Enforced Disappearance.

[2] These rights are found in all general human rights treaties: European Convention on Human Rights from 1950, International Covenant on Civil and Political Rights adopted in 1966, American Convention on Human Rights adopted in 1969 and African Charter on Human and Peoples Rights from 1981. In the Council of Europe 's system, victims' right to access justice has not always been considered compatible with the guarantee of defendants' rights, and only recently has this right been recognised as having the same legitimacy as defendants' rights.

[3] See: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/victims-rights-eu_en.

of the European Union, victims of crime are generally defined as individuals who have suffered harm, including physical or mental injury, emotional distress, or financial loss, as direct result of criminal offenses.

The experience and needs of victims can vary widely depending on the type of crimes, the circumstances, and the effectiveness of support and justice systems in place. Victim support services, legal assistance, counseling, and protection measures are crucial components of addressing the needs of crime victims and ensuring their rights are expected.

The European Union has embarked on a long path from the 2001 Framework Decision to the measures and directives in place, to enhance the rights, support, and protection of victims of crime across member states and to establish common standards. These measures aim to provide a more victim-centric approach to justice and support system. In the primary legislation, Article 47 of the Charter of Fundamental Rights of the European Union, is a significant provision that addresses the rights of victims in the context of criminal proceedings. Article 47 of the Charter underscores the principles of fairness, access to justice, and effective remedies for individuals involved in legal proceedings, including victims of crime. It reflects commitment of the EU to upholding fundamental rights and ensuring the victims are treated with dignity and respect within the criminal justice system.

However, the EU Commission wanted to revise the 2012 Directive after discovering flaws in its practical implementation. Although it improved the victim safety framework overall, the Commission's evaluation revealed specific issues with each of the rights in the 2012 directive that require targeted improvements, such as a lack of clarity and precision regarding the rights formulated in the directive and a large margin for flexibility in transposition by Member States.

In the context of Serbia, EU victims' rights legal framework is important for Serbia's EU accession process. In March 2012, the European Council granted Serbia the status of a candidate country,4 and the initiation of Serbia's accession negotiations in January 2014 intensified efforts to align national legislation with EU *acquis*. According the 2013 Screening report for Chapter 23, Serbia needs to implement measures to align legislation and practice with the Victims' Rights Directive (Kolaković-Bojović, 2020: 42). Specifically, Serbia needs to improve the position of victims, including increasing the quality and scope of support for victims, improving services and support networks across the country to assist victim and witnesses during all stages of criminal proceedings, and improvement of the position of particularly sensitive categories of victims.[5] As a response to the Screening report, the Government of Serbia adopted Action plan for Chapter 23 in April 2016 which incorporated whole set of activities with the aim to strengthen victims' status and position.[6]

Novelties in the regulation of victims' rights proposed by the European Commission will be assessed against Serbian legislative and policy framework, with the aim to identify areas that need to be improved to ensure full alignment with the EU acquis.

---

[4] European Commission, Commission Opinion on Serbia's application for membership of the European Union, Brussels, COM (2011) 668, 12 October 2011.

[5] Full Report is available at: https://www.mpravde.gov.rs/files/Screening-report-chapter-23-serbia%20Official%20(3)%201.pdf.

[6] 2016 Action plan for Chapter 23 and 2020 Revised Action plan for Chapter 23 are available at: https://mpravde.gov.rs/tekst/30402/revidirani-akcioni-plan-za-poglavlje-23-i-strategija-razvoja-pravosudja-za-period-2020-2025-22072020.php.

2. A LOOK AT THE FIRST MEASURES ADOPTED IN THIS FIELD

Within the EU legal order, the protection of victims can generally be traced back to the rulings of the Court of Justice that have led to the progressive affirmation of the protection of fundamental rights in the EU legal order, as well as of the victims' rights.[7] Article 47 of the Charter of Fundamental Rights not only recognises the fundamental right of victims to access the justice system for the protection of all their rights, but also places an obligation on the Member States to ensure effective judicial protection of those rights at national level. Moreover, thanks to the principle of effectiveness, the Court of Justice had already extensively established that national law must not make it impossible or excessively difficult to apply rights derived from Union law. However, legislation specifically dedicated to victims was adopted with the Council Framework Decision (2001/220/JHA) of 15 March 2001 on the standing of victims in criminal proceedings,[8] and then with Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.[9]

Council Framework Decision 2001/220/JHA of 15 March 2001 was adopted under the then Title VI of the Treaty on European Union (TEU) 'Provisions on police and judicial cooperation in criminal matters' (now Title V, Chapter 4 TFEU) and is no longer in force, having been replaced by Directive 2012/29 (Peloso, 2016; Diamante, 2016; Conigliaro 2012; Allegrezza, 2015) with the main aim of consolidating the protection granted to the offended person 'in the process' and 'from the process'. The most obvious limitation of the Framework Decision was that it could not produce direct effects. Consequently, all Member States were obliged to take all necessary national measures to make the victim's position in criminal proceedings effective. Moreover, the Framework Decision had a 'narrow' interpretation of the notion of victim, not including family members in the event of the victim's death, contrary to the case law of the Strasbourg Court[10]. However, the Framework Decision gave priority to vulnerable persons and, thanks to the interpretation of the Court of Justice, imposed an obligation of conformity interpretation on national courts (Cherubini, 2006: 157).[11] In addition, it also

---

[7] Judgment of the Court of 2 February 1989, *Ian William Cowan v Trésor public*, Case 186/87, par. 17. "[…] That reasoning cannot be accepted. When Community law guarantees a natural person the freedom to go to another Member State the protection of that person from harm in the Member State in question, on the same basis as that of nationals and persons residing there, is a corollary of that freedom of movement. It follows that the prohibition of discrimination is applicable to recipients of services within the meaning of the Treaty as regards protection against the risk of assault and the right to obtain financial compensation provided for by national law when that risk materializes […]".

[8] 2001/220/JHA: Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, OJ L 82, 22.3.2001, p. 1–4.

[9] Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ L 261, 6.8.2004, p. 15–18.

[10] This definition was contrary to the caselaw of the ECHR, which instead accepts a 'broad' interpretation of the notion of victim. So much so that the Court also accepts that close relatives of persons who have died for reasons other than natural causes may invoke the rights guaranteed in Article 2. It is similarly towards relatives when a person is subjected to ill-treatment contrary to Article 3 or is deprived of liberty in violation of Article 5 ECHR.

[11] See judgment of the Court (Grand Chamber) of 16 June 2005, *Criminal proceedings against Maria Pupino*, Case C-105/03. Ms Pupino, a kindergarten teacher, was accused of inflicting serious injuries on her pupils. Article 8 of the Framework Decision contained specific protections for 'vulnerable' victims. A preliminary reference to the Court of Justice of the European Union was made on the application of this provision. The CJEU held that young children allegedly abused by their teacher were 'vulnerable'

covered certain victim support measures before or after criminal proceedings, necessary to mitigate the effects of the crime, as well as the involvement of specialized services and victim support groups before, during and after criminal proceedings, and the need to provide appropriate training to persons coming into contact with victims (O'Driscoll, 2023: 303).

As far as Council Directive 2004/80/EC is concerned, in addition to being still in force, it constitutes the significant step, at the level of the European Union, of the initiative already taken by the Council of Europe with its Convention on the Compensation of Victims of Violent Crimes, the objective of which is the full compensation of crime victims. To achieve its objectives, Directive 2004/80/EC bases its action on two fundamental principles. On the one hand, the principle that crime victims in the European Union should be entitled to fair and appropriate compensation in respect of the losses they have suffered regardless of where in the European Union the crime was committed. However - like the 1983 European Convention - a loophole remains in that the directive does not protect victims who are not habitually resident in an EU Member State (Article 1). The crime for which the victim can claim compensation must necessarily be a 'violent intentional crime'. The other principle is territoriality. According to it, compensation is paid by the competent authority of the Member State in whose territory the crime was committed (Article 2). The basic idea here is a combination of the principle of freedom of movement existing in the European Union with the aim of removing all obstacles between Member States. Therefore, when EU law guarantees an individual freedom of movement then, as a corollary, protection for any harm caused to him within a Member State must also be guaranteed.[12]

For this reason, the directive provides for a series of measures to achieve the objective of effective compensation. It constitutes 'minimum standards on the protection of the victims of crime, in particular on crime victims' access to justice and on their rights to compensation for damages, including legal costs' (recital 3). At the same time, the directive establishes a system of cooperation (submission of an application for compensation) to facilitate crime victims' access to compensation in cross-border situations by identifying an assisting authority, for example in providing all necessary information, and a deciding authority, present in the Member State where the crime was committed and empowered to decide on the application for compensation).

3. THE VICTIMS' RIGHTS DIRECTIVE 2012/29/EU

The Treaty of Lisbon has played a pivotal role in providing a legal foundation for European institutions to elevate the standards of protection for victims of crime. Article 82(2) of the Treaty on the Functioning of the European Union (TFEU) serves as the basis for the adoption of Directives through the ordinary legislative procedure that replaced framework decisions in the area of criminal law (Pemberton, Groenhuijsen, 2011: 2). These Directives are designed to establish minimum rules on the rights of victims of crimes within the European Union and harmonize national legislation among Member States. The aim is to facilitate mutual recognition of judgements and judicial decisions, as well as to enhance police and judicial cooperation in criminal matters that have a cross-border dimension.

victims within the meaning of the Framework Decision. Therefore, they were entitled to the specific protection provided by it. The national court had to interpret national law 'as far as possible in the light of the wording and purpose of the Framework Decision'.

[12] See *supra* note 9 and Judgment of the Court (Second Chamber) of 5 June 2008, *James Wood v Fonds de garantie des victimes des actes de terrorisme et d'autres infractions*, case C-164/07.

The Directives that implement the victims' rights legal framework are grounded in the Resolution approved on June 10, 2011,13 by the European Council, outlining a Roadmap for strengthening the rights and protection of victims, especially in criminal proceedings. This roadmap outlines priority measures aimed at ensuring a minimum level of victims' rights, support, and protection throughout the European Union, regardless of their place of origin or residence.

The Victims' Rights Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime is a significant outcome of this roadmap, replacing Framework Decision 2001/220/JHA as a first binding instrument on the legal position of victims at the supranational level (Groenhuijsen, Pemberton, 2009: 43). It addresses the standing of victims in criminal proceedings and establishes comprehensive provisions for the rights, support, and protection of victims. The Victims' Rights Directive is a horizontal instrument, meaning it applies to victims of all crimes. In addition, the EU instruments of a horizontal nature are the 2004 Compensation Directive[14] and EU rules on protection orders.[15] The EU has adopted specific directives addressing victims of particular crimes, such as human trafficking,[16] sexual exploitation of children,[17] counter-terrorism,[18] and fraud.[19] These specific legislative efforts aim to respond to the particular challenges posed by these crimes and ensure adequate protection for victims (Balsamo, 2018 :160).

Directive 2012/29/EU provides a wide scope for defining victims, since it covers not only individuals who have directly suffered harm from a criminal offense but also family members of a person whose death resulted from a criminal offense, and who have suffered harm as a result of that death. According to the Victims' Rights Directive adopted in 2012, a person is considered a 'victim' if they have suffered harm including physical, mental or emotional harm (injuries, trauma, or emotional distress as a result of a criminal offense), or economic damage due to a criminal act. The category of victims is extended to close relatives of homicide victims (Klip, 2015: 178).

The Directive emphasize the importance of recognizing the individual needs and rights of victims, ensuring their access to information, support services, and the right to participate in

[13] Resolution of the Council of 10 June 2011 on a Roadmap for strengthening the right and protection of victims, in particular in criminal proceedings (2011/C 187/01).

[14] Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

[15] Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order and Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters.

[16] Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

[17] Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

[18] Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.

[19] Directive 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA. PE/89/2018/REV/3.

criminal proceedings. Victims are granted specific rights throughout criminal proceedings, including the right to information, the right to support and protection, the right to participate in proceedings, and the right to access victim support services (Diaconu, 2022: 110).

Victims have the right to obtain relevant information in an understandable form from the moment of first contact with competent authorities and throughout the proceedings. This includes the right to be informed of the suspect's release or escape. Victims also have the right to interpretation, translation, and access to specific confidential support services.

The Directive ensures specific evidentiary safeguards, granting victims the opportunity to be heard during proceedings and submit evidence. Victims have rights related to decision review, legal aid, reimbursement of expenses, and the return of sized property (Lupària, 2015: 4).

States are required to facilitate the referral of cases to mediation and restorative justice services, subject to certain conditions. Victims are protected from secondary victimization, intimidation, and retaliation. Although, secondary victimization is subject to vagueness its interpretation may vary depending on the context and the perspective of those using the term (Pemberton, Mulder, 2023: 2). The concept is valuable in drawing attention to the importance of treating victims with sensitivity, empathy, and respect throughout their interaction with various systems. Reducing secondary victimization is crucial for creating a more supportive and just environment for those who have experienced harm. Specific guarantees include the right to avoid contact with the offender within premises where proceedings are conducted and protection during investigations.

Victims are entitled to support services to help them cope with the consequences of the crime. Special protection measures may be considered for vulnerable victims, including children, with enhanced documentation through audiovisual recording of all interviews with children during investigations. The Directive emphasizes individual assessment and approach to identify specific protection needs and the special vulnerability of particular victim (Leonaite, Markina, Pall, 2022: 287).

Victims have the right to claim compensation for the harm suffered, and member states are encouraged to established compensation schemes. The Directive emphasized the principle of non-discrimination, ensuring that victims are treated with dignity and respect regardless of their personal characteristics (Kolaković-Bojović, Grujić, 2020: 247).

It is important to note that the specific legal definitions and provisions related to victims may vary across EU member states, and national legislation may further specify who qualifies as a victim and what rights they are entitled to, since EU member states were required to transpose its provisions into their national legislation. The transposition involves creating or amending laws, regulations, and administrative provisions to align with the Directive's requirements. Furthermore, the member states designate competent authorities responsible for implementing and enforcing the Directive's provisions and ensure that professionals who are likely to come into contact with victims, such as police officers, prosecutors, and judges, receive appropriate training. Moreover, the member states monitor the implementation of the Directive, as well as relevant EU institutions, including EU Fundamental Rights Agency and evaluate its effectiveness to ensure that the rights and protections afforded by the Directive are effectively implemented and upheld throughout the EU (Holder, Kirchengast, Cassell, 2021: 12). The overarching goal is to establish common framework that enhances the rights and protection of victims throughout the European Union.

4. IDENTIFIED CHALLENGES IN THE EU VICTIMS' PROTECTION SYSTEM

While the EU Victims' Protection System, as outlined in Directive 2012/29/EU, represents a significant step forward, there are still challenges and areas where improvements can be made. In June 2022, the European Commission conducted and evaluation of the Victims' Rights Directive as part of its commitment outlined in the EU Strategy on Victims' Rights 2020-2025 (Nafize, 2023: 2). The Strategy focuses on enhancing victims' rights, ensuring their effective implementation, and addressing emerging challenges in this area. Following the evaluation,[20] on July 12, 2023, the European Commission proposed amendments to the Victims' Rights Directive. [21]

The challenges in the EU Victims' Support System are multifaceted and can impact the effectiveness of the support provided to victims of crime. Some of the identified challenges include consistency in implementation, awareness and accessibility, resource constrains, training and sensitization, coordination and cooperation, protection of vulnerable victims, compensation mechanisms, cross-border cases and technological challenges.[22]

The level of support and protection for victims can vary significantly across different EU member states due to the difference in the implementation of the Victims' Rights Directive.[23] Ensuring consistent implementation of the Directive across all member states can be challenging. Difference in legal systems, cultures, and practices may lead to variations in how the rights, support, and protection measures are applied.

Many victims may not be fully aware of their rights or find it challenging to access support services available to them, which can hinder their ability to seek help. Efforts are needed to raise awareness among victims and the general public about the existence of these rights and the available support.

Victim support services may struggle with limited funding, staffing, and training, affecting the quality and availability of support. Law enforcement officials, legal professionals, and support service providers may require specialized training to effectively implement the Directive.[24] Sensitization to the needs of specific victim groups, such as victims with disabilities, is crucial (Jubany, Klett-Davies, Roiha, 2022: 273).

Enhancing coordination and cooperation among different stakeholders, including law enforcement, legal professionals, support services, and NGOs, is essential for providing holistic assistance to victims, since lack of coordination can result in gaps in support.

---

[20] European Commission (2022) Commission staff working document Evaluation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, SWD(2022) 179 final.

[21] Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, COM/2023/424 final.

[22] European Commission (2023) Commission staff working document Impact assessment report, Accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, SWD (2023) 246 final.

[23] FRA – European Union Agency for Fundamental Rights (2023) Underpinning Victims' Rights – Supporting Services, Reporting and Protection, p. 51.

[24] *Idem.*

While the Directive includes provisions for the protection of vulnerable victims, ensuring that these provisions are effectively implemented and tailored to the specific needs of each victim remains a challenge (Wolf, Werner, 2021: 812).

Ensuring that victims have access to compensation mechanisms and that these mechanisms are effective in providing redress can be challenging. Financial constraints and differing compensation systems across member states may impact victims' access to justice.

Addressing the specific challenges associated with cross-border cases, where victims may reside in a different member state from where the crime occurred, requires increased cooperation and harmonization.

As technology evolves, ensuring that victims can benefit from technological advancements, such as remote participation in proceedings, while safeguarding their rights presents both opportunities and challenges.

5. PROPOSED NOVELTIES

The proposed amendments to the Victims' Rights Directive put forward by the European Commission aim to strengthen the rights, support, and protection of victims of crime within the European Union. The proposed amendments focus on key objectives to enhance victims' experiences throughout the criminal justice process. The main objectives and elements of the proposed amendments could be grouped in following measures: improved access to information and reporting, enhanced support for vulnerable victims, effective participation in criminal proceedings, reinforcement of compensation rights, improved use of electronic communication, additional support for vulnerable victims and enhanced statistics collection.[25]

In relation to improved access to information and reporting the proposed amendments envisage establishment of a universal EU-wide Victims' telephone helpline, as well as creation of a comprehensive website with information in multiple languages, suitable for persons with disabilities, and equipped with technology for chats and emails. Furthermore, the amendments proposed facilitation of crime reporting, including for victims in detention and irregular migrants.

Vulnerable victims are targeted through facilitation of access to free psychological support, especially for vulnerable victims, for as long as necessary and support services required to remain operational during crises. Enhanced support includes improved individual needs assessment, initiated from the first contact with authorities, with physical protection measures added to specialized protection measures.

In the criminal proceedings the amendments introduce establishment of victims' right to assistance in court to ensure effective participation. Additional measure is empowerment of victims to challenge decisions affecting their rights, regardless of their formal status under national law and strengthening option for victims to participate in criminal proceedings via teleconferencing.

To reinforce compensation rights the proposal incorporates strengthening the rights to compensation by requiring victims to receive a decision on compensation from the offender within the criminal proceeding. Furthermore, the proposal introduce obligation for member states to guarantee victims compensation directly and promptly after the judgement.

[25] Wahl, T., 2023, Commission Proposes Reform of Victims' Rights Directive, Eucrim, available at: https://eucrim.eu/news/commission-proposes-reform-of-victims-rights-directive/.

Improved use of electronic communication is ensured through obligation for member states to provide a possibility for victims to exercise their rights to information and access justice using electronic communication.

The proposal envisaged additional support for vulnerable victims such as children, elderly persons, persons with disabilities, and victims of hate crime, by ensuring adequate and additional support for them.

To improve completeness, consistency, and comparability of data, the proposal introduced modification of the article on the collection, production, and dissemination of statistics on victims of crime.

6. SOME CRITICAL ISSUES OF THE PROPOSED NEW DIRECTIVE ON VICTIMS' RIGHTS

Therefore, the overall objective of the proposal is to contribute to the creation of an area of freedom, security and justice based on the efficient recognition of judgments and judicial decisions in criminal matters, on a high level of security through increased reporting of offences, and on victim-centred justice that enables victims to exercise their rights through a set of specific measures, such as access to information, strengthening of protection, specialised assistance for vulnerable victims, facilitated access to compensation. However, it does so perhaps excessively, so much so that the German Bundesrat, citing the principles of subsidiarity and proportionality, considers that: *"the proposed directive contradicts these requirements by referring to the legal basis of Article 82 section 2, c TFEU. This does not take into account the fact that this stipulation does not permit the global harmonization of national procedural law, however" (points 2 and 3).*[26] *On the other hand, the Italian Senate evaluates the aims of the European initiative as positive on the whole, considers that the proposal respects the principle of subsidiarity, but that it can be improved with regard to the principle of proportionality (pp. 2-3).*[27]

Moreover, the proposal is critical because in facilitating the reporting of crimes, including for detained victims and irregular migrants (Art. 5 bis, par. 3), it does not clarify how to limit, for instance, the transfer of personal information to migration authorities. If there is a risk of personal data being shared, some undocumented victims are unlikely to report crimes to the police because of the risk of deportation. Moreover, allowing the sharing of sensitive data violates the fundamental human rights of undocumented migrants to privacy and data protection, in line with Articles 7 and 8 of the Nice Charter and the GDPR.[28] The provision should therefore be amended to ensure that a victim's residence status is never shared without the consent of the relevant parties, including migration authorities. It would also not adequately address how detained victims should report a crime from 'closed' facilities.

The proposal then suggests to facilitate access to free psychological support, in particular for all vulnerable victims, for as long as needed (i.e. not only in the short term) and according to individual needs. Victims' access to support services would be strengthened by requiring that support services remain operational even in a crisis. This last aspect is not well received

[26] https://secure.ipex.eu/IPEXL-WEB/document/COM-2023-424/debra.

[27] https://www.senato.it/service/PDF/PDFServer/BGT/1401703.pdf.

[28] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1–88.

by the Bundesrat, which complains that it is too burdensome for the member states: "*Further criticism relates to the requirement for the member states to have the medical examination, psychological support, the filing of criminal charges and the hearing of all child witnesses in criminal proceedings by the investigating judge to take place on the same premises as this involves enormous logistical and financial costs. Furthermore, such a detailed requirement for the local concentration and localization of authorities and courts constitutes a disproportionate interference with the right of member states to organize their administration by themselves*". The Italian Senate aligns itself in this sense: *"Critical elements emerge with regard to the need to harmonise some of the provisions of the proposal with the principles of the Italian legal system, with reference, [...] to the provision that the competent authorities pay directly to the victim the amount awarded as compensation, then subrogating to the same in the right against the convicted person [... As far as the financial impact is concerned, although the burden on the Member States is expected to decrease in the long term, some costs are likely to increase in the short term, including the burden linked to the obligation for the Member States to set up a system for collecting, producing and disseminating statistics on crime victims and to send these data to the Commission (Eurostat) every three years, which entails measures to adapt the existing systems for recording cases and compiling these statistics*" (p. 3).

Moreover, the right of victims to obtain a decision on compensation from the offender only in the criminal proceedings is not compatible with the Italian national system in which there is no prejudicial relationship between the criminal trial and the civil trial with regard to compensation for damages, which can be claimed in one or the other forum, at the plaintiff's choice" (p. 3). Indeed, the alternation between the two solutions allows the victim to obtain compensation in the forum and in the manner he or she considers most appropriate, giving the system a certain flexibility. A full adaptation to the directive as amended by the current proposal would therefore lower the degree of protection for the victim in national law.

The proposal for a directive, in strengthening the right of victims to legal aid, also provides for the possibility of challenging decisions affecting their rights, regardless of their formal status, under national law in criminal proceedings. The Italian Senate foreshadows here a risk of a clear misalignment with the legal system: "*Critical elements emerge with regard to the need to harmonise some of the provisions of the proposal with the principles of the Italian legal system, with reference, for example, to the rules concerning the possibility for victims to challenge decisions irrespective of their participation in the trial*" (p. 3).

Rights to compensation would be strengthened by giving victims the right to obtain a decision on compensation from the offender only in the course of criminal proceedings (thus eliminating the possibility of resorting to another procedure as in the current directive) and by making it mandatory for Member States to provide compensation to the victim directly and swiftly after the judgement. Precisely, the state should compensate the victim promptly, with subsequent recourse to compensation from the offender. In contrast to civil society, this is not much appreciated by the German Federal Council, which states: "*the Bundesrat rejects the proposed rule regarding the transfer of an offender's obligation to pay damages to the states as provided for by law, also due to considerable concerns regarding the financial impact on the budgets of the German Länder*" (point 6).

While welcoming efforts to establish more standards for needs assessment, several observations are made. It is proposed that the individual needs assessment should last "as long as necessary" (Art. 5bis) according to the needs of each victim. Strongly supporting the high focus on victims' needs, civil society recommends more detailed rules to define the meaning

of "for as long as necessary". However, given their specialised expertise, it should be the organisations supporting the victims, and not the police authorities, who should carry out the support assessment. Undocumented victims tend to be afraid to interact with public authorities, and in particular with the police, because of the risk of being arrested and ordered to leave the territory of the state. The need to take return decisions against any third-country national staying irregularly on the territory of a Member State creates a clear contradiction between the protection of victims and immigration rules at both EU and national level. Furthermore, the emphasis on relevant experiences of discrimination in the context of the victim's personal characteristics, which should be taken into account in the needs assessment (Art. 22(2)(a)), is supported. Moreover, undocumented victims should be considered as a group that would require special attention.

Concerning measures to ensure adequate and additional support for identified vulnerable victims, such as minors, the elderly, persons with disabilities, and victims of hate crimes, Article 23 of the proposal requires states to apply protective measures such as the continuous or temporary presence of law enforcement authorities, disqualification, restraint or protection orders. If the offence involves the holder of parental responsibility, states must consider the best interests of the child first. Therefore, civil society is generally satisfied with the proposed amendments with regard to individual assessment, especially with regard to the support services provided for children (Art. 9a of the Proposal). However, they recommend that administrative support and legal aid should be included in the list of services, as the child will have de facto and de jure less capacity to act in these aspects. This is particularly important for migrant children, who are particularly vulnerable to exploitation, violence and crime due to their social isolation, irregular and/or precarious residence status.

Finally, the Proposal is welcomed by the EESC Opinion on the revision of the directive on victims' rights of 5 March 2024,[29] underlining the importance of the amendments to improve the individual assessment of victims and their support throughout the judicial process. However, again with regard to the assessment of victims, the EESC regrets that in the individual assessment of the risk posed by the offender, mental health problems have also been included among crimes and dangerous behaviour, and calls for this reference to be removed from the text (point 1.5).

7. RELEVANCE FOR SERBIAN FRAMEWORK

Proposed amendments of the Directive address not only challenges identified in EU member states, but also areas recognized by Serbian policymakers in the Strategy on the Rights of Victims and Witnesses of Crime in the Republic of Serbia for period 2020-2025.[30] To ensure positive assessment of the compliance of Serbian legislation with the EU acquis and achievement of interim benchmarks for Chapter 23 Serbian authorities should have in focus improvement of access to information for victims, improvement of reporting by establishing universal number, as well as right to compensation from the offender in the criminal proceedings.

---

[29] Opinion of the European Economic and Social Committee on Revision of the victims' rights directive (COM(2023) 424 final — 2023/0250 (COD)), EESC 2023/03943, OJ C, C/2024/1592, 5.3.2024. "Although there should be no hierarchy between victims and types of crime, some victims may need additional support and protection measures. The EESC recommends that the Commission develop detailed guidelines with the Member States on the different authorities that should be in charge of carrying out the assessment" (point 1.2).

[30] Government adopted Strategy on the session on July 30, 2020.

Right to access to information for victims is recognized as one of the priorities of the 2020 Strategy (Specific goal 3). The implementation of activities aimed to lead to the goal did not proceed at the planned pace, mostly due to lack of allocated human and financial resources. Information brochures for victims that should support victims to navigate through the proceedings and exercise their rights have not been printed and distributed, website intended to inform victims is functional but is not regularly updated,[31] while the good practice of connecting websites of the courts and public prosecutor offices with this information page was not implemented. To improve access to information for victims it is necessary to fully utilize available resources and information and promote them among victims (i.e. link website Victims Support with websites of all courts and public prosecutor offices websites, print and deliver information brochure to health care centers and police stations since these are usually the first point of victims' contact with institutions). Furthermore, the Criminal Procedure Code should be amended to fully align with the EU Directive and to ensure comprehensive and systematic approach to access to information (Škulić, 2020: 69).

Authorities recognized importance of introduction of universal number for victims, however, the Feasibility study for introduction of universal number will be conducted by end of 2025, according to the Action plan for period 2023-2025. Having in mind timeframe set by the policymaker, it is clear that universal number cannot be introduced before 2026, which might cause challenges for exercising victims' rights.

Serbian legislation does not regulate in the general manner the procedure or standards for the individual assessment of victims' needs in relation to support and protection measures (Mousmouti i dr., 2019: 19). The importance of the protection of vulnerable victims should be properly reflected in the legislation and practice, as well as individual assessment of the victims to enable individual approach (Stevanović, 2019: 162).

Serbian legislation, Articles 252-259 of the Criminal Procedure Code[32] (Kolaković-Bojović, 2020: 47) establishes victims' rights to compensation from the offender in the criminal proceedings, which is in line with Article 16 of the Victims Rights' Directive.[33] However, analysis of court jurisprudence shows that in practice the decision on the compensation claim of the injured party in the criminal proceedings is an exception instead of the rule, since the court as a rule refers the injured party to exercise the compensation claim in civil proceedings (Altan i dr., 2016: 8). This practice significantly prolongs the process of obtaining compensation, exposes the victim to additional costs, and burdens the judiciary with an additional number of cases. Although, the Strategy on the Rights of Victims and Witnesses of Crime in the Republic of Serbia for period 2020-2025 and accompanying Action plan for 2020-2022, envisaged adoption of Guidelines for the improvement of court practice in proceedings of compensation for victims of serious crimes in criminal proceedings and training on its application, it cannot be verified if the targeted value of 25 percent of decisions on compensation claims in criminal proceedings was reached.

Having in mind that Proposal for amending Directive 2012/29/EU put emphasis on reinforcement of compensation rights, Serbian judiciary should strengthen court practice and as a rule decide on the compensation claim in the criminal proceedings, instead of referring to the civil. The newly adopted Action plan for implementation of the Strategy on the Rights of

[31] Website Victims and Witness Support - https://www.podrskazrtvama.rs/en/.

[32] Official Gazette RS, No. 72/11, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021, 62/2021.

[33] Right to decision on compensation from the offender in the course of criminal proceedings.

Victims and Witnesses of Crime in the Republic of Serbia for period 2023-2025 foreseen set of activities for improvement of mechanism of deciding on compensation claim in the criminal proceedings (i.e. trainings, monitoring, mitigation measures, support in submitting claim), however, it has to be assessed if set goal will be reached by end of 2025.

8. CONCLUSIONS

Although the Proposal for Amending Directive 2012/29/EU has yet to be adopted, as noted alongside the significant innovations, there are also critical issues to be addressed. The Proposal, if adopted, suggests that member states would be given a period of two years to incorporate the amendments into their national legal frameworks. However, there is an exception for the use of electronic means of communication, where member states would have a four-year period to implement these changes. This timeline allows member states to adjust their legislation and practices with proposed amendments. Better understanding of the timeframe is important for Serbian authorities, and it is more or less aligned with the timeline envisaged in the 2020 Strategy.

While alignment of legislation with the EU acquis and the Victims' Rights Directive is feasible, the biggest challenge for Serbian institutions will be changes in practice and allocation of resources to ensure victims' access to information and support. In relation to the right to compensation, courts need to modify practice and decide on compensation claim in the criminal proceedings and avoid referring of victims to the civil proceedings. Since, the legal framework is aligned with the Victims' Rights Directive and Guidelines for deciding on compensation claim in criminal proceedings are adopted, there is a need to ensure its consistent application in practice.

Furthermore, victims should have access to information on their rights through websites of the courts and prosecutor offices, not only on the designated website, which might not be known to victims. In addition, to empower victims to exercise their rights and be informed on procedures and competent auhtories, information brochures should be available in all institutions of first contact, such as health care centers and police stations.

Finally, considering that Proposal for amending Directive has to be adopted, policymakers and legislator in Serbia has to ensure compliance with the new EU framework. This shows how challenging is harmonization of national legislation and practice with the EU acquis due to its amendments during EU accession process.

REFERENCES:

Allegrezza, S. (2015) Il ruolo della vittima nella Direttiva 2012/29/UE. In Lupária, L. (2015) (ed.) Lo statuto europeo delle vittime di reato. Modelli di tutela tra diritto dell'Unione e buone pratiche nazionali, Milano.

Altan, L, Verelst, A., Harley, G., Matić, M. (2016). *Analysis of Victims' Rights and Services in Serbia and their alignment with EU Directive 2012/29/EU*, World Bank. Available at: https://documents.worldbank.org/en/publication/documents-reports/documentdetail/966041511259504946/analysis-of-victims-rights-and-services-in-serbia-and-their-alignment-with-eu-directive-2012-29-eu.

Balsamo, A. (2018) The Protection of Victims, In. Kostoris, R.E. (Ed.) *Handbook of European Criminal Procedure,* Springer, pp. 158-164.

Braun, K. (2019). *Victim Participation Rights: Variation Across Criminal Justice Systems*. Palgrave Macmillan.

Cherubini, F. (2006) L'obbligo di interpretazione conforme "sconfina" nel terzo pilastro: note a margine della sentenza Pupino, *Studi sull'integrazione europea*, No. 1, pp. 157-175.

Conigliaro, C. (2012) La nuova normativa europea a tutela delle vittime di reato, in *Diritto penale contemporaneo*, 22 novembre 2012.

Diaconu, N. (2022). Legal Protection of Victims of Crime in the European Union. *International Journal of Legal and Social Order,* No. 1, pp. 106-117.

Diamante, D., (2016) La direttiva 2012/29/UE che istituisce norme minime in materia di diritti, assistenza e protezione delle vittime di reato. Origini, ratio, principi e contenuti della Direttiva recepita dal D. Lgs. 212/2015, in *Giurisprudenza penale*.

Groenhuijsen, M.S., Pemberton, A. (2009) The EU Framework Decision for Victims of Crime: Does Hard Law Make a Difference? *European Journal of Crime, Criminal Law and Criminal Justice.* Vol. 17, Issue 1, pp. 43-59.

Groenhuijsen, M.S., (2013) The development of international policy in relation to victims of crime. *International Review of Victimology*. Vol. 20, Issue 1, pp. 31-48.

Holder, R., Kirchengast, T., Cassell, P. (2021) Transforming crime victims' rights: from myth to reality. *International Journal of Comparative and Applied Criminal Justice.* Vol. 45, Issue 1, pp. 1-13.

Holm, F. (2022). Successful Human Rights Implementation? Victims of Crime and the Swedish Example, *Nordic Journal of Human Rights*, Vol. 40, Issue 4, pp. 529-548.

Jubany, O., Klett-Davies, M., Roiha, M. (2022) Problematising the Victims' Rights Directive From the Ground: The Implementation of Victims Support Services in Greece, Italy, Bulgaria, Cyprus and Spain. *European Journal of Crime, Criminal Law and Criminal Justice,* Vol. 30, Issue 3-4, pp. 266-287.

Klip, A. (2015). On victim's rights and its impact on the rights of the accused. *European Journal of Crime, Criminal Law and Criminal Justice.* Vol. 23, Issue 3, pp. 177- 189

Kolaković-Bojović, M. (2020). Direktiva o žrtvama (2012/29/EU) i kazneno zakonodavstvo Republike Srbije, In. Bejatović, S. (ur.) *Žrtva krivičnog dela i krivičnopravni instrumenti zaštite (međunarodni standardi, regionalna krivična zakonodavstva, primena i mere unapređenja zaštite),* Misija OEBS u Srbiji, Beograd, pp. 41-54.

Kolaković-Bojović, M., Grujić, Z. (2020) Crime Victims and the Right to Human Dignity – Challenges and Attitudes in Serbia, In. *Yearbook. No. 3, Human rights protection: the right to human dignity.* Provincial Protector of Citizens – Ombudsman; Institute of Criminological and Sociological Research, Novi Sad; Belgrade, pp. 239-269.

Leonaite, E., Markina, A., Pall, K. (2022) Implementation of the Victims' Rights Directive in Lithuania and Estonia: Challenges and Achievements. In. Limante, A., Puraite-Andrikiene, D. (eds.). *Legal Protection of Vulnerable Groups in Lithuania, Latvia, Estonia and Poland: Trends and Perspectives*. Springer. pp. 287-308.

Lupària, L. (ed) (2015) *Victim: and criminal Justice. European standards and national good practices.* Wolters Kluwer Italia.

Mousmouti, M., Contiades, X., Spasic, D., Kasapi, Z., Kontotizou, D., Svircev, S., Matic Boskovic, M., (2019) *Comparability of Institutional Practices in Law Enforcement, Health and Welfare and Generic Victim Support Entry Points with the Standards of the EU Directive 2012/29 on Identification, Individualized needs Assessment and Referral of Victims of Crime*, World Bank. Available at: https://documents.worldbank.org/pt/publication/documents-reports/documentdetail/385681560833548210/compatibility-of-institutional-practices-in-law-enforcement-health-and-welfare-and-generic-victim-support-entry-points-with-the-standards-of-the-eu-directive-2012-29-on-identification-individualized-needs-assessment-and-referral-of-victims-of-crime.

Nafize, A. (2023). *Victims' Rights in the EU: Revision of Directive 2012/29/EU,* EPRS: European Parliamentary Research Service. Belgium. https://policycommons.net/artifacts/4430703/victims-rights-in-the-eu/5227412/.

O'Driscoll, L. (2023) Towards a rights-based approach: victims of violent crime, state-funded compensation and the European Union, *New Journal of European Criminal Law*, Vol. 14, No. 3, pp. 303-326.

Peloso, C., (2016) La tutela della vittima del reato nel processo penale italiano e francese: riflessioni comparate sull'attuazione della direttiva 2012/29/UE, in *Rivista Eurojus*, 13 maggio 2016, p. 1.

Pemberton, A., Mulder, E. (2023). Bringing injustice back in: Secondary victimization as epistemic injustice. *Criminology & Criminal Justice*. 0 (0). pp. 1-20.

Pemberton, A., Groenjuijsen, M. S. (2011) Developing Victims' Rights within the European Union: Past, Present and Future, *SSRN Electronic Journal*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1947236.

Stevanović, I. (2019) Žrtva krivičnog dela i krivičnopravni instrumenti zaštite (neophodni koraci za unapređenje sistema) In. *Izmene u krivičnom zakonodavstvu i statusu nosilaca pravosudnih funkcija i adekvatnost državne reakcije na kriminalitet* (međunarodni standardi i stanje u Srbiji). LIX Savetovanje Srpskog udruženja za krivičnopravnu teoriju i praksu, Intermex, Beograd, pp. 156-169.

Škulić, M. (2020) Krivičnoprocesno zakonodavstvo Srbije i žrtva krivičnog dela (Direktiva 2012/29/EU) i drugi međunarodnopravni standardi – stepen usaglašenosti, iskustva primene i mere unapređenja. In. Bejatović, S. (ur.) *Žrtva krivično dela i krivičnopravni instrumenti zaštite (međunarodni standardi, regionalna krivična zakonodavstva, primena i mere unapređenja zaštite),* Misija OEBS u Srbiji, Beograd, pp. 55-78.

Wahl, T. (2023) Commission Proposes Reform of Victims' Rights Directive, Eucrim, available at: https://eucrim.eu/news/commission-proposes-reform-of-victims-rights-directive/.

Wolf, A-K, Wener, M. (2021) Victims' Rights Looking Good on Paper – How Criminal Prosecution in Germany Fails Victims of Sexual Violence, *German Law Journal,* Vol. 22, pp. 800-816.

REPORTS:

FRA – European Union Agency for Fundamental Rights (2023) *Underpinning Victims' Rights – Supporting Services, Reporting and Protection*.

European Commission (2023) *Commission staff working document Impact assessment report, Accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision* 2001/220/JHA, SWD (2023) 246 final.

European Commission (2022) *Commission staff working document Evaluation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, SWD(2022) 179 final.

Momir JAUKOVIĆ*
Tijana BADNJAR**

Original Scientific Paper
DOI: 10.47152/Palic2024.3

CRIME VICTIMS AND THE RIGHT TO FREE LEGAL AID – INTERNATIONAL STANDARDS AND THE CURRENT STATE OF PLAY IN MONTENEGRO

Abstract: Montenegro introduced free legal aid into its legislation in 2011, with the adoption of the Law on Free Legal Aid. This paper examines the international sources of law related to the right to free legal aid for victims of crimes, with a focus on domestic violence, as well as the compliance of national law with them. Also, the work examines the problems in the application of the Law, finding that the normative framework is solid, mostly harmonized with international sources, but that it is insufficiently used in practice, and that it requires promotion, expansion of the scope of users, specialization of the lawyers, and possible cooperation with non-governmental organizations.

Keywords: Free legal aid; Victims of criminal acts; Domestic violence; International standards; Law on Free Legal Aid.

1. INTRODUCTION

Access to court is of a key importance for exercising rights. However, although laws usually proclaim equality before the law and equal access to court, in practice this is not the case. Numerous categories of people, especially those who are the most vulnerable, remain without adequate access to the court and consequently, without protection of their rights. Therefore, the effective right to free legal aid is one of the most important prerequisites for achieving the rule of law.

This paper is dedicated to examining the extent to which the Law on Free Legal Aid is harmonized with relevant international standards, and whether the application of this institute has taken root in Montenegro, to what extent and in what manner the application of the Law can be improved.

In order to understand the international legal standards that regulate this matter, a brief overview of the development of international law is given in the first part of the paper. In the second part, the relevant legal sources passed under the auspices of the United Nations, the Council of Europe and the European Union are presented, while in the third part the main features of the Law on Free Legal Aid are given, along with the categories of beneficiaries who can exercise this right, the conditions under which it is exercised and the assessment of its compliance with international standards. Finally, instead of a conclusion, the paper offers suggestions on how to improve the Law in order to achieve better protection of vulnerable groups.

* MA, General Director of the Directorate for Judiciary, Ministry of Justice, Montenegro. E-mail: momir.jaukovic@gmail.com.

** MA, Judge, Basic Court in Podgorica, Montenegro. E-mail: tijana.badnjar@sudstvo.me.

2. INTERNATIONAL STANDARDS FOR THE PROTECTION OF THE RIGHT TO FREE LEGAL AID

2.1. A brief overview of the development of human rights

The notion of human rights and protection thereof, is old. It is argued that the first actions which can be described as protection of human rights, were noted in 539 BC, when the troops of Cyrus the Great conquered Babylon (Sutto, 2019). On that occasion, Cyrus decided to free the slaves, declaring that all people had the right to choose their own religion, thus establishing freedom of worship, racial equality, return of displaced persons and the protection of cultural heritage, in addition (Sutto, 2019). This announcement was written on a baked-clay cylinder known as the Cyrus Cylinder and it represented recognition of the human rights by powerful emperor - and thus, by the State itself, through which the State has voluntarily set limits for its authority (Abtahi, 2007: 77). The importance of this document cannot be overestimated not only due to effect it had at the time, but also because, centuries later, it served as an inspiration for the Universal Declaration of Human Rights (Tyagi, Singh, 2019:1).

Further steps for the development of the protection of human rights were made through legal documents such as the Magna Carta libertatum (1215), the English Bill of Rights (1689) (Momen, 2022:1), the Virginia Declaration of Rights (1776), the Declaration of Independence of the United States (1776) and the French Declaration of the Rights of Man and of the Citizen (1789). These documents represented the sublimation of various social, philosophical, political and legal circumstances of the time.

Until the end of the Second World War, the development of human rights and their protection occurred within the frameworks of individual states (Buergenthal, 2006: 783). International relations were based on strict respect for state sovereignty, and the state's relationship to the human rights of its citizens was considered part of the internal policy of each state, which resulted in the prohibition of interference by other states in internal affairs (Dimitrijević et al., 2006: 47). However, the horrors of the Second World War changed the approach to human rights and relations between states. Although certain international organisation existed before, with the establishment of the United Nations in 1945, rapid development and protection in the field of human rights at the international level had begun (Dimitrijević et al., 2010: 47). In 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights, which represents the first international attempt to catalog basic human rights recognised by all countries (Dimitrijević et al., 2010: 47). It enshrined important rights that could be related to the free legal aid, such as equality before the law and the presumption of innocence, as well as the right to a fair and public hearing by an independent and impartial tribunal, along with all the guarantees necessary for the defence of anyone charged with a penal offence.

In the years to follow, other international organisations that are significant for the development of human rights were founded, such as the Council of Europe (1949) and predecessors of the European Union. All of these organisations and its bodies helped not only to protect human rights, but to promote the right to free legal aid to the level of a universal international standard (Kolaković-Bojović, 2017: 132).

In the next part of the paper, the selection of international law documents relevant for the subject of this paper, which were adopted by the above mentioned organisations, will be presented.

2.2. International legal sources in the field of free legal aid and crime victims

As it was stated in the previous part of this paper, development of the international law of human rights gained its momentum after the Second World War. However, at the outset, international law had not been largely devoted to the protection of victims' rights, but it rather reflected the interest of states, than of the individuals (Romani, 2010: 221). This had changed during 1980s, when the initiative to protect victims in the criminal proceedings became more powerful especially in respect of victims of crime, victims of abuse of power and victims of gross violations of international human rights law (Romani, 2010: 221-223).

International law offers several concepts of victim, but there is no uniform definition of victim at the international level (Romani, 2010: 237). This paper will focus on victims of domestic violence, bearing in mind that the national Law on Free Legal Aid provides for this right for said victims. Although the national law also protects victims of human trafficking, due to the complexity of this topic, which exceeds the scope of this paper and due to the fact that a number of criminal and misdemeanour acts for domestic violence is constantly increasing, this paper focuses on the rights of these victims.

Under the auspices of the United Nations, numerous documents that are significant for the protection of human rights, have been developed and, having in mind the topic of this paper, it is important to emphasise three - UN Basic principles on the Role of Lawyers and the United Nations Principles (hereinafter: "Principles on the Role of Lawyers"), International Covenant on Civil and Political Rights from 1966 (hereinafter:" ICCPR") and Guidelines on Access to Legal Aid in Criminal Justice Systems (hereinafter: "Principles and Guidelines").

Principles on the Role of Lawyers were adopted in 1990 at the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders and they serve as a set of recommendations to Governments with the aim of enabling the legal profession to provide high-quality legal representation, thus contributing to the rule of law. The Preamble of this document indicates that it relies on numerous international conventions that have set standards in the protection of human rights and fundamental freedoms, and that the realisation of those standards depends precisely on the work of lawyers. Therefore, the Principles reminds that adequate protection of the human rights and fundamental freedoms, be they economic, social and cultural, or civil and political - requires that all persons have effective access to legal services provided by an independent legal profession. This document foresees a series of recommendations to the governments of the signatory states, that refers to proper protection in the criminal justice matters in the course of the stages of that process, appropriate education of lawyers, guarantees of professional quality, responsibility and professional association of lawyers. For the purpose of this paper, the most interesting provisions are those related to access to lawyers and legal services that emphasise the need to create a system that will enable equal and effective access to lawyers for all, without discrimination. In addition Principles on the Role of Lawyers prescribe that Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons.

ICCPR represents an international treaty, adopted by the General Assembly of the United Nations in 1966, by which member states have committed themselves to include in their legal systems provisions on the protection of civil and political human rights. For the aim of this paper, the most important provision of the ICCPR is Article 14 which states that everyone shall be equal before the courts and that everyone shall be entitled to a fair and public hearing by the competent, independent and impartial court, established by law. In addition, the ICCPR in the same Article envisages the right of the accused to be present at the trial and to defend himself

alone or with the help of a legal representative of his choice. If the interests of justice require so, the accused is granted to a legal assistance even if does not have sufficient means to pay for it.

The above stated documents are not specialised in legal aid, but rather prescribe general rules on legal assistance due to its importance to the equality before the law and to the rule of law, in general. The first international document that is dedicated solely to the legal aid and offers comprehensive approach to this subject, including legal aid for the victims of crimes, are Principles and Guidelines (Akter, Brems, 2016: 1). At the same time, the Principles and guidelines provide the first definition of legal aid, defining it as: "legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require. Furthermore, "legal aid" is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes." Although they do not have legally binding force, the Principles and Guidelines are considered an authority in the field of legal aid, as they represent a product of modern legal development and a guide to good practices, so that states can establish efficient criminal systems (Akter, Brems, 2016: 4-5).

Analysis of this definition indicates that legal aid, according to the Principles and Guidelines, is a complex institution that goes beyond legal assistance and encompasses legal advice and representation (Akter, Brems, 2016:10). In addition, it applies before the alternative dispute resolution institutions and includes legal education as an important precondition of exercising any right (Akter, Brems, 2016:10). The significance of this document also lies in the fact that in this way it actually enabled the states to implement reforms of their systems so that they could respond to all the recommendations contained in it (Akter, Brems, 2016:10).

The Principles and Guidelines give a broad definition of legal aid, and also expand the circle of persons to whom legal aid applies, and thus include victims of crime, witnesses, children and women, as beneficiaries to this right. In order to provide victims with legal aid, the States should, according to the Guideline 7, take adequate measures to ensure that advice, assistance, care, facilities and support are provided to victims of crime, throughout the criminal justice process, at the same time taking care that the system prevents victimization. Other measures that should be provided to victims include receiving legal advice of any aspects of the criminal or civil proceedings, prompt information of their rights and their entitlement to legal aid. The Principles and Guidelines tend to create legal system that is aware of victims and respect their views and concerns. To that end, it is envisaged that their opinion should be presented and considered at appropriate stages of the criminal justice process, where their personal interests are affected or where the interests of justice require so. Legal aid for the victim can be provided by non-governmental organisation and victim services. From the abovementioned provision it also follows that victims should receive attention not only from the legal profession, but from health and social institutions as well, in order to understand their position and needs.

Apart from victims of criminal offences, the Principles and Guidelines contain a special provision related to women's rights to legal aid. States should ensure this through a series of measures, including the creation of a gender-sensitive system an representation by female lawyers. Special attention is given to female victims of violence and prevention of secondary victimisation. This, according to the Guideline 9, should be achieved by providing them legal aid, advice and court support services in all legal proceedings.

Children can be victims, too. The Guidelines and Principles do not contain detailed provisions on legal assistance for child victims, but refer this to another UN document - Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, adopted in 2005 by the Economic and Social Council. Lawyer can be assigned to a child victim, free of charge, by State, if the best interest of a child requires so, or on the basis of a request submitted by the child, his or her parents or support person.

In addition to UN, other international organisations were active in promotion of legal aid, such as Council of Europe and European Union (hereinafter: "EU"). Legal aid is a precondition of a fair trial and as such, it enjoys protection of the European Convention on Human Rights (hereinafter: "ECHR") Article 6 (3)(c) envisages three rights to one charged with a criminal offence: to defend himself in person, to defend himself through legal assistance of his own choosing and, on certain conditions, to be given legal assistance free. The right to legal assistance applies for the whole proceedings, from the police interrogation until the appeal procedure, but does not include the defendant's right to choose a defence attorney.[1]

National authorities are the ones to appreciate whether someone needs legal aid, but still, this issue can be subject to the assessment of the European Court. The right to legal aid is not absolute and, from the perspective of the European Court, is subject to two requirements - the accused must lack sufficient means and the interests of justice must require the realisation of this right (Harris et al., 2018: 478). Contrary to the national laws, the ECHR does not prescribe detailed explanation of "sufficient means". The burden of proving the lack of funds is on the defendant, but the European Court has taken the position that the lack of funds does not need to be proven beyond all doubt, it is sufficient that there are certain indications of this (Harris et al., 2018: 478). This stance was given in *Pakelli v. FRG*[2] and restated in *Tsonyo Tsonev v. Bulgaria*.[3]

Under the second condition for providing legal aid - interests of justice, the European court took into consideration different criteria, such as: the seriousness of the criminal offense, the severity of the possible punishment, the complexity of the case and the defendant's capacity to present his case (*D.L. v Germany*).[4] How the European Court examine these criteria, can be seen in the case *Quaranta v Switzerland*[5]. In this case, the applicant, an Italian national who spent years in home for juveniles, was suspected of an offence under the Federal Misuse of Drugs Act. In the course of examination before the investigative judge, he requested free legal assistance, which was refused by the president of the court, with the explanation that his needs did not require free legal assistance and that the case did not give rise to particular difficulties. The court found the applicant guilty of taking drugs and drug trafficking and on this account sentenced him to six months' imprisonment, stating that mitigating circumstances existed - very precarious financial position since he lived on social security benefit. The European Court observed the severity of the possible punishment, stating that the maximum sentence was three years imprisonment and that the free legal assistance should have been afforded by reason of the mere fact that so much was at stake. Further, in terms of the complexity of the case, the European Court observed that the outcome of the trial was of considerable importance for the applicant since the alleged offence had occurred during the probationary period, which meant that the

[1] Priručnik o evropskom pravu u području pristupa pravdi, p. 66.

[2] *Pakelli v. FRG,* no.8398/78, Decision from April, 25, 1983.

[3] *Tsonev v. Bulgaria*, (no. 2). no. 2376/03, Judgment from January 14, 2010.

[4] *D.L. v Germany,* no. 18297/13, Judgment from November, 22, 2018.

[5] *Quaranta v. Switzerland,* no. 12744/87, Judgment from May, 24, 1991.

court would decide on the revocation of the suspended sentence, as well as on a new sentence. This made a case more complex, especially when taken into account the personal situation of the applicant - a young adult of foreign origin, without proper education and means for living, with a heavy criminal history. The European Court found the violation of the Article 6 para. 3 (c) (art. 6-3-c) of the Convention concluding that without the assistance of a lawyer, applicant was not did enable him to present his case in an adequate manner.

ECHR does not explicitly contain provisions relating to victims. However, that does not mean that victims of crimes are not protected. According to the case law, in particular circumstances, the principles of fair trial require to recognise victims' rights and reconcile it with an adequate and effective exercise of the rights of the defence.[6] Crime victims have a right to effective legal remedy in the form of criminal proceedings and the absence of criminal proceedings may violate Article 13 of the ECHR.[7] The system must be effective, so if the defences available to an accused are too broad, the criminal law may not be effective in protecting victims' rights.[8]

ECHR does not explicitly mention domestic violence, either. However, the jurisprudence shows that these cases are decided by the European court and the following violations were hold: Article 2 - when domestic violence reaches a life-threatening level; Article 3, which is activated when domestic violence reaches a certain severity threshold; Article 8 - when there is an interference with the moral and physical integrity of the victim, but also Article 13, due to the lack of an effective legal remedy, or Article 14, due to discrimination (Mole, Peykova, 2019: 18). In relation to Article 6, it is important to note that victims of crime cannot claim fair trial rights, unless they join criminal proceedings to enforce civil law claims within the framework of the criminal procedure.[9] Therefore, when victims call upon the Article 6 and deprivation of legal aid, the European court would usually consider these allegations under other articles of the ECHR - especially Article 13 and in relation to positive obligations of the states.[10]

Under the doctrine of positive obligations of the states, the rights of victims can be further developed, by the duty to enact criminal law, duty to undertake preventive operative measures and duty to investigate (Medarska, 2009: 50). In addition, when deciding in cases of domestic violence, the European Court, by referring to the Istanbul Convention, significantly affects the rights of the victims. For example, in case *Talpis v. Italy,*[11] the applicant was a victim of domestic violence during which her son, who was trying to protect her from her husband, was killed. The European Court, found violation of Articles 2, 3 and 14 and referred to the Istanbul Convention. It stated that the national authorities should have had regard to the applicant's situation of great mental, physical and material insecurity and vulnerability and assessed the situation accordingly, providing her with appropriate support. Instead of that, the authorities issued protection order and heard applicant on her first complaint, seven months after lodging her complaint. In such way, the authorities' delays had deprived the complaint of any effectiveness, creating a situation of impunity conducive to the recurrence of the husband's acts of violence. In relation to the Article 3, it was stated that the applicant could be considered as belonging to the category of "vulnerable persons" entitled to State protection, in view of the acts of violence which she had suffered in the past and that Istanbul Convention requires from states special diligence in

[6] *Y. v. Slovenia, no. 41107/10,* Judgment from May, 28, 2015.

[7] *A. v. Croatia, no.55164/08,* Judgment from October, 14, 2010.

[8] *A. v. United Kingdom,* no. 100/1997/884/1096, p. 24.

[9] *Rumor v. Italy,* no. 72964/10, Judgment from May, 27, 2014.

[10] *Rantsev v. Cyprus and Russia,* no. 25965/04, Judgment from January, 7, 2010.

[11] *Talpis v. Italy, no. 41237/14,* Judgment from March, 2, 2017.

dealing with complaints concerning such violence. In that sphere it is incumbent on the national authorities to consider the victim's situation of extreme mental, physical and material insecurity and vulnerability and, with the utmost expedition, to assess the situation accordingly. In terms of the violation of Article 14, it was stated that: "a State's failure to protect women against domestic violence breaches their right to equal protection before the law and that this failure does not need to be intentional (...) such discriminatory treatment occurred where it could be established that the authorities' actions were not a simple failure or delay in dealing with the violence in question, but amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards the complainant as a woman".[12]

The Istanbul Convention is an instrument of the Council of Europe and the first legally binding international document in Europe related to gender-based violence. It is a comprehensive document that lays down detailed standards and requirements for states in the areas of legislation, especially measures of legal and institutional protection and support for victims, as well as efficient prosecution and punishment of perpetrators (Mole, Peykova, 2019: 7). In terms of legal aid, the Istanbul Convention contains Article 57 which envisages obligation of the member states to ensure the right to legal advice and free legal assistance for victims under the conditions prescribed by national legislation. However, it can be argued that the Istanbul Convention, through other provisions, especially those dedicated to the protection of victims, introduces obligations for states to improve their systems and to ensure better rights for victims, such as e.g. to enable victims, in accordance with the procedural rules of international law, to be heard, provide evidence and state their point of view.[13]

Since Montenegro is a candidate country for the membership in European Union, it is important to take into consideration relevant legal sources of that organisation. Charter of Fundamental Rights of the European Union (hereinafter: "EU Charter") through the Article 47 guarantees victims of criminal offenses the right to a fair and public hearing before an independent court, the right to counselling and representation, the right to legal aid and the right to an effective legal remedy. Therefore, victims enjoy the right to an effective legal remedy, but also the right to a fair trial. In addition, secondary legislation of the EU further develop rights of victims. Namely, the Directive 2012/29/EU of the European parliament and of the Council of 25 October 2012 (hereinafter: "The Victims' Rights Directive"), establishes minimum standards on the rights, support and protection of victims of crime. In Article 2, it provides quite broad definition of the term "victim", stating that it is: "a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence (...) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death". Furthermore, this document obliges member states to establish support services and to ensure victims certain rights related to a fair trial, such as the right to a hearing and the right to legal aid. Finally, this document obliges member states to establish support services and to ensure victims certain rights related to a fair trial, such as the right to a hearing and the right to legal aid. In relation to legal aid, Article 13 binds the right to legal aid of victims to their status of a party in criminal proceedings, while in terms of conditions and procedural rules under which victims have access to legal aid, leaves to the national law.

[12] *Talpis v. Italy, no. 41237/14,* Judgment from March, 2, 2017.

[13] Article 56.

3. NATIONAL LEGAL FRAMEWORK FOR PROVIDING FREE LEGAL AID

3.1. Law on Free Legal Aid - objectives of adoption, forms of legal aid, conditions for obtaining

The Constitution of Montenegro[14] envisages the right to a fair and public trial within a reasonable time before an independent, impartial and legally established court,[15] as well as the right to legal aid. Legal aid is provided by the advocacy, as an independent and autonomous profession, and by other services. Legal aid may be provided free of charge, in accordance with the law.[16]

The normative framework for exercising the right to free legal aid in the Montenegrin legal system was established in 2011, with the adoption of the Law on Free Legal Aid[17] (hereinafter: "The Law"). The adoption of this Law represented a legal response to the obligations contained in the Constitution of Montenegro and the ECHR, but also to the obligation to implement legal standards developed within the framework of European Union law, through the establishment of an organized system of providing free legal aid by passing a special law in this area.

The aim of passing this Law, was to provide a free legal aid to an individual who is unable, given his/her financial situation, to exercise the right to judicial protection without damage to the minimum subsistence level for himself and his family.[18] Since some normative deficiencies were observed during its application, the Law was additionally improved with amendments from 2015, by which victims of misdemeanour domestic violence offences were recognized as privileged beneficiaries, in the same way as victims of the criminal offense of domestic violence and human trafficking. In addition, the material criteria for exercising the right to free legal aid are improved and the criteria according to which a lawyer can deny legal aid are clearly defined.

The law recognises several forms of free legal aid, and for each of them it is possible to provide the necessary funds for full or partial coverage of costs. In addition, the Law prescribes the exemption from paying the costs of court proceedings. Thus, according to this Law, beneficiaries are fully or partially exempted from paying the costs of legal advice, preparation of pleadings, representation in proceedings before the court, the State Prosecutor's Office and the Constitutional Court of Montenegro, and in proceedings for out-of-court settlement of disputes, as well as in proceedings before a public bailiff.[19] The costs of legal aid are paid by the State, and funds are provided in the budget of Montenegro. All authorities before which free legal aid could be provided, have the obligation to inform participants in the procedure about this right.

The right to legal aid may be exercised by: 1) a Montenegrin national; 2) a stateless person lawfully residing in Montenegro and a person seeking asylum in Montenegro; 3) an alien with permanent residence or approved temporary residence and other person legally residing in Montenegro; and 4) other person in terms with ratified international treaties.[20]

---

[14] Constitution of Montenegro ("Official Gazette" no. 1/07).

[15] Article 32.

[16] Article 21.

[17] Law on Free Legal Aid ("Official Gazette" no. 20/11 and 20/15).

[18] Article 1.

[19] Article 2.

[20] Article 12.

The aforementioned persons may exercise the right to free legal aid under the condition that they are of a low financial status, which is determined on the basis of their income and property and the income and property of their family members. A person with low financial status is considered to be the one who has no assets, and whose monthly income and the total monthly income of family members does not exceed 30% of the average salary in Montenegro in the month preceding the month in which the request for approval of free legal aid was submitted, and 15% of the average salary for each subsequent member of the family.[21] The Law further provides a detailed elaboration of the rules on what is considered assets and income.

In addition, the Law explicitly recognizes certain categories of persons who can exercise the right to free legal aid regardless of their financial status. These are: 1) the beneficiary of the material security of the family, in accordance with the special law; 2) a child without parental care; 3) a person with a disability; 4) a victim of the criminal offense of domestic violence and human trafficking, as well as a victim of misdemeanour offense of domestic violence in accordance with the Law regulating protection against domestic violence.[22]

The authority competent for granting legal aid is the president of the basic court or the judge authorised by him, within the territory of whose jurisdiction the applicant is domiciled or resides.[23] The decision upon the request is final and an administrative dispute can be initiated against it.

Important role in exercising the right to legal aid can be attributed to the legal aid service or section. The legal aid service is established within basic courts with ten or more judges in office, and the legal aid section is established within basic courts with fewer than ten judges in office. These services or sections perform professional and administrative tasks in the procedure for approving free legal aid[24] and were established in all 15 basic courts in Montenegro.

In addition to these tasks, the service provides information and advice to interested persons regarding the possibilities and requirements for the exercise of the right to legal aid and other matters related to granting legal aid and assist the applicant in filing the application.[25] The Service may also provide legal counselling.[26]

It should be emphasized that exercising the right to free legal aid in accordance with this Law does not limit providing legal aid by services, non-governmental organizations and other organizations that are formed in accordance with other laws (services of local governments, non-governmental organizations, trade unions, etc.).[27] The Law does not exclude the possibility of exercising the right to be exempted from paying the costs of the procedure and the appointment of a defence counsel or attorney on the account of unfavourable financial situation, which can be achieved in accordance with special procedural laws. However, a person who receives free legal aid under another law is not eligible to exercise the right to free legal aid in accordance with the Law on Free Legal Aid.[28]

[21] Article 14.
[22] Article 13.
[23] Article 27.
[24] Article 28.
[25] Article 29.
[26] Article 32.
[27] Articles 5.
[28] Article 6.

3.2. Compliance with international legal sources

In this part of the paper, a brief overview of the compliance of the Law with the main principles of the international sources of law discussed in the 2.2. part of this paper will be given.

Having in mind that ICCPR contains general principles on the importance of legal aid for the legal system, it can be argued that the Law conveys these principles by its very adoption and the matter it regulates, since it gives citizens who do not have financial resources and those particularly vulnerable groups the opportunity to more easily access the court, not just in criminal cases, but in civil, enforcement cases, proceedings before the Constitutional Court and in amicable settlement proceedings as well. It is worth mentioning that the ICCPR in Article 14 (3) bounds free legal aid for the accused, without mentioning victims of crimes. Therefore, it can be argued that the Law provides right to free legal aid to a wider scope of beneficiaries since it does not only refer to the accused, but to everyone who is unable to exercise the right to judicial protection due to their financial situation.

The Principles on the Role of Lawyers, as it was stated in the second part of this paper, serve as a set of general recommendations to Governments with the aim of enabling the legal profession to provide high-quality legal representation delivered in a non-discriminatory manner. The Law is aligned with these important principles when taken into account that the provision of free legal aid is entrusted to lawyers. They provide free legal aid according to order from the list of the Bar Association of Montenegro, which, with the prior consent of the lawyer, is compiled according to the territorial jurisdiction of the basic courts. The Bar Association submits the aforementioned list to the Service, and the lawyer may refuse to provide free legal aid in accordance with the law regulating the legal profession.[29] In this way, the quality of provided legal service should be maintained as well as the equal participation of lawyers. In addition, the Law in Article 8 envisages that exercising and using the right to free legal aid must be ensured without discrimination on any basis or other personal feature.

The Principles and Guidelines, as it was stated previously, contains a broad definition of legal aid. Compared to the Law, it can be concluded that the Law does not provide for "legal education" as a form of a legal aid. It does provide for a legal advice - a narrower term than legal education, which actually creates the possibility for the state to act proactively and to raise the level of knowledge about the legal protection of citizens. In terms of beneficiaries, the Law does not specifically envisages a right to a legal aid to witnesses of crime, although it does envisages legal aid to victims of crime, but only to those coming from domestic violence and human trafficking. Therefore, it can be argued that there is a space for further improvement of the Law in terms of broadening the scope of the victims and entrusting legal aid services with the task of acting proactively and carrying out campaigns to educate potential beneficiaries even before they are in a situation where they need legal aid.

The determination of the ECHR that legal aid refers to "Everyone charged with a criminal offence", was softened and elaborated by the practice of the European Court, so legal aid also applies to victims of criminal acts, not only to perpetrators. The ECHR leaves a margin of appreciation to the states in order to organize their systems in a manner consistent with the principle of the rule of law. It is noticeable that the Law talks about the material test referred to by the ECHR but it does not talk about the "interests of justice". However, it cannot be stated that the Law is not harmonized with the ECHR because it contains a wide range of persons who are entitled to free legal aid, some of them regardless of financial means, and the provi-

[29] Article 30.

sions on the material conditions that the applicants must fulfil are elaborated in details which contribute to predictability and transparency. In addition, the Law is aligned with the case law of the European Court, since the legal aid can be delivered in each phase of the proceedings, through various forms, not just presentation before the Court. In terms of the "interest of justice", it should be noted that not only the Law on legal aid serves as a basis for obtaining this right. In criminal proceedings, it can be obtained through the application of the Criminal procedure Code[30] which prescribes in Article 70 that, where there are no conditions for a mandatory defence, but the interests of justice require it, a defence attorney may be appointed to the defendant, at his request, if he cannot bear the costs of the defence due to his financial situation. Therefore, taken together, these two laws make solid basis for the implementation of Strasbourg principles into the free legal aid system.

Also, the assessment of the Law's compliance with EU law cannot be viewed in isolation from other laws, especially the Criminal Procedure Code, because it is a law that contains rules on the participation of the injured party in the proceedings. Neither law contains a definition of the term victim, which is provided for in the Victims Directive. However, amendments to the Criminal Procedure Code are currently being prepared, which, among other things, aim to harmonize that law with the Victims Directive. Additionally, in terms of compliance of EU law with the Law, it is worth mentioning that the Law is aligned with the Council Directive 2002/8/EC and Commission Decision 2005/630/EC, since it contains provisions on free legal aid in cross-border matters, which are, actually, transposition of the relevant EU legal sources into national law.

3.3. Problems in practice

The Ministry of Justice is responsible for the preparation of legal acts that govern legal aid and it monitors the implementation of the free legal aid system. Since the application of the Law began, the Ministry of Justice conducted six analyses of the application of this system, in which the challenges in its functioning have been identified and appropriate recommendations have been made for the improvement of the system. The findings and recommendations of these analyses resulted in the improvement of the normative framework through amendments to this Law in 2015.

In the last analysis prepared in November 2020,[31] which was supported by the experts of the Council of Europe, it was concluded that after more than eight years since the adoption of the Law, the system of free legal aid functions and contributes to the realization of the right to a fair trial and equal access to the court for the most vulnerable social groups, and that there are no systemic deficiencies in terms of both the normative framework and the application of the law. However, in the Report of the European Commission on Montenegro for 2023,[32] it was stated that there is a lack of comprehensive data on free legal aid because it depends on the development of the new judicial information system and that the budget is decreasing.

Indeed, more detailed data on free legal aid were included in the Annual Report of the Judicial Council only in 2023. However, it should be noted that data do not provide explanation whether the data refer to victims of crime, or other participants of the proceedings:[33]

---

[30] Criminal Procedure Code ("Official Gazette", no. 57/09, 49/10, 35/15 and 145/2021).

[31] Analiza rezultata funkcionisanja sistema besplatne pravne pomoći, Ministarstvo pravde Crne Gore, Novembar 2020.

[32] Montenegro 2023 Report, Commission staff Working document.

[33] https://sudovi.me/static//sdsv/doc/Izvjestaj_o_radu_2023_web_preview.pdf.

Table 1: All basic courts in Montenegro - total request for legal aid with data for criminal offences domestic violence and human trafficking (Judicial Council Annual Report 2023, p.72).

15 basic courts	Total submitted request for legal aid	Granted	Submitted for domestic violence and human trafficking	Granted for domestic violence and human trafficking
2023	352	284 (80%)	77 (22% from the total number of submitted)	68 (23% from the total number of granted and 88 % from the total number of submitted)

High percentage of the total requests was granted - 80%. However, only 22% of the submitted requests, stems from applicants involved in domestic violence or human trafficking.

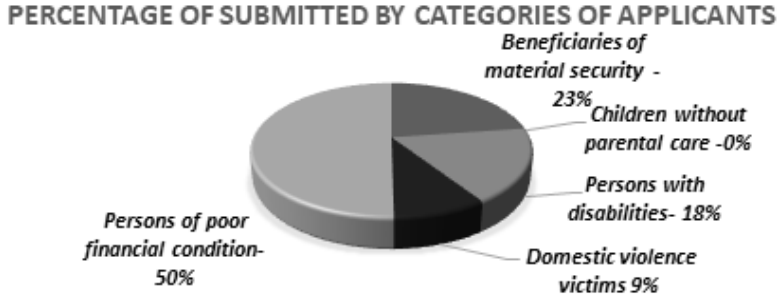
Table 2: Number of criminal/misdemeanour offences and request for legal aid (Judicial Council Annual Report 2023, p.72).

Year	Total number of criminal proceeding for domestic violence	Total number of misdemeanour proceedings for domestic violence	Total number of granted requests	Submitted requests for domestic violence and human trafficking	Granted for domestic violence
2023	443	2334	284	77	68

The total number of requests for free legal aid granted (68) compared to the total number of criminal and misdemeanour proceedings initiated for domestic and family violence (2,777), leads to the conclusion that these types of beneficiaries seek for the free legal aid in a very small percentage - about 3% in total.

Table 3: Basic court in Podgorica statistical data on submitted legal aid requests, per year:

Year	2019	2020	2021	2022	2023	Total 2019-23
Submitted request	169	107	119	146	118[1]	659
Granted	151 (89%)	101 (94%)	96 (81%)	116 (86%)	94 (80%)	568 (86%)
Rejected	16 (9%)	1 (1%)	11 (9%)	12 (8%)	13 (11%)	53 (8%)
Suspended	2 (2%)	5 (5%)	12 (10%)	8 (6%)	5 (4%)	32 (5%)



The highest number of requests in period from 2019-2023 were submitted by persons with poor financial conditions (around 50%), and the lowest number of requests came from victims of criminal/misdemeanour domestic violence and human trafficking (up to 10% on average).

Table 4: Total funds spent for lawyers providing legal aid, per year (Judicial Council Annual Reports 2019-2023):

Year	Total funds spent for lawyers providing legal aid
2019	203.273,62 €
2020	146.483,59 €
2021	121.500,28 €
2022	108.776,74 €
2023	106.475,83 €

Total amount of funds spent on providing legal aid by lawyers, decrease continuously.

3.4. Instead of the conclusion -Suggestion for further developments of the right to free legal aid

Montenegro has a good normative framework for exercising the right to free legal aid. However, statistical data indicate that a very low number of victims of criminal offenses decide to exercise this right. So, it can be concluded that there is still a need for continuous improvement of this system. To that end, in the upcoming period, both the revision of the normative framework and the implementation of concrete activities for the improvement of the implementation of this system should be undertaken. These activities should be aimed at:

- amending the current law in order to recognize additional beneficiaries - primarily victims of torture and victims of crimes against sexual freedom;

- continuous promotion of the free legal aid even before the victims as potential beneficiaries of this right turn to the Service and enhance visibility of the Services in basic courts;

- organizing specialized trainings for lawyers and employees of the Services, especially on the rights of particularly sensitive groups of citizens;

- improving the Service's cooperation with legal clinics and non-governmental organizations, with the aim of constantly raising the quality and availability of free legal aid;

- allocating more funds for the free legal aid:

- maintaining comprehensive and detailed statistics that will provide a basis for studying and improving the system.

BIBLIOGRAPHY

A. v. United Kingdom, no. 100/1997/884/1096, p. 24.

A. v. Croatia, no.55164/08, Judgment from October, 14, 2010.

Akter, F. & Brems, E. (2016) The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems: A Comprehensive Approach to Legal Aid, *Bangladesh Journal of Law 16(1),* p.1-20, available at: https://www.biliabd.org/wp-content/uploads/2021/08/Farzana-Akter-Eva-Brems.pdf, accessed on 27.04.2024.

Analiza rezultata funkcionisanja besplatne pravne pomoći (2020) Ministarstvo pravde Crne Gore, available at:
https://wapi.gov.me/download-preview/0fc0b937-0673-48c5-a5b8-89f8fa374c2a?version=1.0, accessed on: 29.04.2024.

Basic Principles on the Role of Lawyers, adopted by the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, available at: https://digitallibrary.un.org/record/166213?ln=en, accessed on 27.04.2024.

Buergenthal, T. (2006) The Evolving International Human Rights System, *The American Journal of International Law, Volume 100 (4)*, pp. 783-807, available at: https://www.jstor.org/stable/4126317, accessed on 27.04.2024.

Charter of Fundamental Rights of the European Union (2012) Official Journal C 326, 26 October p. 391–407.

Commission Decision of 26 August 2005 establishing a form for the transmission of legal aid applications under Council Directive 2003/8/EC (2005) Official Journal L 225, 31 August, p. 23–27.

Constitution of Montenegro (2007) Official Gazette no. 1/07.

Council of Europe Convention on preventing and combating violence against women and domestic violence (2011), available at: https://rm.coe.int/ic-and-explanatory-report/16808d24c6, accessed on 30.04.2024.

Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (2003) Official Journal L 26, 31 January, p. 41–47.

Criminal Procedure Code, Official Gazette, no. 57/09, 49/10, 35/15 and 145/2021.

D.L. v. Germany, no. 18297/13, Judgment from November, 22, 2018.

Dimitrijević, V., Popović, D., Papić, T., & Petrović, V. (2006) *Međunarodno pravo ljudskih prava*. Beograd: Beogradski centar za ljudska prava.

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (2012) Official Journal L 315, 14 November, p. 57–73.

European Convention on Human Rights, available at: https://www.echr.coe.int/documents/d/echr/convention_ENG, accessed on: 29.04.2024.

Godišnji izvještaj o radu Sudskog savjeta i ukupnom stanju u sudstvu za 2023.godinu (2023), Sudski savjet Crne Gore, available at: https://sudovi.me/static//sdsv/doc/Izvjestaj_o_radu_2023_web_preview.pdf, accessed on: 29.04.2024.

Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, adopted in 2005 by the Economic and Social Council, available at: https://www.unodc.org/documents/justice-and-prison-reform/Justice_in_matters...pdf, accessed on 27.04.2024.

Harris, D., O'Boyle, M., Bates, E., & Buckley, C. (2009) *Law of the European Convention on Human Rights.* Oxford: Oxford University Press.

Abtahi, H. (2007) Reflections on the Ambiguous Universality of Human Rights: Cyrus the Great's Proclamation as a Challenge to the Athenian Democracy's Perceived Monopoly on Human Rights. *Denver Journal of International Law & Policy, Volume 36 (1),* p.55-91, available at: https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1269&context=djilp, accessed on 27.04.2024.

International Covenant on Civil and Political Rights, adopted on 16 December 1966, by General Assembly resolution 2200A (XXI), available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights, accessed on: 27.04.2024.

Kolaković-Bojović, M. (2017) Besplatna pravna pomoć kao međunarodni pravni standard, *Regionalna naučna konferencija Besplatna pravna pomoć (Ratio legis, obim i uslovi primene)*, p.129-147.

Law on Free Legal Aid, Official Gazette, no. 20/11 and 20/15.

Medarska, A. (2009) *Rights of crime victims under the European Convention on Human Rights: Invading Defendant's Rights?* LL.M. Human Rights Thesis. Central European University.

Mole, N. & Peykova, R. (2019) *Nasilje u porodici - Pregled međunarodnih standarda i jurisprudencije Evropskog suda za ljudska prava.* AIRE centar.

Momen, N. (2022) United Nations Universal Declaration of Human Rights, https://doi.org/10.1007/978-3-319-69909-7_104661-1

Montenegro 2023 Report, Commission staff Working document, SWD(2023) 694 final, available at: https://neighbourhood-enlargement.ec.europa.eu/document/download/e09b27af-427a-440b-a47a-ed5254aec169_en?filename=SWD_2023_694%20Montenegro%20report.pdf, accessed on: 29.04.2024.

Pakelli v. FRG, no.8398/78, Decision from April, 25, 1983.

Priručnik o europskom pravu u području pristupa pravdi (2015) Luxembourg: Ured za publikacije Evropske unije.

Quaranta v. Switzerland, no. 12744/87, Judgment from 24 May 1991.

Rantsev v. Cyprus and Russia, no. 25965/04, Judgment from January, 7, 2010.

Romani, C.F.C. (2010), International Law of Victims, *Max Planck Yearbook of United Nations Law, Volume 14*, p.219-372, available at: https://www.mpil.de/files/pdf3/mpunyb_06_casadevante_14.pdf, accessed on 27.04.2024.

Rumor v. Italy, no. 72964/10, Judgment from May, 27, 2014.

Sutto, M. (2019) *Human Rights evolution, a brief history*, available at: https://www.coespu.org/articles/human-rights-evolution-brief-history, accessed on 27.04.2024.

Talpis v. Italy, no. 41237/14, Judgment from March, 2, 2017.

Tsonev v. Bulgaria, (no. 2). no. 2376/03, Judgment from January 14, 2010.

Tyagi, A. & Singh, R. (2019) Analysis of International Humanitarian Law and Human Rights. *International Journal of Law Management & Humanities, Volume 2 (1)*, p.1-7, available at: https://ijlmh.com/wp-content/uploads/2019/10/Analysis-of-International-Humanitarian-Law-and-Human-Rights.pdf, accessed on 27.04.2024.

United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Resolution adopted by the General Assembly (on the report of the Third Committee (A/67/458), available at: https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf, accessed on 27.04.2024.

Y. v. Slovenia, no. 41107/10, Judgment from May, 28, 2015.

Milica KOLAKOVIĆ-BOJOVIĆ*
Grażyna BARANOWSKA**

Original Scientific Paper
DOI: 10.47152/Palic2024.4

MIGRANTS AS VICTIMS OF ENFORCED DISAPPEARANCES

Triggered by various factors, migrations change people's destinies, social, economic, and cultural fibre and patterns of the states and regions, but also the geo-political map of the world. In their attempts to find a better life conditions or environment, migrants are frequently faced with insecurity, serious human rights violation and violence, including exposure and additional vulnerability to be subjected to smuggling and trafficking and other forms of exploitation. Rigid migration policies of States such as refusal of entry, pushbacks often accompanied by violence, expulsion or detention, and the increasingly perilous journeys of migrants cause a particular risk to become victims of enforced disappearances. This paper explores and presents the reasons behind the decision of the UN Committee on Enforced Disappearances to adopt the First General Comment on Enforced Disappearances in the Context of Migration, but also elaborates on the process preceded the adoption as well as the content of the document itself. It also discusses the forthcoming steps in dissemination and implementation of the General Comment focusing on the specific roles of other universal, regional and national human rights mechanisms, including the UN Working Group on Enforced and Involuntary Disappearances.

Key words: migrants, enforced disappearances, migrant rights, missing migrants.

1. ENFORCED DISAPPEARANCES IN THE CONTEXT OF MIGRATION

We are witnessing the massive migration movements around the World, caused by international or internal conflicts, persecution, natural disasters, difficult economic situation, discrimination, high crime rate or even by the risk of being subjected to enforced disappearance. Regardless of the reasons that trigger the migration, a large number of migrants are at risk of disappearing en route to reach their destination country or even in the destination or a country of their return.

Much attention has indeed been brought in recent years to the thousands of migrants who go "missing" *en route* to reach their destination country, or in the destination country itself. Among missing migrants are persons who have been subject to enforced disappearances.[1]

Considering the variety of factors that can cause migrants go missing en route, it is important to underline the clear terminological distinction between a few related concepts: go miss-

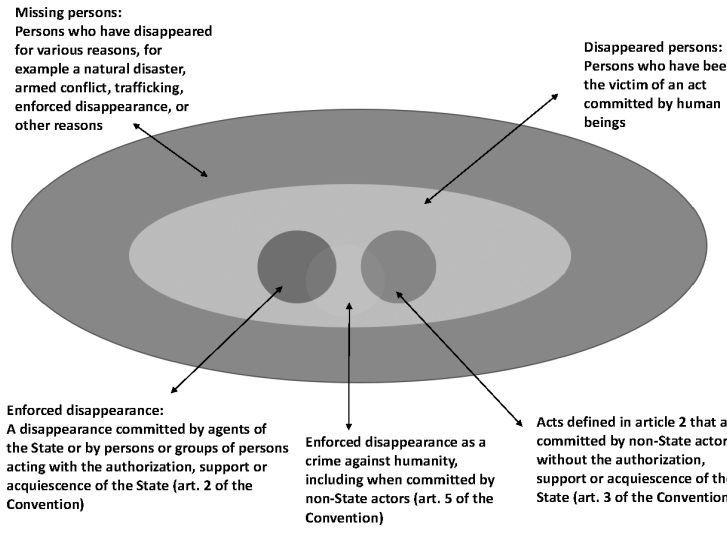
* PhD, Senior Research Fellow, Institute of Criminological and Sociological Research in Belgrade, Vice President of the UN Committee on Enforced Disappearances, Member of the Advisory Committee on Nomination of Judges of the International Criminal Court, https://orcid.org/0000-0002-3130-5128. E-mail: kolakius@gmail.com. The current paper is part of a research endeavor funded by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia, conducted by the Institute of Criminological and Sociological Research, 2024, number 451-03-66/2024-03/200039.

** PhD, Assistant Professor Institute of Law Studies, Polish Academy of Sciences, Senior Researcher at Hertie School, Germany, Member of the UN Working Group on Enforced and Involuntary Disappearances, https://orcid.org/0000-0001-6614-9121. E-mail: baranowska.g@gmail.com.

[1] For more see: https://www.ohchr.org/en/treaty-bodies/ced/general-comment-no-1-enforced-disappearances-context-migration, last accessed on April 29th 2024.

ing, disappear and be subjected to enforced disappearance. Therefore, the precise distinction between those notions is given in the chart below:

Chart 1: Terminological distinction of enforced disappearances from related terms[2]



2. EFFORTS TO ADDRESS ENFORCED DISAPPEARANCES IN THE CONTEXT OF MIGRATION

The initial attempt to address the phenomenon of enforced disappearances of migrants was initially made by UN Working Group on Enforced or Involuntary Disappearances (hereinafter: WGEID), followed by the more comprehensive approach of the UN Committee on Enforced Disappearances (hereinafter: CED, Committee).

2.1. The WGEID and migration

WGEID was created in 1980 and has since dealt with enforced disappearances through the monitoring of the implementation of the Declaration. The instances of enforced disappearances that reached the WGEID show different patterns and occur in various contexts, one of them being migration. The WGEID has addressed enforced disappearances in migration through several means, including under its humanitarian mandate, in General Allegations, when conducting country visits, as well as in its thematic studies. In the crucial thematic study on enforced disappearances in the context of migration in 2017, the WGEID called them a 'moder-day reality that should urgently be given adequate attention'.[3]

a. Humanitarian mandate

The WGEID's primary task is its 'humanitarian mandate.' This means providing assistance to families in determining the fate and whereabouts of family members who are reportedly

[2] Committee on Enforced Disappearances, Report of the Committee on Enforced Disappearances on its visit to Iraq under article 33 of the Convention, CED/C/IRQ/VR/1 (Findings), p. 11.

[3] See: 1712900 (un.org).

forcibly disappeared. It essentially acts as a channel of communication between families and states. Invoking the humanitarian mandate is not a confirmation that the act is indeed an enforced disappearance, but the WGEID can only consider cases that allege the occurrence of an enforced disappearance.[4]

Over the years, the WGEID has received many requests from families of disappeared migrants. For example, in 2017, the WGEID received cases from ten families of persons who disappeared in the territorial waters of Tunisia on their way to Italy. The WGEID accepted those cases and transmitted them to Tunisia, Italy and Frontex, as at the time of the disappearance the three conducted joint measures in the region.[5]

b. General Allegations

The WGEID regularly transmits to states allegations on encountering the implementation of the Declaration. Those are reflected in the post-session documents of the WGEID[6] and often concern disappearances of migrants.[7]

c. Country visits

The WGIED, just like all other special procedures of the Human Rights Council, carries out two country visits a year. The visits provide WGEID with a first-hand account of the situation concerning enforced disappearances. They also allow the WGEID to provide the state with conclusions and recommendations that are intended to assist governments and provide them with practical solutions to implement international standards. During such visits, the WGEID has also address enforced disappearances in migration, including in separate sections in the report.[8]

d. 2017 Thematic study on enforced disappearances in migration[9]

In 2017 WGEID adopted the Report of the Working Group on Enforced or Involuntary Disappearances on enforced disappearances in the context of migration.[10] Using the extensive

[4] Additionally, since 2019, – if concerning acts tantamount to enforced disappearances – to a non-State actors exercising *de facto* control or government like functions over territory or a population; WGEID Methods of Work. However, this is not relevant for the described case concerning the disappearance within the territorial waters of Tunisia, which was processed within the regular state-centered procedure.

[5] WGEID: Communications, cases examined, observations and other activities conducted by the WGEID. UN Doc A/HRC/ WGEID/112/1; para. 93–94. The communication did not seek to attribute responsibility to either Italy or Frontex but only asked them for available information. Frontex authorities responded to the WGEID's letter yet without clarifying the case, see WGEID Communications, cases examined, observations and other activities conducted by the Working Group on Enforced or Involuntary Disappearances. UN Doc. A/HRC/ WGEID/113/1, par. 122–123.

[6] See: General allegations | OHCHR.

[7] For example GA-Annex-II-Maroc.pdf (ohchr.org).

[8] For example https://www.ohchr.org/en/documents/country-reports/ahrc5422add2-visit-honduras-report-working-group-enforced-or-involuntary.

[9] Why this contributions highlights that thematic study, there are also other thematic studies that address enforced disappearances in the context of migration, most notably the study on enforced disappearances in the context of transnational transfers, g2121521.pdf (un.org).

[10] Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on En-

experience of the WGEID on the topic, the report pointed out that there is a direct link between migration and enforced disappearances. First, people get forcibly disappeared in migration. Second, people migrate to escape threats of being subjected to enforced disappearances. Thirdly, families migrate to establish the fate and whereabouts of their loved ones.[11]

The WGEID found that migrants get forcibly disappeared for various reasons. Just as with all other disappearances, this can happen as a result of a deprivation of liberty for political or other reasons. The report pointed to the "Operation Condor" as an example of cooperation between states to forcibly disappear political opponents. In this cooperation military regimes in South American coordinated their actions in the 1970s and 1980s to capture their nationals who have fled to escape persecution.[12] At the same time migrants are also forcibly disappeared in procedures that are specific to migrants, namely immigration detention and deportation proceedings. The report mentions several instances of such detentions throughout the world, pointing also to the fact that enforced disappearances also occur during arbitrary expulsions and pushbacks.

Enforced disappearances in the understanding of the WGEID are only acts conducted by, 'on behalf of, or with the support, direct or indirect, consent of acquiescence' of the state.[13] However, the report also addressed the fact that migrants disappeared as a result of criminal conduct of non-state actors, notably smugglers and traffickers. As the WGEID points out, such acts constitute enforced disappearances, if official authorities are involved in them – at least by acquiescence.

Importantly, the report also mentioned factors which contribute to the enforced disappearances of migrants, singling out conflict and violence, socioeconomic factors, impunity, discrimination, state migratory and counter-terrorism policies and lack of statistical data. It provides examples of those and explains how those factors could be addressed to prevent enforced disappearances.[14] Finally, the report points out state obligations, focusing on prevention, search for disappeared migrants, obligation to investigate, criminalize and prosecute. It also contains a section specifically on families of forcibly disappeared persons[15] and the need to protect them and provide them with remedies.[16]

3. THE ROLE OF THE COMMITTEE IN PROTECTING MIGRANTS

3.1. The Committee's role in overseeing implementation of the Convention

International Convention for the Protection of all Persons from Enforced Disappearance, (hereinafter: ICCPED, Convention) was adopted in 2006 and entered into the force in 2010.

forced or Involuntary Disappearances on enforced disappearances in the context of migration, 2017, available at www.ohchr.org/en/enforced-disappearances-context-migration-report.

[11] Thematic study, par 7-14.

[12] Thematic study, par 17; The Condor Trials: Transnational Repression and Human Rights in South America : Lessa, Francesca: Amazon.de: Books.

[13] Preamble Declaration on the Protection of all Persons from Enforced Disappearance | OHCHR.

[14] Thematic study, 46-56.

[15] For more info. on the rights of families of missing persons see: Baranowska, G. (2022) 'The Rights of the Families of Missing Persons: Going Beyond International Humanitarian Law', *Israel Law Review*, 55(1), pp. 25–49.

[16] Thematic study, 57-76.

Its implementation is being overseen by the Committee on Enforced Disappearances composed of 10 independent experts proposed by the States Parties to the Convention and elected by the Assembly of the States Parties. Therefore, they are not representatives of the State Parties but serve in individual expert capacity.[17]

The main mechanisms used by CED to monitor implementation of the Convention are:

a) Country Reports, follow-up reports and additional information submitted in line with Art. 29 of the Convention and discussed in the country dialogues with the States Parties.

b) Urgent Actions- the mechanism allowing the Committee to request the States Parties to provide as soon as possible information on the disappeared person and on the measures taken to find him/her.

c) Individual and Interstate Communications (arts. 31 and 32 of the Convention).

d) Country Visits (art. 33 of the Convention)

Just like other UN Treaty Bodies, CED is allowed to develop additional, non-binding instruments to interpret certain provisions of the Convention or to in depth explore certain aspects or contexts of the phenomenon addressed by the Convention. This mechanism allows the UN Treaty Body System to stay sensitive to the real needs of people whose human rights are being violated worldwide. These needs evolving through the time, the same as contexts in which human rights violations occur, but also the same as changing the modalities of human rights violation. For UN Treaty Bodies, this means that they need to take into account not only the context in which a treaty has been developed, but also the present one.

For CED, as one of the youngest committees, this should be an easy task. But, in practice, the situation is quite different. Namely, this Convention was created due to the need to react to a great number of enforced disappearances during the second half of the 20th century. At the time the Convention was created, the largest number of enforced disappearances was related to the context of dictatorship regimes. Over time, the contexts of enforced disappearances evolved, they have got new forms, so nowadays, the thousands of victims around the world facing enforced disappearances associated to armed conflicts, organized crime, or migrations.

Some initial efforts to tackle the issue of enforced disappearances in the context of migration was made by the Committee through the Guiding Principles for the Search for Disappeared Persons[18] adopted in 2019 emphasizing the particular vulnerability of migrants and call upon States to pay attention to the risks of enforced disappearance, which increase as a result of migration, and ask for specific coordinated search and protection measures taking into account the difficulties linked to migration situations.[19]

---

[17] For more info. on development of universal response to enforced disappearances see: Baranowska, G. & Kolaković-Bojović, M. (2024) Dealing with Uncertainty: On Addressing Enforced Disappearances Universally, In: Baranowska, G. & Kolaković-Bojović, M. (eds.) *Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon*. Cambridge University Press (in publishing).

[18] Committee on Enforced Disappearances. (2019). Guiding Principles for the Search for Disappeared Persons. CED/C/17, available at www.ohchr.org/en/documents/legal-standards-and-guidelines/guiding-principles-search-disappeared-persons, last accessed on April 21, 2024.

[19] For more info. on the content of the Guiding Principles, the process of development and the impact they made so far, see: Galvis Patiño, M.C. & Huhle, R. (2024) The Guiding Principles on the Search for Disappeared Persons – Origins and Impact, In: Baranowska, G. & Kolaković-Bojović, M. (eds.) *Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon*. Cambridge University Press (in publishing).

Despite the identification of the issue of enforced disappearances of migrants, it remains marginalised in the political and legal discourse, including the specificities of the legal obligations of States in these cases. Rigid migration policies of States such as refusal of entry, push-backs often accompanied by violence, expulsion or detention, and the increasingly perilous journeys of migrants cause a particular risk to become victims of enforced disappearances. This is by no means a problem of certain states only. Deaths and disappearances on various migration routes are widely reported. However, there is a lack of statistical data, and it is not possible to establish the exact number of migrant victims of enforced disappearances. 20

In addition to the general objective of ensure improved level of the protection of migrant victims of enforced disappearances, by its decision to develop and adopt the General Comment on Enforced Disappearances in the Context of Migration, CED tried to achieve the following operational goals:

- To shed light on one of the most burning contexts of enforced disappearances in detail.

- To provide the State Parties detailed guidelines on how to act to prevent enforced disappearances in the context of migration, but also on how to react upon them as well as how to protect and support victims.

- To provide the victims, their associations, NGOs, human rights defenders, international organisations and academic community a kind of the additional instrument in their hands to fight for the protection of migrants from enforced disappearances.

- To ensure for the Committee itself an additional instrument to oversee the implementation of the Convention in this specific context and to make it more efficient.

- Finally, the Committee counted on the fact that through the process of developing the General Comment, but also through its content later on, a general public will learn about what happening to migrants around the world, with the focus on the risk to be subjected to enforced disappearances.

3.2. The process of developing the General Comment

Almost three years long process (from the presentation of the initial concept to the adoption) was led by two rapporteurs Ms. Barbara Lochbihler and Ms. Milica Kolaković-Bojović, Committee members.

The consultative process itself included:

a) Two rounds of internal consultations aimed at developing and finalization of the draft concept note to be presented to the public together with the public call for contributions. The same was repeated to discuss the draft General Comment before making it public. This draft has been shared with member States, civil society actors, national human rights institutions (NIHRIs) and United Nations actors for inputs and comments.

b) Two rounds of public consultations, including both modalities: written contributions and online round tables organized for four regions: in Latin America and the Caribbean (16 and 17 August 2022); Asia Pacific (18 August 2022); Europe (5th December 2022) and Africa: (12 and 13 December 2022).

[20] See: https://www.ohchr.org/en/treaty-bodies/ced/general-comment-no-1-enforced-disappearances-context-migration, last accessed on April 21, 2024.

Within this period, more than 100 of written contributions were received together with oral statements of the UN agencies, international organisations, regional organisations (including CoE), NGOs, academia, associations of victims and family members.[21]

During its 25th session, on September 18th 2023, the Committee adopted the General Comment[22]. With the aim to disseminate and promote the content of the adopted general comment and foster its implementation, the Committee held a launching event on 28th September 2023.

Through such comprehensive and long-lasting process, the Committee has proved its commitment the "quality before speed" principle.

3.3. The main novelties brought by the General Comment

Bearing in mind the comprehensiveness of this document, by this occasion we will try to present the main novelties included in it through the following 10 points:

1) The General Comment brings a clear determination of the notion of migrant used for the purpose of this document as well as elaboration of reasons or triggers of migration. It takes into account various reasons, but it deals in dept with discrimination as a triggering factor of migration.

Namely, for the purposes of the General Comment, "the term "migrants" is used to refer to persons who move away from their place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons,[23] such as family reunification or moving away from international or non-international armed conflicts, persecution, discrimination, natural disasters, environmental degradation, the effects of climate change, difficult economic situations or high crime rates." (par. 1)

2) This document also reflects upon migrants' exposure to various risks, including reasons that causing such risks. The special attention was given to the strict border and migration policies as a factor of risk.

The General Comment elaborates that "migrants are in situations of particular vulnerability, which may arise from their personal characteristics or socioeconomic status, the circumstances in which they travel – including their undocumented status and language barriers – or the treatment or conditions that they face in countries of origin, transit and destination, including border areas.[24] The universal human rights and fundamental freedoms of migrants must be respected, protected and fulfilled at all times.[25] Although States have a sovereign prerogative to manage their borders and regulate access to their territories, they must

[21] See more on: https://www.ohchr.org/en/calls-for-input/2023/call-inputs-first-draft-enforced-disappearances-context-migration-ced-general, last accessed on April 29th 2024.

[22] Committee on Enforced Disappearances, General comment No. 1 (2023) on enforced disappearance in the context of migration Available at: https://www.ohchr.org/en/treaty-bodies/ced/general-comment-no-1-enforced-disappearances-context-migration, 21.4.2024.

[23] International Organization for Migration (IOM), "IOM definition of 'migrant'".

[24] Global Compact for Safe, Orderly and Regular Migration, objective 7. See also the Guiding Principles for the Search for Disappeared Persons (CED/C/7, annex), principle 9; and African Commission on Human and Peoples' Rights, Guidelines on the Protection *of All Persons from Enforced Disappearances in Africa* (2022), para. 1.3.2.

[25] Global Compact for Safe, Orderly and Regular Migration, para. 4.

do so in full compliance with their obligations under international law,[26] in particular human rights law, international humanitarian law, international refugee law and the law of the sea." (par. 2) Already in a situation of vulnerability and faced with restrictive immigration policies and dehumanizing border governance tactics,[27] thousands of migrants die, disappear or go missing each year, leading to humanitarian crises in many regions of the world.[28] (par. 3)

3) The point of this document which we perceive to be very important is a clear distinction between migrants going missing, disappeared or being subjected to enforced disappearances.

As it is underlined in the General Comment, "some missing migrants could be victims of disappearance, including enforced disappearance. The principal distinctive element between a migrant going missing and a migrant becoming a victim of disappearance is the commission of a crime against a migrant, as provided in articles 2, 3 and 5 of the Convention." (par. 4)

4) The GC provides a set of measures aimed at preventing enforced disappearances of migrants, including a prohibition of a secret detention as well as set of the procedural guarantees aimed to prevent it. In that regard, a special attention was also given to the registries of persons deprived of liberty (keeping those registries up to date, their interconnection and interoperability. This is especially important taking into account that in many SPs there is no interconnection and interoperability between registries established in prison administration, migrant reception centres, medical institutions, etc.) (par. 16-20)

5) The General comment also in many points deals with data collection/statistics on enforced disappearances. Namely, collecting statistical, properly disaggregated data on disappeared and deceased migrants is crucial. "This lack of accurate and disaggregated data hinders the adoption of policies and strategies to prevent the enforced disappearance of migrants and increases the vulnerability of migrants to becoming victims of this crime". (par. 5) Frequently, it is difficult to get data on enforced disappearances from the general databases of missing persons, and even more difficult to identify migrant victims of enforced disappearances as a subcategory. In that regard, the GC brings precise guidelines on how to collect, preserve, analyse and protect personal data. This last point was very important to us having in mind that improper handling the personal data can expose migrants and their family members to additional risks. (par. 23-26)

6) Additional reason to focus on the personal data protection is connected to the fact that this document addresses to the great extent a use of new technologies in combating enforced disappearances of migrants which also corresponds in time and content the newly adopted Study on New Technologies and Enforced Disappearances adopted by the Working Group on Enforced and Involuntary Disappearances (WGEID).[29]

Namely, in the 54th session of the Human Rights Council, the Working Group on Enforced or Involuntary Disappearances presented this thematic study which analyses how new technologies:

---

[26] Committee on the Elimination of Discrimination against Women, general recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, para. 23.

[27] A/HRC/50/31, para. 24. See also CED/C/GRC/CO/1, para. 28; CED/C/MEX/VR/1 (Findings), para. 20; and CED/C/MEX/VR/1 (Recommendations), paras. 39–42.

[28] A/72/335, para. 1.

[29] See more on: https://www.ohchr.org/en/press-releases/2023/09/un-experts-study-new-technologies-and-enforced-disappearances-exposes-risks, last accessed on April 29th 2024.

(a) are being used against relatives of disappeared persons, their representatives, human rights defenders and CSOs and which protective strategies are – or can be put – in place;

(b) can be effectively applied to facilitate the search for disappeared persons, ensuring that their fate and whereabouts are established promptly and in a reliable and secure manner; and

(c) can be used to obtain evidence of the commission of enforced disappearance, bearing in mind that this international crime is by its own nature shrouded in secrecy and, as such, poses substantial evidentiary obstacles to identify and bring to justice perpetrators.

The study is complemented by annexes containing a non-comprehensive mapping of publicly available tools, contacts and resources that may assist in putting in place protective strategies vis-à-vis online threats, facilitate the search for disappeared persons and the corresponding criminal investigations. The Working Group also aims at developing in the near future the presentation of a hypothetical case study illustrating the step-by-step process to investigate a case of enforced disappearance through the use of new technologies, with the objective of showing the implications, both in terms of advantages and existing obstacles.

The Working Group offers several recommendations to States, corporations, civil society organisations, NIHRIs, academic institutions, donors, international courts, as well as other human rights mechanisms and the Office of the High Commissioner for Human Rights.[30]

7) This General Comment also approaches comprehensively to the state policies, following the principle of non-criminalization of migrants and human rights defenders assisting them.

8) The document establishes a clear connection between trafficking and smuggling of migrants and enforced disappearances of them, providing for a set of measures to additionally protect children. (par. 26)[31]

9) A very important section of the GC is dedicated to the non-refoulment and pushbacks. Namely, the General Comment deals in detail with the need to ensure individual risk assessment in order to prevent refoulements that may lead to enforced disappearances. The pushbacks were recognized as a one of the riskiest environments for migrants to be subjected to enforced disappearances. Namely, a various harmful practices were recognised in that regard, such as destroying their mobile phones and other personal belongings e.g. biometric documents which prevents them from keeping communication and/or receiving assistance, leaving them in extreme weather conditions or other life-threatening environments.

10) When it comes to search[32] and investigation of enforced disappearances of migrants, the General Comment addresses several subtopics:

---

[30] See more in: Citroni, G. (2024) New Technologies and Enforced Disappearances- The Working Group on Enforced or Involuntary Disappearances Exploring a New World Between Opportunities and Challenges, In: Baranowska, G. & Kolaković-Bojović, M. (eds.) *Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon*. Cambridge University Press (in publishing).

[31] For more info. on the protection of children from enforce disappearances see: Kolaković-Bojović, M. (2019) Wrongful Removal of Children. In: Yearbook. No. 2, *Human rights protection: protection of the right's of the child: 30 years after the adoption of The Convention* on the Rights of the Child. Provincial Protector of Citizens - Ombudsman; Institute of Criminological and Sociological Research, Novi Sad; Belgrade, pp. 429-450.

[32] For more info. on the application of conducting search under the presumption that a person is still alive see: Kolaković-Bojović, M. (2021) *Disappeared Persons and the Right to be Considered Alive - The current State of Play in the Western Balkans.* In: Yearbook. No. 4, *Human rights protection: right to life*.

a) Initiation of investigation ex officio, and obligation to provide mechanisms to report e.d., including using modern technologies.

b) Use and preserving the border surveillance footage for the purpose of search and investigation.

c) We also recognised the role of the creation of centralised DNA databases with ante- and post-mortem information and DNA cross-matching.

d) Also, we have underlined the need for the SP to use for the purpose of search and investigation, information provided by relatives, civil society organisations, international organisations also through innovative use of information and communication technology.

11) The General Comment includes also a detailed section on victims' rights, where the Committee especially addressed the participation in the search and investigation, and the right to obtain information about disappeared persons from two perspectives:

a) Provision of humanitarian visas or temporary residence permits to relatives to facilitate their participation in the search and investigation (para 46).

b) Remote participation and communication including through the use of new technologies or, where appropriate, diplomatic and consular representation. (par. 46)

The General Comment underlines that the States parties have an obligation to ensure that all victims of enforced disappearance have access to their rights to truth and justice, reparation and guarantees of non-repetition, including when such disappearance occurs in the context of migration. It further clarifies that the "reparation should be understood in a broad sense that includes restitution, rehabilitation, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition. In addition, all victims have a right to prompt, fair and adequate compensation" (art. 24 (2)–(5) ICPPED). (par. 44)[33]

The General Comment emphases that "in ensuring access to compensation and reparation, States parties must be sensitive to the specific needs of victims, taking into account, inter alia, their sex, sexual orientation, gender identity, age, nationality, ethnic origin, social status, disability, migratory status and other characteristics of the person or their relatives. Such access must be guaranteed for those in any form of union comparable to marriage, even when not recognized under the law of the State party or the country in which relatives are located. (par. 45)

Provincial Protector of Citizens - Ombudsman; Institute of Criminological and Sociological Research, Novi Sad; Belgrade.

[33] For more on the concept of reparation for victims of enforced disappearances see: Kolaković-Bojović, M. & Džumhur, J. (2024) Enforced Disappearances and the Right to Reparation in Western Balkans, In: Baranowska, G. & 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. and Grujić, Z. (2020) *Crime Victims and the Right to Human Dignity - Challenges and Attitudes in Serbia.* In: Yearbook. No. 3, *Human rights protection: the right to human dignity*. Provincial Protector of Citizens - Ombudsman; Institute of Criminological and Sociological Research, Novi Sad; Belgrade, pp. 239-269. ISBN 978-86-80756-36-3

In addition to this, the General Comment addressed the victims' right to be protected and supported. "Specific attention should be given to ensuring the necessary psychosocial and logistical support for relatives of disappeared persons." (par. 46)

12) The final section of the GC is dedicated to the regional and international cooperation, but also to dissemination of this document.

4. NEXT STEPS: DISSEMINATION AND IMPLEMENTATION

Despite the fact that comprehensive efforts were made to draft and adopt the General Comment, the main steps are yet to be made to ensure its effective dissemination and implementation.

An important role in that regard can play establishing a clear connection between that process and the promotion of the further ratification of ICPPED. Namely, adoption of the General Comment can bring the new perspective also to the issue of ratification process which can be fostered if we take into account all the specificities of the particular regions, but also particular states. This General Comment provides us with the opportunity to look into the states and regions that, beyond the migration context may not be interested in enforced disappearances.

In that process, the Committee should count on the existing networks and resources/infrastructure around the World, such as:

a) UN agencies and regional offices

b) National human rights institutions

c) International Committee of Red Cross network of legal advisers

d) UNHCR

e) NGOs who have expertise in enforced disappearances, continuous interaction with victims, but also rich networks of contacts. Their human rights monitoring and advisory role should be also taken into account.

f) Various regional organisations and institutions, such as Council of Europe whose Parliamentary Assembly currently works on the preparation of the special report dedicated to the issue of missing migrants through the mechanism of its Committee on Migration, Refugees and Displaced Persons.[34]

Finally, a valuable mechanism that could and should be used to connect the ratification of the Convention and the promotion of the General Comment is sharing good practices between potential State Parties and the State Parties that are so-called "old State Parties". Namely, those States can play significant role in convincing the new states to ratify the Convention by sharing their experiences and benefits arising from the implementation of the Convention and the interaction with the Committee.

BIBLIOGRAPHY

Baranowska, G. (2022) 'The Rights of the Families of Missing Persons: Going Beyond International Humanitarian Law', *Israel Law Review*, 55(1), pp. 25–49. doi:10.1017/S0021223721000182.

[34] CoE mechanisms are of the particular importance having in mind that so far out of 72 states have ratified the ICPPED 27 of them are CoE Member States, while 39 of CoE Member States have signed the Convention (plus Mexico and Japan as CoE Observer States).

Baranowska, G. & Kolaković-Bojović, M. (2024) Dealing with Uncertainty: On Addressing Enforced Disappearances Universally, In: Baranowska, G. & Kolaković-Bojović, M. (eds.) *Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon*. Cambridge University Press (in publishing).

Citroni, G. (2024) New Technologies and Enforced Disappearances- The Working Group on Enforced or Involuntary Disappearances Exploring a New World Between Opportunities and Challenges, In: Baranowska, G. & Kolaković-Bojović, M. (eds.) *Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon*. Cambridge University Press (in publishing).

Committee on the Elimination of Discrimination against Women, general recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration.

Committee on Enforced Disappearances. (2023). UN General Comment No. 1 on Enforced Disappearances in the context of migration. CED/C/GC/1. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CED%2FC%2FGC%2F1&Lang=en.

Committee on Enforced Disappearances, Guiding principles for the search for disappeared persons, CED/C/7 adopted on 8th of May 2019.

Committee on Enforced Disappearances, Report of the Committee on Enforced Disappearances on its visit to Iraq under article 33 of the Convention, CED/C/IRQ/VR/1 (Findings).

Galvis Patiño, M.C. & Huhle, R. (2024) The Guiding Principles on the Search for Disappeared Persons – Origins and Impact, In: Baranowska, G. & Kolaković-Bojović, M. (eds.) *Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon*. Cambridge University Press (in publishing).

International Convention for the Protection of all Persons from Enforced Disappearance, adopted on 20 December 2006 during the sixty-first session of the General Assembly in resolution A/RES/61/177.

Kolaković-Bojović, M. & Džumhur, J. (2024) Enforced Disappearances and the Right to Reparation in Western Balkans, In: Baranowska, G. & 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. ISBN 978-631-90305-0-1

Kolaković-Bojović, M. (2021) *Disappeared Persons and the Right to be Considered Alive - The current State of Play in the Western Balkans.* In: Yearbook. No. 4, *Human rights protection: right to life*. Provincial Protector of Citizens - Ombudsman; Institute of Criminological and Sociological Research, Novi Sad; Belgrade, pp. 271-287. ISBN 978-86-80756-43-1

Kolaković-Bojović, M. and Grujić, Z. (2020) *Crime Victims and the Right to Human Dignity - Challenges and Attitudes in Serbia.* In: Yearbook. No. 3, *Human rights protection: the right to human dignity*. Provincial Protector of Citizens - Ombudsman; Institute of Criminological and Sociological Research, Novi Sad; Belgrade, pp. 239-269. ISBN 978-86-80756-36-3

Kolaković-Bojović, M. (2019) *Wrongful Removal of Children.* In: Yearbook. No. 2, *Human rights protection: protection of the right's of the child: 30 years after the adoption of The Convention on the Rights of the Child*. Provincial Protector of Citizens - Ombudsman; Institute of Criminological and Sociological Research, Novi Sad; Belgrade, pp. 429-450. ISBN 978-86-89417-10-4

UN Commission on Human Rights, Declaration on the Protection of All Persons from Enforced Disappearance, 28 February 1992, E/CN.4/RES/1992/29

Thematic Session 2:
Domestic Violence Victims' Rights

Edita NASKOVSKA*
Natasha PAVIKJEVIKJ-STOJMENOVSKA**
Original Scientific Paper
DOI: 10.47152/Palic2024.5

IMPLEMENTATION AND THE BEST PRACTICES OF THE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE IN THE REPUBLIC OF NORTH MACEDONIA

Abstract: The paper deals with the sphere of family protection, protection from domestic violence, protection of women and gender-based violence in Republic of North Macedonia (RNM). It begins by studying the principles of the Istanbul Convention, and then analyzing The Law on Prevention and Protection from Violence Against Women and Domestic Violence adopted in 2021. The main goal of this empirical research is to detect the weaknesses in the protection system and to give suggestions for the creation of a quality system of prevention and inter-institutional cooperation among the competent authorities. The paper analyzes data obtained from the Centers for Social Affairs in RNM in order to obtain clear perceptions of the spheres that are most sensitive to the prevention of violence. With a presentation of civil-judicial protection cases, an analysis is made of the court procedure and the measures imposed to prevent and protect against family violence. It is concluded that there is a need to propose solutions for developing new specific methods for efficient interdepartmental cooperation of the authorities.

Keywords: prevention of family violence, gender-based violence, protection of women, measures for protection and prevention of violence, civil-judicial protection.

1. LEGAL-PHILOSOPHICAL ASPECT OF DOMESTIC VIOLENCE

Ancient authors such as Plutarch and Virgil (Virgil, 1910, book VII verse 659) give information about the life of Rhea Silvia. They indicate the cruel and merciless treatment towards her, the traces of despair and helpless pressure in which she was as a girl and later as a mother separated from her twin children. The story points out to several eternal elements that constitute violence or lead to resolution of the act: psychological and physical abuse, psychological analysis of the victim in a state of suffering, institutions that accept the victim etc. This cycle has stayed the same through time, although violence takes different forms in various settings.

In Blackstone's comments on the laws of England "the husband is given the power to correct his relatives or children. This right is also confirmed in legal decisions in England and North America, where violent conduct towards a woman in the family goes unpunished. The husband's right to punish his wife was known as the "rule of thumb" because it was considered normal to beat a wife with a stick no bigger than the husband's thumb." (Blackstone, 1775, quoted in Mehmeti et al., 1997: 11) John Stuart Mill in "The Subjection of Woman" states that "a wife, however brutal a tyrant her husband may be, even though she knows he hates her, even though he takes daily pleasure in torturing her, and even though she thinks she cannot

* PhD, Edita Naskovska, Judge of the Administrative Court of the Republic of North Macedonia; assistant professor at The MIT University of Skopje, RNM. E- mail: editamb@yahoo.com.

** Natasha Pavikjevikj-Stojmenovska, Data Analysis Expert and Social Protection Expert. E-mail natasha.pavicevic@gmail.com.

hate him, can survive the lowest degradation of a human being, e.g. that she is turned into an instrument with the function of an animal against her affection." (Mill, 1980: 57)

Domestic violence is one of the most serious and common forms of intimate partner violence against women. It can be further defined as intimate partner violence between current or former partners, as well as intergenerational violence, such as parent-child violence. Knowledge of the act is obtained only after the victims gain enough strength to speak up and ask for protection. The key problem oftentimes is that mental or physical consequence is not recognized as such and is tolerated. The psychological state of the victims is mostly exposed to close relatives or friends, and even today the victim very rarely dares to ask for help from specialized institutions. Its unmasking, presentation to the public, and mobilization of public opinion are necessary to prevent all future attempts of this type of behavior.

At the global level, the situation with gender-based violence, including domestic violence and violence against young girls and women, has been monitored. The United Nations (UN) shows that every third woman worldwide is exposed to physical and/or sexual violence by an intimate partner at some point in her life, with girls and younger women (aged 15-29) being at increased risk (UN 2020). There is a strong evidence of the negative impact of violence in intimate affective-sexual relationships on the physical and mental health of girls who are victims of gender-based violence (Barter, Stanley, 2016; Martín-Baena, Talavera, Montero-Piñar, 2016; Seyller et al., 2016). Negative psychological consequences include body image problems, anxiety and depressive symptoms, suicidal ideation and/or attempts, impaired psychosocial functioning, and deterioration of self-esteem and well-being (Schad et al., 2007; Banyard, Cross, 2008).

2. ISTANBUL CONVENTION

It wasn't until the early 70s that big campaigns related to domestic violence began, partly due to the work of liberal philosophers but also thanks to the feminist movement in the 60s that began in Europe and North America (Mehmeti et al., 1997: 12). In International law, violence against women was recognized as discrimination and violation of human rights in the early 1990s, in several documents: Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol (1979); UN Declaration on the Elimination of Violence against Women (1993); Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994); Beijing Declaration (1995); and Recommendation Rec (2002) 5 of the Committee of Ministers to member states on the protection of women against violence.

Most recently, the Council of Europe (CoE) created the Convention on Preventing and Combating Violence Against Women and Domestic Violence, also known as the Istanbul Convention (IC). IC was adopted by the Committee of Ministers on April 7, 2011 and was opened for signature on May 11, 2011. After ratification by ten countries, it entered into force on August 1, 2014.[1] The provisions of the IC are written on the basis of the jurisprudence of European Court of Human Rights.[2] Article 3 of IC contains definitions for key terms such as "violence against women", "gender-based violence against women", "family violence" and "gender" as well as definitions for the different forms of violence against women contained in

[1] The Council of Europe, https://www.coe.int/en/web/istanbul-convention/cahvio.

[2] List of all relevant cases based on Istanbul Convention: https://www.coe.int/en/web/istanbul-convention/echr-case-law.

Chapter V. According to Article 5 of the Convention, the principle of due diligence is foreseen, an obligation for the member states to refrain from participating in any act of violence against women and ensure that the state authorities, officials, public servants, institutions and other actors acting on behalf of the state, act in accordance with this obligation. States are obliged to take necessary legislative or other measures to protect victims of any acts of violence and its recurrence (CoE, 2011).

The objective of the Istanbul Convention is based on four key principles: prevention, protection and support, prosecution and integrated policies (The Council of Europe, 2011). The standards incorporated in the IC are directly aimed at supporting victims in a way that their rights, needs and safety are key in all phases of response, intervention and support. IC recognizes that domestic violence disproportionately affects women, but that men can also be victims of domestic violence. In order to achieve immediate, comprehensive and quality protection of victims, the states must: respond promptly and provide immediate and adequate protection; provide standards for effective risk assessment and risk management, in order to prevent revictimization of victims; include in the national legislation provisions that will regulate emergency protection measures and measures to prohibit approach or protection. establish shelters for victims in an adequate number that will cover several regions; provide general services that will offer adequate protection to all victims of gender-based violence; and provide 24/7 available SOS telephone lines (The Council of Europe, 2011).

3. IMPLEMENTATION OF THE ISTANBUL CONVENTION IN THE REPUBLIC OF NORTH MACEDONIA

The Constitution of North Macedonia in its Article 9 guarantees "equality in freedoms and rights regardless of gender, race, skin color, national and social origin, political and religious belief, property and social position".[3] The Republic of Macedonia signed the Istanbul Convention on July 8, 2011, and in December 2017, the Parliament adopted the Law on Ratification of the Istanbul Convention. The Convention was ratified by depositing the instrument of ratification, which was delivered on March 23, 2018, and entered into force on July 1, 2018. With the ratification, the Istanbul Convention constitutes "part of the internal legal order and cannot be changed by law".[4]

Consequently, in 2021, The Law on Prevention and Protection from Violence Against Women and Domestic Violence (LPPVAWDV) was also adopted by the Parliament with cross-party support. LPPVAWDV defines domestic violence as harassment, insult, threats to security, bodily harm, sexual or other mental, physical or economic violence that causes a feeling of insecurity, distress or fear, including threats of such actions, to a spouse, parents or children or other persons living in a marital or extramarital union or joint household, as well as to a current or former spouse, common-law partner or persons who have a common child or are in a close personal relationship, regardless of whether the perpetrator shares or has shared the same residence with the victim or not.[5] In accordance with the Law, female

[3] See Article 9.

[4] See Article 118 of the Constitution of the Republic of North Macedonia: "The international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law".

[5] Article 3 of the Law on Prevention and Protection from Violence Against Women and Domestic Violence Official Gazette of the Republic of North Macedonia, No. 24/2021.

victims are understood to mean girls up to 18 years of age. Most recently, the amendments to the Criminal Code from 2023 also adopted these relevant definitions for domestic violence.[6]

LPPVAWDV also provided for two forms of violence against women that are not included in the Istanbul Convention: 1. the coercive control over women which is the abuse of power, the use of threats, force or other forms of coercion, deception or misrepresentation in order to control the behavior and life of women and 2. sexual harassment over the Internet, which is unwanted verbal, non-verbal or other conduct of a sexual nature, which has as its purpose or consequence a violation of dignity or the creation of a threatening, hostile, humiliating or intimidating environment, approach or practice, through electronic means of communication.

The solid legal basis of LPPVAWDV is built according to Article 10 of the Convention, which clearly sets out its composition and tasks for public institutions and includes the participation of civil society. A number of guidelines, handbooks and regulations are available for practitioners, for example, the handbook for police officers on the provision of gender-sensitive support services, the guidelines and standards for the reception and accommodation of asylum seekers and the handbook of conduct for health professionals. The beginnings of specialization of the institutional response is also visible from the opening of a special police department in the Skopje police. The Law on Free Legal Aid[7] since 2019 has introduced victims of violence against women and domestic violence as a special category of beneficiaries of primary legal aid. The Women's Helpline has been providing skilled counseling and support to women victims of violence since 1994, but, like most services run by women's rights NGOs, will require more sustained government funding. These guidelines set the standards that public authorities and NGOs are expected to follow and contribute to a more harmonized application of relevant laws and practices.

3.1. Competent Authorities in Republic of North Macedonia for implementation of procedure

Multi-sector partnership and integrated cooperation of competent authorities is of great importance for adequate measures for prevention, prevention and protection of victims of violence against women and family violence and taking legal measures against the perpetrators of these forms of violence. A Protocol has been adopted for the implementation of the law[8] for mutual cooperation of competent entities.

The Center for Social Work acts upon a report by the victim or any physical (including anonymous) person who is aware of the existence of violence against women and domestic violence, as well as upon a report by a responsible person and the head of an institution that performs activities in the field of child protection, employment, internal affairs, health and education. The Center also acts upon reports of awareness or existence of violence by other legal entities. When an expert from the Center receives knowledge of such issue, they start a procedure immediately and make contact with the victim, within 12 hours at the latest.

After arriving at the scene, if the violence is still ongoing, the police officers should first take measures to prevent the perpetrator from further violence, check whether they were a previ-

[6] Article 5, paragraph 4, Law on amendments to the Criminal Code, Official Gazette of the Republic of North Macedonia, No. 36/2023.

[7] The Law on Free Legal Aid Official Gazette of the RNM No. 101/19.

[8] Article 12 of the Law on prevention and protection against violence against women and family violence.

ous perpetrator of domestic violence, and assess whether they will give resistance, whether the individual owns a firearm or other type of weapon, and see if there are children in the home in order to take measures for their protection. If injured persons are found at the scene, it is necessary to provide them with medical assistance. If there is no need for police assistance, the expert takes measures to protect the victim. If the victim is in another institution, such as the police, a health facility, an association that provides a service, or in another location (residence, public space, etc.), the expert immediately goes to the field and acts in accordance with their competences and powers. The expert establishes cooperation in order to collect additional information.[9]

During the first meeting with the victim, the expert makes a risk assessment. Conducting the conversation is done individually with the victim and the perpetrator. If necessary, the victim is placed in a shelter center. If a serious risk to the safety and health of the victim is determined, the expert convenes without delay with a multi-sectoral team, composed of members from the Center, the competent police station and a health facility. The members of the multisectoral team draw up a safety plan for the protection and strengthening of the victim. Representatives of civil society organizations also participate in the team and propose and implement measures and activities from the security plan to help the victim. Whenever the expert becomes aware that the violence was committed by a person in possession of a firearm, they immediately informs the Ministry of the Interior, and within 24 hours at the latest they submit a written notification.

Competent entities also take into account cases where the victim takes care of a child or a person who is unable to take care of themselves or a person whose business ability is limited or taken away. The expert cooperates with educational institutions for the immediate enrollment of a child victim of violence in schools or kindergartens in its area, without seeking the consent of both parents. In such cases, support is extended to the entire family, and children who are direct or indirect victims are particularly ensured with enhanced protection. While in the procedures for entrusting the child to one of the parents, the Center takes into account the interest of the child, in a way that will be careful not to endanger the rights and safety of the victim and the children. Competent entities adapt to the needs and circumstances that might increase the vulnerability of the victims, especially pregnant women, women with children and children with disabilities, single mothers, women with disabilities, women from rural areas, women who use drugs, sex workers, migrants, refugees, asylum seekers, stateless women, lesbian, bisexual and transgender people, women living with HIV, homeless women, trafficked women, older women, financially disadvantaged women or any other status or a condition that can increase vulnerability.

Very often, victims need free legal assistance, so it is the obligation of the expert to issue a certificate through active assistance and refer the victim to the regional department of the Ministry of Justice, to an authorized association or to an authorized legal clinic, for obtaining free legal assistance and legal advice. Furthermore, if it is determined that the victim is in an unenviable economic position, measures should be taken for their active inclusion in the labor market by notifying the Employment Agency to include the victim in active employment

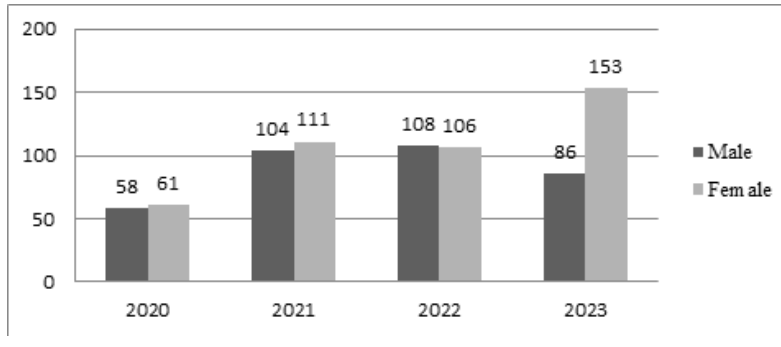
[9] Rulebook on the method of conducting a risk assessment of serious danger to the life and physical and mental integrity of the victim and members of their family and the risk of recurrence of violence, appropriate risk management, implementation and monitoring of measures to protect women victims of gender-based violence -based violence and victims of domestic violence, taken by the center for social work and the necessary forms (Official Gazette of the Republic of North Macedonia no. 240/21).

measures, including trainings and employment search. If the victim needs reintegration and rehabilitation services, the expert contacts an association that provides services in accordance with the Reintegration Program.

In order to protect the victim from repetition of violence and to ensure their safety and protection, the Center submits a proposal to the competent court in accordance with the law for the imposition of temporary measures for protection. When acting to protect victims of gender-based and family violence, not enough attention is paid by all competent to the two aspects of protection of victims of gender-based and family violence: 1) the criminal-legal protection and 2) civil-legal protection. That is why there are often omissions in quick action, and omissions in respecting the prescribed deadlines for action and protracted procedures.

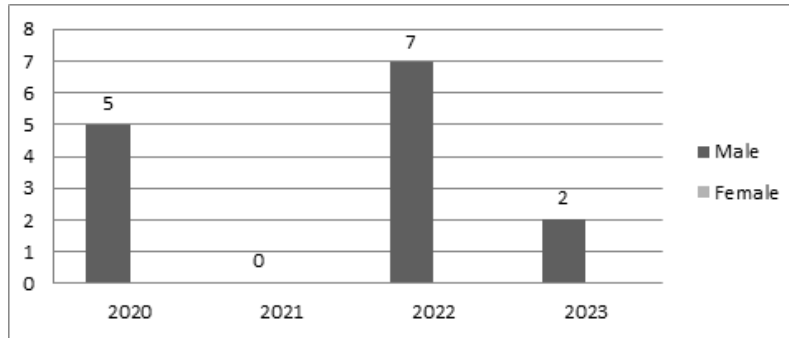
The 2019 OSCE survey on violence against women in North Macedonia showed that 45% of women experienced psychological, physical and/or sexual violence committed by a current or former intimate partner. A significant proportion of women in North Macedonia (37%) indicated that their friends would agree that a wife should obey her husband. Almost half believe that domestic violence is a private matter and should be resolved within the family, and 32% believe that it is important for the man to show his partner who is the boss (OSCE, 2019). These traditional beliefs represent a challenge for the fight against violence against women in North Macedonia.

30 Centers of Social Work across RNM have internally reported their annual number cases of minor victims of domestic violence in the period from 2020 to 2023. Graph 1 shows the accumulated data, where it is noticeable that the number of victims are almost equal between boys and girls from 2020 to 2022. In 2023, however, the number of female victims is almost twice as high as that of boys, 153 (64%) for girls and 86 (36%) for boys. Regarding the recorded juvenile perpetrators of domestic violence, according to Graph 2 below, only boys appear as perpetrators of domestic violence. Analyzing the recorded violence against children from 2020 to 2023 in Graph 3, the highest number of victims are boys and girls who suffered psychological violence, followed by the number of victims of physical violence (again both by boys and girls).



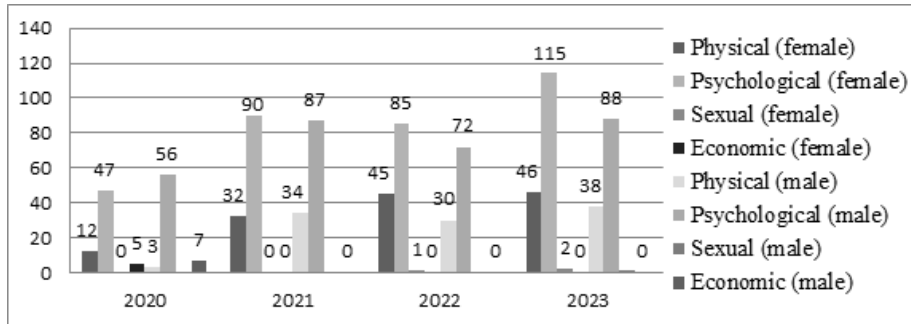
Graph 1: Annual number of minor victims of domestic violence in RNM, by gender

Source: Accumulated data from 30 Centers for Social Work across Republic of North Macedonia



Graph 2: Annual number of minor perpetrators of domestic violence in RNM, by gender

Source: Accumulated data from 30 Centers for Social Work across Republic of North Macedonia



Graph 3: Number of reports of violence against children in RNM, by type, gender and age

Source: Accumulated data from 30 Centers for Social Work across Republic of North Macedonia

3.2. Civil Court protection: Case Studies from North Macedonia

This paper elaborates on the judicial civil proceedings initiated after a report by a competent Center for Social Work and indicate the common forms of domestic violence in modern society.

The court assesses the merits of the motion to impose temporary measures and may impose the following ones against the offender:

1. Prohibition to threaten to commit violence;

2. Prohibition to harass, torment, communicate by phone, or via any other methods;

3. Prohibition to approach at a distance of less than 100 meters to the residence, school, workplace or specific place that the victim regularly visits;

4. Removal from the home regardless of ownership for 10 to 30 days;

5. Prohibition to possess firearms or other weapons or to have them confiscated;

6. Obligation to return the items that are needed to meet the daily needs of the victim and the family;

7. Mandatory legal alimony for the family;

8. Mandatory visit of a counseling center for perpetrators;

9. Mandatory treatment of the offender, if he abuses alcohol, drugs and other psychotropic substances or has a mental illness;

10. The perpetrator must compensate the medical and other costs incurred by the violence and

11. Any other measure that the court deems necessary to ensure the safety and well-being of the victim and other family members.

Measures from 1 to 5 are carried out by the Ministry of Internal Affairs, while the measure from point 9 is under the authority of the Ministry of Health. These temporary measures can be imposed for a duration of at least three months, and at most up to one year, with the possibility of extension if the danger of gender-based violence against women and domestic violence still exists.

To illustrate the judicial practice and implementation of the law, we will refer to case studies.

Case study 1: Protection against domestic violence in an extramarital union with a minor child under the age of three. The extramarital partner, the father of the minor child, is prohibited from taking actions, verbal or physical, with which he causes a feeling of fear, danger and anxiety in the extramarital partner, evident from the decision of the court confirmed by the decision of the court of appeal. The Center is responsible for handing over the minor child to the mother, and a decision has been made to entrust the child to the care, education and upbringing of the mother.

Case study 2: Protection from domestic violence in a married union with three minor children. The wife, the mother of three minor children, left the family together with the children. With the decision of the court, the perpetrator, the husband was sentenced to 5 temporary measures for protection against domestic violence for a period of 6 months, not to threaten to commit and not to commit physical and mental violence against the wife in the presence of minor children, prohibition to harass, call or communicate in any other way and prohibition to come within 100 meters of the wife's place of residence and workplace, and is obliged to contact the Psychiatric Hospital due to the determination of possible alcohol addiction. The perpetrator did not respect the imposed measures and again physically attacked the victim in the presence of the minor child, which is why the temporary measures were additionally extended for another three. The husband's request to visit the minor children was also refused, so he, as a plaintiff, initiated an administrative dispute to exercise the right to visit with the claim that life without the children is meaningless to him. The court rejected the claim on the grounds that temporary measures were imposed on the plaintiff. For a pronounced temporary measure of protection, the expert from the Center receives notifications from the health institution about the course of the implementation of a mandatory treatment of the offender. If the measure is discontinued or not respected, the expert from the Center, after receiving the notification from the health institution, notifies the competent court within three days after receiving the notification from the counseling Center.

Case study 3: Protection from domestic violence, where the event is reported by the minor child. The final court decision imposed temporary measures for protection against domestic violence for a period of 6 months to the two perpetrators who, as parents, are prohibited from entering into conflict situations and mutual arguments and not to commit domestic violence in the presence of minor children. The father is prohibited from threatening to commit domestic violence against his wife and mother, and they are both ordered to attend mandatory counseling for perpetrators of domestic violence. In this case, the father worked outside the

city where the family has a residence, and when he came to the home for the weekend, there were arguments because the mother did not take care of the children, and the conflict situations happened in the presence of the children, which led to negative consequences for the minor children. According to allegations given by the minor child, the arguments were because the mother left the children alone all night, so the mutual domestic violence directly reflected on the development of the minor children, and it was established that the mother drastically neglected the children's needs in terms of elementary personal hygiene and lack of hygiene in the household and problems in the growth and development of minor children that reflected on the overall health condition of the children.

Case study 4: Protection from mutual domestic violence. The court has established mutual domestic violence and the need for prevention and protection. In a specific case, we are talking about spouses with deteriorated communication and separated for many years with three children. Despite the fact that the ex-husband had a six-year relationship with another partner, the ex-wife came to the ex-husband's home late at night and with a high a tense tone and an argument that constitutes harassment, she started insulting them for which she was reported. The court imposed temporary measures on both of them for a period of 6 months, they are prohibited from threatening each other to commit domestic violence and they are prohibited from committing domestic violence against each other and are obliged to attend treatment at a counseling Center where psychosocial services and psychosocial treatment are provided, and the ex-wife is prohibited from approaching within 100 meters of the residence where the ex-husband lives.

Case study 5: Witness protection from domestic violence. Decision of court, confirmed by Decision of the court of appeal, refers to a marriage union with three minor children. The children are witnesses of domestic violence against the mother. She reported the event and left the shared home alongside the children. After leaving home, the children were disturbed by the constant calls and SMS messages from the father threatening to take them and separate them from the mother. The husband was sentenced to three temporary measures for protection against domestic violence against his wife and three minor children, and with a fourth temporary measure demanding the perpetrator to attend a counseling center for offenders for a period of 6 months. Information was obtained from the children that they witnessed the father's violent behavior towards their mother, who insulted her, spat on her, pushed her, and that one of the children shared the feeling that she felt bad when the mother cried.

From the above-mentioned cases, it can be determined that it is common for the Court to adopt the proposal from the Center for Social Work for imposition of temporary measures on perpetrators. Furthermore, in the judicial opinion, the justification of the issued measures supported by legal provisions is elaborated in detail based on the fact situation established through the analysis of the evidence. It is also relevant to highlight the importance of Article 58 of LPPVAWDV, which is the sole Law cited in the application of the substantive law, while not directly referencing the Istanbul Convention or views from Judgments of the European Court. What is also notable is that the appeal filing does not delay the execution of the temporary measures. Moreover, there are short deadlines for the right to appeal, within three days from the receipt of the decision. It is determined that after the end of the court procedure, especially when a certain temporary measure for addiction treatment has been imposed, the Center does not cooperate with the Court at all in terms of monitoring whether the imposed measures are carried out and under what circumstances. In cases of recidivism, the Court has to actually open a new case.

4. CONCLUSIONS AND SUGGESTIONS

From the analysis of the statistical data and the actions taken in the elaborated case studies, it can be concluded that the following weaknesses are identified in the intersectoral action in dealing with cases of gender-based and family violence:

1. The time frame and compliance with the prescribed deadlines, the slow action, protracted duration of the procedure, protracted and ineffective communication of stakeholders.

2. Insufficiently developed cooperation and communication between competent entities: there is a good cooperation between the Centers for Social Work and the Ministry of Internal Affairs - MIA, but the cooperation with other institutions is weak or non-existent.

3. Constant victimization of victims of gender-based and family violence, as a result of weak inter-sectoral cooperation: namely, due to the constant actions of competent entities in their scope of work, victims are exposed to repeating and reliving the violence when they make statements separately, before each of the competent entities.

4. Lack of professional and properly trained staff in all competent institutions. A shortage has been identified in the number of professional and trained staff in the Ministry of Internal Affairs in the department for domestic violence.

5. Lack of a continuous program for education and implementation of intersectoral and intrasectoral training of all professionals.

6. Lack of adequate information and support for the victims in the entire procedure - from the report to the court resolution of the case.

7. The most frequently present risk for termination of the procedure and cancellation of further action, in addition to the duration, is the economic dependence of the victims (not having their own residence and source of income).

8. Decision-makers and other competent entities do not recognize established practices and existing services such as counseling Centers, shelters and SOS lines as allies in the implementation of measures.

4.1. Recommendations for Improving and Promoting the Protection of Victims of Gender-Based and Domestic Violence

Based on the elaboration of the weaknesses in the implementation of the law, in order to overcome the weaknesses, the following recommendations are necessary:

1. To strengthen and advance the expectations, but also to establish new specialized and standardized services for victims of gender-based and domestic violence, especially at the local level, such as: specialized counseling Centers for psycho-social support, specialized types of counseling for children, protection and treatment during trauma, specialized rehabilitation and resocialization services for both victims and perpetrators, services with a focus on working with perpetrators, with children, etc.

2. To establish a software solution for systematic monitoring of victims, from the application itself to the resolution by all competent entities, with the aim of reducing the constant victimization. To increase the number of experts, sensitized and properly trained staff in all competent institutions and subjects who will continuously work in the long-term.

3. To plan and implement sustainable measures and activities for economic strengthening and social integration of victims of gender-based and family violence, such as:

3.1 To extend the wage subsidy measure as part of the operational plan for active programs and measures for employment of victims throughout the year.

3.2 To provide tax relief to employers who will employ victims.

3.3 To create a package of services that enable reintegration and rehabilitation of victims.

3.4 To ensure the sustainability of existing services by associations as competent entities for taking measures: counseling Centers, shelters and SOS lines for victims.

3.5 To introduce more of an individual approach in processes like free treatment, addiction treatment, positive mitigating employment measures, etc.

3.6 To introduce measures such as reduced working hours, regulation of unpaid family labor with a certain compensation, and regulation of the "housewife" status for victims.

Due to the seriousness and complexity of this social problem the fact that the numbers say that psychological violence against the minor population, especially against female children, is on the rise, as a general prevention it is necessary:

1. To continuously implement well-thought-out, educational and informative campaigns to raise public awareness of all forms of gender-based violence against women.

2. To introduce comprehensive sexual education from an early age with customized content and topics, where the focus will be on familiarization, recognition and protection from any type of violence, including gender-based and family violence.

3. To develop and implement sustainable programs and activities in schools to prevent, but also to recognize cases of gender-based and family violence, with the involvement of professional profiles (psychologists, pedagogues, social workers) who would contact and cooperate with the institutions, associations and service providers at the local level.

4. To involve the units of local self-government - the municipalities in informing and raising the public awareness of the local population about the problem of family and gender-based violence through the distribution of printed materials, organizing informative meetings and using the local media for information.

BIBLIOGRAPHY

Banyard, V.L. and Cross, C. (2008) 'Consequences of teen dating violence', *Violence Against Women*, 14(9), pp. 998–1013. doi:10.1177/1077801208322058.

Barter, C. and Stanley, N. (2016) 'Inter-personal violence and abuse in adolescent intimate relationships: Mental health impact and implications for practice', *International Review of Psychiatry*, 28(5), pp. 485–503. doi:10.1080/09540261.2016.1215295.

Constitution of the Republic Northern of Macedonia, with amendments I to XXXVI. Official Gazette of R.M, No. 52/91, 1/92, 31/98, 91/01, 84/03, 107/05, 3/09, 49/11, 6/19.

Criminal Code of the Republic of North Macedonia. 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, 36/23) with Decisions of the Constitutional Court U No. 138/2007 of 19.12.2007

The Council of Europe: Guardian of Human Rights, democracy and the rule of law for 700 million citizens - portal - www.coe.int (no date) *Portal*. Available at: https://www.coe.int/en/web/portal/home (Accessed: 01 April 2024).

The Council of Europe (2011). *The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*. Available at: https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=210 (Accessed: 01 May 2024).

The Law on Free Legal Aid. Official Gazette of the RNM No. 101/2019

Law on Prevention and Protection from Violence Against Women and Domestic Violence. Official Gazette of the Republic of North Macedonia, No. 24/2021

List of relevant judgments - istanbul convention action against violence against women and domestic violence - www.coe.int (no date) *Istanbul Convention Action against violence against women and domestic violence*. Available at: https://www.coe.int/en/web/istanbul-convention/echr-case-law (Accessed: 01 April 2024).

Martín Baena, D., Talavera, M. and Montero-Piñar, I. (2016) 'Interpersonal violence and health in female university students in Spain', *Journal of Nursing Scholarship*, 48(6), pp. 561–568. doi:10.1111/jnu.12239.

Mill, J.S. and Mill, H.T. (2009) *Subjection of Women*. Auckland: The Floating Press.

Mehmeti, M. *et al.* (1997) *Rea Silvija*. Skopje: Humanitarna asocijacija za emancipacija, solidarnost i ednakvost na ženite.

Ministry for Labor and Social Policy (2024). *Ministry for Labor and Social Policy.* Available at: https://www.mtsp.gov.mk. (Accessed: 01 April 2024).

The negotiations - istanbul convention action against violence against women and domestic violence - www.coe.int (no date) *Istanbul Convention Action against violence against women and domestic violence*. Available at: https://www.coe.int/en/web/istanbul-convention/cahvio (Accessed: 01 April 2024).

OSCE (2019). *OSCE-led Survey on Violence Against Women: North Macedonia - Results Report*. Available at: https://www.osce.org/secretariat/419264 (Accessed: 01 April 2024).

Rulebook on the method of conducting a risk assessment of serious danger to the life and physical and mental integrity of the victim and members of their family and the risk of recurrence of violence, appropriate risk management, implementation and monitoring of measures to protect women victims of gender-based violence -based violence and victims of domestic violence, taken by the center for social work and the necessary forms. Official Gazette of the Republic of North Macedonia no. 240/2021

Schad, M.M. *et al.* (2007b) 'The broader context of relational aggression in adolescent romantic relationships: Predictions from peer pressure and links to psychosocial functioning', *Journal of Youth and Adolescence*, 37(3), pp. 346–358. doi:10.1007/s10964-007-9226-y.

Seyller, M. *et al.* (2016) 'Intimate partner sexual assault', *Obstetrics & Gynecology*, 127(3), pp. 516–526. doi:10.1097/aog.0000000000001288.

Vergil (1910) *Aeneid* Theodore C. Williams. Translated by T.C. Williams. Boston: Houghton Mifflin Co.

The World's Women 2020: Trends and Statistics (2020) *The World's Women 2020*. Available at: https://worlds-women-2020-data-undesa.hub.arcgis.com/ (Accessed: 01 April 2024).

Review Paper

Mladen JELIČIĆ*

DOI: 10.47152/Palic2024.6

PROTECTION OF VICTIMS OF DOMESTIC VIOLENCE IN MISDEMEANOR PROCEDURE

Abstract: In this paper, the author discusses the possibility of protecting victims of domestic violence in misdemeanor procedure. The provisions of the Law on Prevention of Domestic Violence and the Law on Misdemeanors were analysed. It was indicated that the protection of the victim of domestic violence can be ensured by applying a shortened or urgent procedure, because the Law on Prevention of Domestic Violence refers to the application of these provisions of the Law on Misdemeanors. The author considered the application of procedural and protective measure prohibiting access to the injured party, object or place of misdemeanor, as the basic procedural mechanism for the protection of the injured person provided by the Law on Misdemeanors. Deficiencies in the legal regulation of the mentioned measures have been identified, so the author's conclusion is that they are not realistically applicable because the procedure for their execution is not provided. For this reason, the author proposes changing the legal provisions to enable the effective protection of victims of domestic violence.

Key words: victim, domestic violence, abbreviated or urgent misdemeanor procedure, procedural measure and protective measure prohibiting access to the injured party, object or place of misdemeanor.

1. INTRODUCTION

Serbian penal law has three kinds of delicts: criminal offences, misdemeanors and economic offences. Misdemenors are the most common delicts. Misdemeanor law, as a part of positive legal norms has had long tradition in the Republic of Serbia. As a part of penal offences, misdemeanors have been regulated by legal acts since 1851 (Vuković, 2015: 21), and since then this part of legal norms has been constantly improving. There is no part of life regulated by legal norms that is not in touch with misdemeanor law. Everyone who applies misdemanor law has large challenges in realizing basic principle of law skils – applying law or legal acts in a concrete case, because there are a large number of legal acts that predict misdemeanors, different social relations, subjects of misdemeanor responsibility and legal-tehnical specifications of misdemeanors' legal norms (Jeličić, 2018a: 148). The doctrine indicates that the multiplicity and variety of misdemeanors, represent a special problem both in positive law (regulation of the matter) and misdemeanor practice (applaying law regulation), but also in the theory of misdemeanor law (Dimitrijević, 2001: 16).

Domestic violence is a serious social problem for which special attention is given to the penal law of the Republic of Serbia. Although penal law repression manifested through criminal and misdemeanor sanctions cannot be the only way to suppress this negative social phenomenon, the necessity of such a response of the state to illegal offenses cannot be ignored. Misdemeanor courts in the Republic of Serbia deal with misdemeanor related to domestic violence when applying the Law on Prevention of Domestic Violence.[2] Article 2 states that the aim of

* PhD, Judge, High Court in Šabac, Research Fellow. E-mail: mladen.jelicic.kaishin@gmail.com.

[1] Official Gazette of the Republic of Serbia, No. 94/2016 and 10/2023.

this Law is to regulate the organization and actions of state authorities and institutions in a general and unique manner, and thus provide effective prevention of domestic violence, along with urgent, timely and effective protection and support for victims of domestic violence. Article 3 paragraph 3 of the Law prescribes that domestic violence, for the purpose of this Law, shall be an act of physical, sexual, psychological or economic violence of the perpetrator against a person with whom the perpetrator is either presently or has previously been in a matrimonial relationship or common-law marriage or partnership relation, or with a person is blood-related to in the direct line, or side line up to the second degree or with whom is in an in-law relation up to the second degree or to whom is an adoptive parent, adopted child, foster parent or foster child or with another person with whom is living or has lived in a common household.

Due to the emphasized focus of the law on the protection of victims, their safety (protection) from domestic violence is determined by the law as a public interest, and not only as a victim's private interest not as a victim (Stevanović, Subošić, Kekić, 2018: 160). This Law provided for the jurisdiction of misdemeanor courts in the event that the perpetrator violates the emergency measure imposed on him, which is prescribed as a misdemeanor under Article 36 of the aforementioned Law. Violation of the mentioned measure can be a prelude to more serious cases of domestic violence. This raises the question of the effectiveness of misdemeanor legal protection for victims of domestic violence. This protection can be viewed from two perspectives. The first refers to the instruments provided by the Law on Prevention of Domestic Violence, and the second concerns the general institutes for the protection of victims in misdemeanor procedure provided by the Law on Misdemeanors.[2] We analyse the effectiveness of misdemeanor legal protection of victims of domestic violence through both aspects.

2. MISDEMEANOR PROTECTION OF VICTIMS OF VIOLENCE IN ACCORDANCE WITH THE LAW ON PREVENTION OF DOMESTIC VIOLENCE

2.1. The legal basis for the action of the misdemeanor court in accordance with the provisions of the Law on Prevention of Domestic Violence

The Law on Prevention of Domestic Violence in Article 36 paragraph 1 stipulates that a person who violates the emergency measure that was imposed or extended will be punished for a misdemeanor with a prison sentence of up to 60 days. The provisions of Article 17, paragraphs 1, 2 and 3 prescribe that if, after the risk assessment, he establishes an immediate danger of domestic violence, the competent police officer issues an order imposing an emergency measure on the perpetrator who is brought to the competent organizational unit of the police (Article 15, paragraph 1). Urgent measures include the temporary removal of the perpetrator from the apartment and the temporary prohibition of the perpetrator to contact and approach the victim of violence. Both emergency measures can be imposed by order. By order of a police officer, the emergency measure can last 48 hours from the delivery of the order, and the basic court can extend the emergency measure for another 30 days (Article 21, paragraphs 1 and 2). This measure has a preventive purpose-to prevent the possibility of committing violence, without having to restrain the victim from performing their daily activities or to disturb their usual life activity, but to prevent opportunities for the perpetrator to commit violence. The measure should allow the victim to free themselves from the

[2] Official Gazette of the Republic of Serbia, No. 65/2013, 13/2016, 98/2016, 91/2019 and 112/2022.

fear that a possible perpetrator will suddenly appear near them and attack them. (Marković, 2019: 53). Therefore, on the basis of the cited legal provisions, it follows that the jurisdiction of the misdemeanor court is established in cases where there is a reasonable suspicion that a person has violated the emergency measure assigned to him or her and thus committed a misdemeanor.

2.2. Procedural mechanisms of the emergency procedure of the misdemeanor court

The basic procedural mechanism of the misdemeanor court's response in cases of well-founded suspicion that there may be domestic violence, and therefore endangering the physical or psychological integrity of a possible victim, is the implementation of an urgent or abbreviated procedure. The provisions of Article 36, paragraph 3 of the Law on Prevention of Domestic Violence stipulate that a conviction for a misdemeanor from paragraph 1 of this Article can be executed before its finality, according to the Law on Misdemeanors. The motive for this kind of intervention by the legislature is to give the misdemeanor court the opportunity to execute the judgement before its finality in cases where the perpetrator's misdemeanor responsibility has been established to prevent possible negative situations that may arise in the mutual relationship between the perpetrator and the victim of violence.

It is a shortened or urgent procedure, which in fact represents the application of the provisions of the Article 308 Law on Misdemeanors. Perpetrators of misdemeanors are immediately brought before the judge on duty to the misdemeanor court, who can decide that after the passing of the guilty verdict, it should be executed before it becomes final. This procedure has its own justification, which is reflected in the fact that most often it is about perpetrators of serious misdemeanors whose nature imposes the need for immediate response or there are circumstances that concern the perpetrator of these misdemeanors and are the reason for implementing such a procedure. The legislator stipulated[3] that a conviction can be executed even before its finality in the following cases: 1) if the defendant cannot prove his identity or does not have a place of residence, or does not live at the address where he was registered, or if he has a place of residence abroad or if he leaves to stay abroad, and the court finds that there is a well-founded suspicion that the defendant will avoid the execution of the imposed sanction; 2) if the defendant has been punished for a serious misdemeanor in the area of public order and peace, public traffic safety, or a serious misdemeanor endangering the life or health of people, or if the interests of general safety or security of goods and financial traffic require it, or moral reasons, or if he has been punished for an misdemeanor from which more serious consequences may arise, and there is a reasonable suspicion that he will continue to commit the misdemeanor, repeat the misdemeanor or that he will avoid the execution of the imposed sanction.

It is clear from the cited provisions that in cases where protection of a victim of domestic violence is needed, there are conditions for implementing an emergency procedure, which is regularly performed in the case of misdemeanors from the Law on Prevention of Domestic Violence. With this, the perpetrator of the misdemeanor is immediately sanctioned for the misdemeanor, and if he is convicted, the execution of the sentence is immediately started.

[3] Article 308 paragraph 1 point 1 and 2 Law on Misdemeanors.

3. MISDEMEANOR PROTECTION OF VICTIMS OF DOMESTIC VIOLENCE IN ACCORDANCE WITH THE PROVISIONS OF THE LAW ON MISDEMEANORS[4]

The Law on Misdemeanors foresees two procedural mechanisms for the protection of the injured person in the misdemeanor procedure: through the procedural measure prohibiting access to the injured party, object or place of misdemeanor, which is imposed during the misdemeanor procedure and can last until its final conclusion and by imposing a protective measure of the same name as a misdemeanor sanction. Given that the victim of domestic violence has the status of an injured person in the misdemeanor procedure, it is necessary to consider how the aforementioned measures can be applied.

3.1. Procedural measure prohibiting access to the injured party, object or place of misdemeanor

This is a measure that the court can determine at the request of the injured party during the misdemeanor procedure, and the *ratio legis* is to impose such a procedural measure to prevent the defendant from continuing to commit or repeat the misdemeanor during the misdemeanor procedure, which endangers the injured party (Mrvić Petrović, 2014: 100) The legislator prescribed[5] that the injured party is authorized to submit evidence on the basis of which the court can order the defendant not to approach the injured party, objects or the place where the misdemeanor was committed during the misdemeanor procedure. This measure can last as long as the reasons for its imposition last, and at the longest until the final conclusion of the procedure. The court pronounces it with a resolution, and the appeal against the decision imposing an access ban is submitted within three days from the day of delivery and does not delay the execution of the resolution.

There are three important characteristics of this procedural measure, which derive from legal regulations: evidentiary basis, time limitations and enforceability before the resolution becomes legally binding. The conditions for imposing the measure are not prescribed in the provisions of Article 126 Law on Misdemeanor, but they would have to be interpreted in the same way as with protective measure - preventing the perpetrator from repeating the misdemeanor or continuing to endanger the victim. For the application of a procedural measure, only the subjective feeling of the injured party that the defendant threatens him or that there is a danger that he will repeat the misdemeanor is not sufficient. The intention of the legislature is that the imposition of the measure is supported by the evidence submitted by the injured party. In this regard, the question of the quality of the evidence is raised. Eligible evidence for the application of the measure would be, for example, the testimony of witnesses who confirm the claim of the injured party that the defendant continues to threaten him and that there is a danger that he will repeat the misdemeanor, recorded communication between the defendant and the injured party on any of the data carriers (sms or viber messages, messages sent via social networks, emails, etc.), videos from public cameras, medical records, etc. Considering the consequences that this measure has for the defendant, the court must in each specific case determine the conditions for its imposition, which is a complex and challenging task.

[4] Parts from the paper are used below: M. Jeličić (2023) Sporna pitanja u primeni procesne i zaštitne mere zabrana pristupa oštećenom, objektu ili mestu izvršenja prekršaja. Revija za kriminologiju i krivično pravo 61(2) pp. 91 – 107.

[5] Article 126 paragraph 3 point 4, paragraph 4 and paragraph 5 Law on Misdemeanors.

The measure is limited in time and can last until the final conclusion of the misdemeanor procedure, and its essential feature is execution before the finality, which means that it is executed immediately. When the judgement becomes legally binding, the duration of this measure ends, but the court can pronounce a protective measure prohibiting access to the injured party, object or place of misdemeanor, if the conditions from Article 61 of the Law of the Misdemeanors are met.

The legislator did not precisely define the holders for submitting proposals for the imposition of this measure. There an understanding that if there are conditions for imposing a measure and appropriate evidence, it is expedient to allow the court to impose the measure ex officio, especially because it is of temporary duration, so in terms of the above, *de lege ferenda*, this possibility should be explicitly foreseen. Also, in order to protect the injured party as a victim of a violation, there is a reason to allow the applicant to propose the imposition of this procedural measure (Jeličić, 2023: 94). There are established understandings that because the victim can always be pressured, conditioned, blackmailed and the like, the proposal presented once would have to be accepted whenever the judge, based on a comprehensive and thorough review of the case, assesses that there is a risk of repeating the misdemeanor or continuing to endanger the victim , no matter what the victim's subsequent attitude is about it, and the statement of the injured person can only be significant when deciding on the type of measure (Brkić, 2010: 146).

The injured party in misdemeanor procedure usually does not have the necessary knowledge and is not informed that he can submit a proposal for the imposition of a procedural measure and submit evidence. In doctrine, it is emphasized that the Code of Criminal Procedure[6] in the legal text mentions the defendant and "other participants" in the procedure, which implies that other procedural subjects, who due to ignorance may miss an action or do not exercise their rights, should be warned of the consequences of omission, as well as that there is a duty of the court to teach not only the defendant but also other participants in the procedure about their rights. Given that the provision of Article 99 Law on Misdemeanors as the basic principle of the misdemeanor procedure prescribed corresponding application of the Code of Criminal Procedure, there is no reason to quote that the provisions of Article 8 paragraphs 1 and 2 of the Code of Criminal Procedure do not apply in the misdemeanor procedure (Jeličić, 2018b: 228). This means that the court would have to instruct the injured party about the right to submit evidence and propose the imposition of a temporary procedural measure prohibiting access to the injured party, the object or the place of misdemeanor.

However, in cases of protection of a victim of domestic violence, the aforementioned procedural measure is not purposefully applied if an urgent misdemeanor procedure is conducted, because it is usually completed within a short period of time. Therefore, the effects of this measure cannot be realized. When the misdemeanor court acts in regular misdemeanor procedure, this procedural measure has its own justification. Such situations can arise in cases where the perpetrator is reasonably suspected of having violated the emergency measure, but after committing the misdemeanor, he became unavailable to the court and state authorities, that is, he was not found by the police. Then the applicant can submit a request to initiate misdemeanor procedure, which the court would not be able to act on in an emergency procedure because the suspect was not found by the police and was brought to court. The court would then act in the regular procedure and after securing the presence of the defendant and hearing the injured party, the conditions for the application of the mentioned measure would be met.

[6] Official Gazette of the Republic of Serbia, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014 and 35/2019.

3.2. Protective measure prohibiting access to the injured party, object or place of misdemeanor

Protective measures are a special type of misdemeanor sanctions that are a kind of counterpart or equivalent to security measures from criminal law. They are sanctions of an extremely preventive nature because they are aimed at the person of the perpetrator, although many of them are not devoid of penal effects. (Ćorović, 2021: 156). The mentioned measure is pronounced to prevent the perpetrator from repeating the misdemeanor or from continuing to endanger the injured party, upon a written proposal of the petitioner to initiate a misdemeanor procedure or upon an oral request of the injured party made during the hearing in the misdemeanor procedure. Its essential feature is that it can be imposed even if it is not provided for by the regulation that defines the misdemeanor.

The applicant's different approach regarding the proposal for imposing a protective measure from Article 61 of the Law on Misdemeanors is noticeable. Some of the applicants base the proposal on the existence of a well-founded suspicion that the defendant will repeat the misdemeanor, and in that context propose the imposition of a protective measure, while there are also diametrically opposite examples when the applicant specifies the proposal by stating the defendant's previous behaviour towards the victim of violence or indicates an earlier criminal conviction the defendant for criminal acts with elements of violence, so the proposal is based on that, the essence of which is to provide additional legal protection to the victim of violence (Garić, Menićanin, 2023: 57).

Unlike the process measure of the same name that is imposed while the misdemeanor procedure lasts, the protective measure shall be imposed with the judgement, after its end. This measure must not be prioritized to protect the injured party, as the court may prohibit defendant access to certain objects or place of misdemeanor, and to eliminate conditions that allow or encourage the perpetration of a new misdemeanor.

There are two alternatively provided terms for the measure. In terms of the first, we belive that protective measure is exposed to the injured party, and it is certainly necessary for the Court consider the nature of earlier misdemeanors, in particular, it must be appreciated whether misdemeanors with elements of violence are involved. In this regard, for the evaluation of the justification of the imposition of this measure, the severity of previous violations is not irrelevant. In contrast, as part of the evaluation of all circumstances of a particular case, these facts are also considered and justify the protective measure. It is not the same whether the defendant was previously convicted of more easy traffic violations or misdemeanors from the Law on Public Order and Peace[7] with elements of violence.

The second condition for imposing a protective measure is to prevent the perpetrator from continuing to endanger the damaged. Under threat, should be understood in the danger of the injured party, in terms of a concrete danger that represents the possibility of immediate injury to life, body or property of the injured party (Delić, Bajović, 2018: 103). The feeling of endangerment at the injured party can cause threats, monitoring, observation, boring visits, phone calls, e-mail and similar disturbance modes (Mrvić Petrović, 2014: 100).

The legislator provided that the court decision pronouncing the restraining order must include: the time period of its enforcement, information on persons to which access shall be restrained to the offender, an indication of the facilities to which access shall be restrained

[7] Official Gazette of the Republic of Serbia, No. 6/2016 and 24/2018.

and of the time thereof, and the places or locations in which access by the offender shall be restrained.[8] The imposed measure of restraining access to the aggrieved party should additionally include the measure of restraining order to the joint apartment or household for a period during which the restraining order is in effect.[9] The safeguard measure of restraining order can be imposed for a term of up to one year, counting from the enforceability of judgement.[10] The injured party, the police directorate in charge of enforcement of the measure and the competent guardianship authority where the measure pertains to restraining the offender from accessing children, the spouse or family members shall be notified of the court decision whereby the restraining order is imposed.[11]

The legal regulation of this misdemeanor sanction has the potential to provide protection to victims of domestic violence, which results from the normative framework analysed thus. However, regarding the issue of imposing a protective measure, it would be absolutely wrong to take an exclusive position, regardless of whether it is about adopting or rejecting the proposal of the applicant or the injured party, but every decision should be made on the basis of the evidence and the specific circumstances of the event, with particular reference to the personality of the offender , the way the misdemeanor was committed, or his or her previous relationship with the victim of violence (Garić, Menićanin, 2023: 59).

However, the real expediency of the application of this measure and procedural measure, is largely meaningless due to the absence of an appropriate procedural mechanism that regulates the violation of these measures. More will be said about this below.

4. THE PROBLEM OF VIOLATING IMPOSED MEASURES[12]

According to doctrine, although the legislator prescribed a procedural measure prohibiting access to the injured party, object or place of misdemeanor, its execution in practice is disputed because the method of its execution is not regulated and, most importantly, no sanction is prescribed if the defendant violates the prohibition. In this case, the provisions of the Code of Criminal Procedure, which provide for the imposition of a more severe procedural measure, cannot be applied accordingly (Ristivojević, Milić, 2023: 279).

The situation is somewhat different with regard to protective measures. By providing the Article 62 Law on Misdemeanors, the legislator prescribed that the convicted on whom a restraining order has been imposed by means of a final judgement and who approaches the injured party, object or place of misdemeanor during the term of the measure or makes contact with the injured party in the prohibited manner or at a prohibited time shall impose a sanction under the regulation laying down the misdemeanor for which this measure has been imposed. However, in the misdemeanor legislation, there are no prescribed sanctions for violating protective measures, or procedures that would be carried out.

According to doctrine,[13] it is indicated that one of the ways to solve this problem is to prescribe a special incrimination, a misdemeanor, which, based on criminal legislation, would define the violation of pronounced procedural and protective measures as a special misde-

[8] Article 61 paragraph 3 Law on Misdemeanors.

[9] Article 61 paragraph 4 Law on Misdemeanors.

[10] Article 61 paragraph 5 Law on Misdemeanors.

[11] Article 61 paragraph 6 Law on Misdemeanors.

[12] For more, see: Jeličić, 2023: 97-105.

[13] See: Jeličić, 2023: 100-105.

meanor. Another possible solution is to amend the Law on Misdemeanors with the aim of prescribing a special procedure that would refer to the sanctioning of violations of the imposed procedural or protective measures.

Finally, but not least, it is necessary to regulate the procedure for the execution of the abovementioned measures, primarily by amending the Law on the Execution of Criminal Sanctions and the Law on the Off- Institutional Execution of Sanctions and Measures.

5. CONCLUSION

The protection of victims of domestic violence from misdemeanor procedure is not regulated satisfactorily. The legislator did not take into account the possible procedural implications of the analysed measures. On the other hand, an abbreviated or urgent misdemeanor procedure can achieve its purpose by determining that the judgement is executed before it becomes final, preventing further interaction between the perpetrator of the misdemeanor and the victim of domestic violence. In an emergency procedure, the defendant may be ordered to have a protective measure prohibiting access to the injured party, the object or the place of misdemeanor, and it seems that this is the maximum that the positive misdemeanor legislation, in the normative part, enables in terms of protecting the victim of domestic violence. In these situations, in relation to the offender from Article 36 paragraph 1 of the Act on the Prevention of Domestic Violence, whose responsibility is determined in the misdemeanor procedure, the court would determine the execution of the judgement before it becomes final, which means that the defendant, in the case of a prison sentence, would immediately be sent for support. By simultaneously imposing a protective measure, the defendant would be obliged to refrain from approaching the victim of domestic violence, the object or the place of misdemeanor. However, the absence of appropriate mechanisms that would be activated in the event of a violation of the imposed protective measure greatly reduces the real purposefulness of the protective measure. The just indicated anomaly in the legal regulation deprives this possibility of protecting the victim of domestic violence from its practical aspect. For these reasons, it is first necessary to improve the legal regulation of the abovementioned measures, which can be effective mechanisms for the protection of victims of domestic violence in misdemeanor procedure. This should be done urgently in terms of liability for violation of the imposed measures.

REFERENCES:

Brkić S. (2010) Nasilje u porodici. U: R. Šarkić (ur.) *Zbornik sudske prakse prekršajnih sudova u Srbiji*, Beograd: Udruženje sudija za prekršaje Republike Srbije, pp. 130–153.

Ćorović, E. (2021) *Osnovi prekršajnog prava Crne Gore*. Podgorica: Fakultet pravnih nauka UDG.

Delić N., Bajović V. (2018) *Priručnik za prekršajno pravo*. Beograd: Službeni glasnik.

Dimitrijević, P. (2001) *Prekršajno pravo*. Beograd: Službeni glasnik, Savet za državnu upravu Vlade Republike Srbije.

Garić Ž., Menićanin, M. (2023) Zakon o sprečavanju nasilja u porodici i opravdanost izricanja zaštitne mere iz člana 61. Zakona o prekršajima. U: *Zbornik radova sa godišnjeg savetovanja udruženja sudija prekršajnih sudova*, USAID i Udruženje sudija prekršajnih sudova Republike Srbije, pp. 52-60.

Jeličić, M. (2018a) Činjenična identifikacija prekršaja. *NBP Žurnal za kriminalistiku i pravo 23*(2) pp.147-166, (https://doi:10.5937/nabepo23-18125).

Jeličić M. (2018b) Načelo pomoći neukoj stranci u prekršajnom postupku. *Pravni zapisi*, br. 2, Beograd: Pravni fakultet Univerziteta Union, pp. 223-238, (https://doi:10.5937/pravzap0-19030).

Jeličić M. (2023) Sporna pitanja u primeni procesne i zaštitne mere zabrana pristupa oštećenom, objektu ili mestu izvršenja prekršaja. *Revija za kriminologiju i krivično pravo* 61(2) pp. 91 – 107, (https://doi.org/10.47152/rkkp.61.2.5).

Marković S. (2019) Measures for prevention of domestic violence and for protection of victims in Serbia's legal system with special reference to emergency measures. NBP Journal of Criminalistics and Law 24(2), pp. 45-63. (https://doi:10.5937/nabepo24-20916)

Mrvić Petrović N. (2014) Sprečavanje nasilja izricanjem mere zabrane okrivljenom da pristupi oštećenom u prekršajnom postupku. U: D. Kolarić (ur.) *Nasilje u Srbiji – uzroci, oblici, posledice i društvene reakcije* Kriminalističko policijska akademija i Fondacija „Hans Zajdel", tom 1, Beograd, pp. 97-105.

Ristivojević B., Milić I. (2023) *Komentar Zakona o prekršajima*. Beograd: Službeni glasnik.

Stevanović O, Subošić D, Kekić D. (2018) Specifične karakteristike zakona o sprečavanju nasilja u porodici. *Zbornik radova Pravnog fakulteta u Novom Sadu* 1/2018, pp. 153-168. (https://doi:10.5937/zrpfns52-17106)

Vuković, I. (2015) *Prekršajno pravo*. Beograd: Pravni fakultet Univerziteta u Beogradu.

LAWS:

Law on Prevention of Domestic Violence - Published in the Official Gazette of the Republic of Serbia, No. 94/2016 and 10/2023.

Law on Misdemeanors - Published in the Official Gazette of the Republic of Serbia, No. 65/2013, 13/2016, 98/2016, 91/2019 and 112/2022.

Code of Criminal Procedure - Published in the Official Gazette of the Republic of Serbia, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014 and 35/2019.

Law on Public Order and Peace - Published in the Official Gazette of the Republic of Serbia, No. 6/2016 and 24/2018.

Review Paper
Kosta D. MITROVIĆ*
DOI: 10.47152/Palic2024.7

PREVENTION OF DOMESTIC VIOLENCE THROUGH MISDEMEANOR PROCEEDINGS IN THE REPUBLIC OF SERBIA

Abstract: Domestic violence is a pervasive and deeply concerning issue that affects both individuals and families worldwide, regardless of age, gender, and social or economic status, or cultural background. Prevention of domestic violence is not only essential for safeguarding the well-being and safety of individuals, but also for promoting healthier relationships. By addressing the root of the cause, raising awareness, providing support services, and implementing effective interventions, societies can work towards creating a future free from domestic violence. This introduction will explore key strategies and approaches towards preventing domestic violence and fostering a culture of respect, equality, and non-violence within households, while at the same time explaining its preventive new role that has introduced the courts of Misdemeanors in such cases, challenges that are faced along the way, and possible solutions to them, with proper cooperation of all the parties involved.

Key words: domestic violence, prevention, urgent measures, misdemeanor, support, perpetrator

1. INTRODUCTION

In Serbian family law, family can be defined as "a group of persons connected by marriage or extra-marital union and kinship, among whom there are legally established rights and duties, whose disrespect entails certain legal sanctions, or as a set of relatives having mutual rights and duties established by law" (Mladenović, 1981: 46), or "as a group of persons related by marriage and kinship" (Bakić, 1988: 35), or as biological-social community which represents the bridge between the biological world of the individual and the social world of formed personalities"(Draškić, 2011: 49). When it comes to the prevention of domestic violence, it is crucial to recognize that this complex issue requires a diverse approach. Prevention efforts of the domestic violence often involve early intervention programs, public education campaigns, community outreach initiatives, and legal reforms to address the root causes of violence within homes. By promoting gender equality, by challenging harmful stereotypes, providing various resources for victims, and holding perpetrators accountable, societies can create a culture that values healthy relationships, communication, and mutual respect. Effective prevention strategies aim to not only address the immediate impacts of domestic violence but also work towards long-term systemic change that prioritizes safety, well-being, and dignity for all individuals in society. Domestic violence shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.[1] It is impossible not to notice that this definition of domestic violence introduces into our legal system, in addition to marital and non-marital family relations, partner relationship as well as economic violence as a form of domestic violence in accordance with

* PhD, Judge in the Court of Misdemeanors in Belgrade. E-mail: kosta.mitrovic@gmail.com.

[1] Council of Europe, Convention on preventing and combating violence against women and domestic violence, Article 3b, Istanbul, 11.V.2011.

Article 3 of the Istanbul Convention (Kolarić, Marković, 2016: 23). On the other hand, United Nations define domestic abuse even wider. Domestic abuse, also called domestic violence or intimate partner violence, can be defined as a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner. Abuse is physical, sexual, emotional, economic or psychological actions or threats of actions that influence another person. This includes any behaviors that frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure, or wound someone. Domestic abuse can happen to anyone of any race, age, sexual orientation, religion, or gender. It can occur within a range of relationships including couples who are married, living together or dating. Domestic violence affects people of all socioeconomic backgrounds and education levels.[2] Some legal systems are dealing with.

Considering that the foreign policy of the Republic of Serbia shall be based on generally accepted principles and rules of international law, and that generally accepted rules of international law and ratified international treaties shall be an integral part of the legal system in the Republic of Serbia and applied directly, all the ratified international treaties must comply with the Constitution.[3] In order to provide additional protection to the victims, raise the awareness of the issue, and prevent the abusers from perpetrating such offences, Republic of Serbia has adopted a Law on prevention of domestic violence ((LPDV) Official Herald of the Republic of Serbia No 94/2016, 10/2023)). Domestic violence, for the purpose of this Law, shall be an act of physical, sexual, psychological or economic violence of the perpetrator against a person with whom the perpetrator is either presently or has previously been in a matrimonial relationship or common-law marriage or partnership relation, or with a person he/she is blood-related to in the direct line, or side line up to the second degree or with whom he/she is in an in-law relation up to the second degree or to whom he/she is an adoptive parent, adopted child, foster parent or foster child or with another person with whom he/she is living or has lived in a common household.[4] Beside LPDV being also applied to the cooperation in prevention of domestic violence (Article 24 through 27 of LPDV) in criminal proceedings for the various criminal acts (Article 4), it also for the first time gives a jurisdiction to the Courts of Misdemeanors in this matter, introduces urgent measures as a way to provide additional protection to the victims and a way to discourage the offenders from further victimization, as well as the punishment for violating these measures, which shall all be better described and is the goal of this research.

2. INTERNATIONAL INSTRUMENTS RELATED TO THE PREVENTION OF DOMESTIC VIOLENCE

International instruments related to the prevention of domestic violence play a significant role in shaping policies, strategies, and actions taken by countries to address this issue. Here are some key international instruments relevant to the prevention of domestic violence:

1. United Nations Declaration on the Elimination of Violence against Women (1993): This declaration recognizes domestic violence as a violation of women's human rights and

[2] https://www.un.org/en/coronavirus/what-is-domestic-abuse.

[3] Constitution of the Republic of Serbia (Official Herald of the Republic of Serbia No 98/2006, 115/2021), Article 1.

[4] Law on prevention of domestic violence (Official Herald of the Republic of Serbia No 94/2016, 10/2023), Article 3.

calls for the prevention and elimination of all the forms of violence against women, including domestic violence.

2. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): CEDAW is an international treaty that obligates States to take measures to prevent and address gender-based violence, including domestic violence, and to ensure women's full, equal participation in society.

3. Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention): This treaty sets out comprehensive legal standards to prevent and combat violence against women, including domestic violence, and includes measures for protection, support services, and prevention of violence.

4. Beijing Platform for Action (1995): Adopted at the Fourth World Conference on Women, the Beijing Platform for Action addresses domestic violence as a critical issue that requires a coordinated International response to prevent and eliminate violence against women.

5. Sustainable Development Goals (SDGs): Goal 5 of the SDGs aims to achieve gender equality and empower all women and girls, including efforts to prevent and eliminate all forms of violence against women and girls, such as domestic violence.

6. United Nations Security Council Resolution 1325 on Women, Peace, and Security : This resolution recognizes the disproportionate impact of conflict on women and girls and highlights the importance of preventing and responding to gender-based violence, including domestic violence, in conflict and post-conflict settings as well.

7. World Health Organization (WHO) Global Plan of Action to Strengthen the Role of the Health System in Addressing Violence, in Particular against Women and Girls : This plan provides the guidance for health systems to prevent and respond to interpersonal violence, including domestic violence, through a public health approach.

8. European Union Victims' Rights Directive (2012/29/EU): This directive outlines measures to support victims of crime, including victims of domestic violence, by ensuring access to protection, support services, and legal assistance.

9. Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará): Adopted by the Organization of American States, this convention aims to prevent and eliminate violence against women, including domestic violence, in the Americas through comprehensive measures.

10. African Union Continental Framework on Ending Violence against Women and Girls: This framework provides all the African countries with guidance and tools to implement strategies to prevent and address violence against women and girls, including domestic violence, in alignment with international human rights standards.

By ratifying and implementing these international instruments, countries can strengthen their responses to domestic violence, improve victim support services, enhance prevention efforts, and hold the perpetrators accountable. Collaboration at the international level helps promote a unified approach to combat domestic violence and advance gender equality and human rights worldwide.

3. DOMESTIC VIOLENCE THROUGH MISDEMEANOR PROCEEDINGS IN THE REPUBLIC OF SERBIA

Misdemeanor proceedings involving domestic violence offenders are crucial in holding offenders accountable for their actions, ensuring the safety of victims, and deterring future instances of domestic violence. Misdemeanor proceedings for domestic violence offenses involve legal actions against individuals accused of committing acts of abuse or violence against intimate partners, family members, or household members.

Until the beginning of this century, there was no real Strategy in the Republic of Serbia to confront and prevent domestic violence, and as a separate crime, domestic violence was introduced into our country's criminal justice system in 2002, and as of 1st of June 2017. Law on Prevention of Domestic Violence introduced two emergency measures that are available to the authorities for the prevention of domestic violence: measure of temporary expulsion of the perpetrator from the apartment, and a measure of temporarily prohibiting the perpetrator to contact and approach the victim of violence".5 Both of these measures can be issued at the same time, or separately, and for both of them to be issued, the victim and the perpetrator need to share the same address where they live. Upon reporting the possible domestic violence, competent police officer is determining the possible threat of domestic violence, and if finds that there is a threat of family violence in the future, or it has already happened (any form of violence, or disturbing of public peace or order shall be treated as such, and against the perpetrator shall be taken the action either by the Criminal code if it represents criminal offence, or misdemeanor if it represents disturbing of public law and order, andlaw urgent measures shall be rendered if there is a basis for them), He/she shall render an order on the perpetrator, and that order may impose one or both measures. The police order may last up to 48 hours from the moment it has been rendered, and breaking the order in any way is Misdemeanor, and the Law on prevention of domestic violence provides for such offence an imprisonment punishable for up to 60 days.6 The competent police officer shall deliver the order to the basic public prosecutor on whose territory is the permanent or temporary residence of the perpetrator, who shall after receiving the order and risk assessment do the evaluation, and if determined that there is a risk of further violence, file to the court proposal of the extension of the urgent measure within the 24 hours from the hour that the order was served to the person on whom the urgent measure was imposed. Within the 24 hours, the single judge, without hearing, shall decide on whether the measure or measures shall be prolonged for another 30 days, or not, based on everything above mentioned. So overall, urgent measure/s can last up to 32 days total, and the goal of these measures are to provide additional protection to the victims of domestic violence. This Law (LPDV), as a relatively new law in our legal system, brought a new, innovative way to prevent the domestic violence as a main goal, and as it goes with everything new, it brings along its good solutions, as well as its flaws. Some European legal systems are having the same, or the similar practice, while the others are treating this matter as a Criminal offence, without any Lex specialis to enforce, and each country based on

[5] Law on prevention of domestic violence (Official Herald of the Republic of Serbia No 94/2016, 10/2023), Article 17.

[6] Law on Misdemeanors (Official Herald of the Republic of Serbia No 65/2013, 13/2016, 98/2016, 91/2019, 112/2022), Article 37, 45 – prison sentence cannot be prescriber for shorter than 1 day, not longer than 60 days, unless by one act, the perpetrator has commited more than one misdemeanor in which case, by concurrence of misdemeanors, the maximal lenght of imprisonment can be up to 90 days.

its characteristics had its own way to deal with such problems. Some solutions that work very well some some nation, and their legal system, does not mean that it shall work nearly as good, or not at all to some other legal system, depending of the socialization, sensibility, awareness, and willingness to deal with such problems, which are unfortunately present more or less everywhere, having human as an imperfect being. If mankind had wished for what is right, they might have had it long ago,7 but not being so, we had to satisfy with the best we can do with legal state and the rule of law as we have it. The goal of this work is to try to present you with its pros and cons in our legal system since it came into force.

3.1. Perpetrators and sanctions against them in the Misdemeanor proceedings

Majority of cases that do appear in the practice of the Courts of Misdemeanors in the Republic of Serbia, with elements of violence, are mostly connected with disturbing the public order and peace either by insults, threats, imposing violence on others, carrying cold weapons or other types that are convenient or meant to hurt someone, hooliganism on sport matches or manifestations, and various smaller similar offences, but over the past seven years, numerous offenders breaking the urgent measures by LPDV have been prosecuted. Article 36 of the LPDV stipulates that a person violating the urgent measure which has been imposed on or extended to him/her shall be punished with imprisonment of up to 60 days, giving the range of the duration of the prison sentence from 1 day of imprisonment up to 60 days, and the convicting judgement for the offence may be enforced prior to it being final in line with the Law on Misdemeanors.

A conviction may be enforced even before its legal enforceability in the following cases: 1) if the defendant cannot prove his/her identity or has no domicile, or does not live at the address at which he/she is registered, or if he/she has domicile in a foreign country or if he/she goes abroad to stay there, and the court finds that there is reasonable doubt that the defendant will evade enforcement of imposed sanction; 2) if the defendant is punished for a graver misdemeanour in the field of public order and peace, safety of public transport or for a graver misdemeanour whereby the human life or health is threatened or where the interests of general safety or the safety of transactions in goods and financial transactions or the moral reasons call for that or where he/she is punished for a misdemeanour which may result in some graver consequences, and there is reasonable doubt that he/she shall continue to commit misdemeanours, repeat the misdemeanour or evade enforcement of imposed sanction. In the cases referred to in paragraph 1 of this Article, the court shall determine in the judgement that the defendant shall accede to its enforcement even before the legal effectiveness of the judgement.[8] Court of Misdemeanors in Belgrade have a duty judges, and a duty courthouse situated in the police station which deals with such cases, and all the persons who are violating either one of urgent measures, no matter them being issued as a 48 hours police order, or extended by the court for another 30 days are being processed in such a manner, in accordance with Article 308, Para 1(2) of Law of Misdemeanors treating the violations of these measures as an offences where the human life or health is threatened, or where that is the interest of general safety.

Having in mind that the life itself is complicated, and that each case is unique, different decisions are being made, depending on the circumstances of the case. That is the part where the single judge dealing with such a case needs to bring the verdict with an educated

---

[7] William Hazlitt, The Plain Speaker, 1826.

[8] Law on Misdemeanors (Official Herald of the Republic of Serbia No 65/2013, 13/2016, 98/2016, 91/2019, 112/2022), Article 308.

decision based on all the available data, hearing everything from both parties if needed, taking care of not putting the victim through the secondary victimization, and having her/his welfare and best interest in mind. Psychological violence is the type of violence that is the hardest to prove, and even though it does not leave visible traces as some other types do, can leave severe and long-term consequences on the victims. These are all the factors that are being taken into consideration while giving the verdict, type and length of the sentence. Even though the LPDV prescribes the prison sentence for violation of the urgent measures, Law on Misdemeanors in cases where it is determined on the occasion of weighing of a penalty that no graver consequences have been caused by the misdemeanour, and where there are mitigating circumstances indicating that even a lighter penalty may achieve the purpose of the punishment, the prescribed penalty may be mitigated by imposing a punishment below the minimum measure of a penalty prescribed for such misdemeanour, which may not however be below the minimum statutory measure for such type of penalty or imposing a fine or community service instead of the prescribed prison sentence which may not be below the minimum statutory measure for such type of penalty,[9] which gives the opportunity not to give the prison sentence if there are mitigating circumstances. While some cases of violating the measures are quite severe, some are quite benign, or being made from an uneducated party with no prior history of any kind.

Another option, which is considered by the Law on Misdemeanors to be a penalty, is Admonition. Instead of a fine, admonition can be imposed for a misdemeanour if there are circumstances mitigating to a significant degree the offender's responsibility, so that it can be expected that he/she shall avoid committing misdemeanours in the future even without imposition of penalty.[10] This kind of penalty has been given rarely for this kind of offence, and if so, was given under circumstances that are mitigated to such a degree, that the prison sentence would not be appropriate, and the admonition is usually given along with one or more safeguard measures.[11] The ones that are usually being imposed, though rarely, due to the nature of these cases and them being conducted as fast as possible for the protection of the victims are mandatory medical treatment of alcoholics and addicts of psychoactive substances, mandatory psychiatric treatment, an order restraining access to the aggrieved party, facilities or place of misdemeanour committing[12] and removal of foreigners from the territory of the Republic of Serbia. Furthermore, the convicted person on whom a restraining order has been imposed by means of a final judgement, and who approaches the aggrieved party, facilities or place of committing misdemeanour during the term of the measure or makes a contact with the aggrieved party in the prohibited manner or at a prohibited time, shall be imposed a sanction under the regulation laying down the misdemeanour for which this measure has been im-

[9] Law on Misdemeanors (Official Herald of the Republic of Serbia No 65/2013, 13/2016, 98/2016, 91/2019), Article 43.

[10] Law on Misdemeanors (Official Herald of the Republic of Serbia No 65/2013, 13/2016, 98/2016, 91/2019, 112/2022), Article 50.

[11] Law on Misdemeanors (Official Herald of the Republic of Serbia No 65/2013, 13/2016, 98/2016, 91/2019, 112/2022), Article 52.

[12] Law on Misdemeanors (Official Herald of the Republic of Serbia No 65/2013, 13/2016, 98/2016, 91/2019, 112/2022), Article 61, The safeguard measure of restraining order can be imposed for a term of up to one year, counting from the enforceability of judgement, which can provide additional protection in addition to 32 days by the LPDV if circumstances justify it.

posed,[13] which means that the once again, prison sentence up to 60 days may be given to the perpetrator violating prolonged urgent measure given by the judge of misdemeaours court.

Another possibility, which happens rarely though, because the motion to institute the misdemeanour proceedings is rarely filled in such a manner is the Misdemeanour of Extended Duration,[14] where a misdemeanour of extended duration shall exist where the offender commits a number of identical, coinciding misdemeanours with a single premeditation, which comprise a single body on the grounds of two of the following circumstances at least: the sameness of aggrieved party, sameness of the subject matter of misdemeanour, exploitation of the same situation or lasting relationship, uniformity of place or space where the misdemeanour is committed. In such cases, given the severity of urgent measures being violated, the sentence of up to 90 days of imprisonment can be given from the court, on the principle of concurrence of the Misdemeanours, where prolonged misdemeanor is committed because the perpetrator with a single intent makes more of the same time-related misdemeanors during the time when a single urgent measure is in force.

In case that the LoM does not give enough options due to the complexity or nature of the case, Mutatis Mutandis Application of the Criminal Procedure Code Article 99 Provisions of the Criminal Procedure Code shall apply mutatis mutandis to the misdemeanour proceedings, unless laid down otherwise by this or another law.

3.2. Statistical data on urgent measures

It has been over seven years since LPDV came into force, and in this part of the research, statistical data shall be given regarding the number of urgent measures that have been issued, number and type of verdicts in the courts of Misdemeanors in Belgrade, and in whole Serbia.

During emergency measures, it is not enough to adopt a protection plan, and for the state authorities to play with the numbers on statistical data on the number of emergency measures or individual protection plans that have been imposed, but also that they have an effect on the potential perpetrator to stop the violence if they planned it in the future, and to prevent possible situations in which the victim would be at risk. For the purpose of this research, for the time 5 years' time from 2019. until the end of 2023., there was 807 cases of violating the urgent measures referred to Article 36, Para 1 LPDV in the Misdemeanour court of Belgrade (Table 1), where all of the perpetrators of the urgent measures have been brought to trial right after they broke the measures, or as soon as they were found, and 792 verdicts have been imposed, while the the remaining 1% have been solved on the other way, which by all means shows that the system is quite efficient in combating the domestic violence, apprehending the violators of measures and delivering verdicts in a swift manner respecting the rule of law in order to protect the possible victims from any further risk. The same table (Table 1), gives us the statistics based by the gender of the perpetrator, where we can see that the vast majority of violators of urgent measures are males, 727 out of 807, leaving 67 females as perpetrators, which is generally less than 10% of overall number, but is showing a slight increase per year, from 7 in 2019, to 25 in 2023.

[13] Law on Misdemeanors (Official Herald of the Republic of Serbia No 65/2013, 13/2016, 98/2016, 91/2019, 112/2022), Article 62.

[14] Law on Misdemeanors (Official Herald of the Republic of Serbia No 65/2013, 13/2016, 98/2016, 91/2019, 112/2022), Article 46.

Table 1. Official statistics from SIPRES, Court of Misdemanours in Belgrade

	2019	2020	2021	2022	2023
Total number of cases	128	151	151	188	189
Gender of the perpetrator – Male	121	141	129	166	164
Gender of the perpetrator - Female	7	10	3	22	25
Total number of verdicts	126	151	151	186	178
Defendant pronounced liable	122	143	145	177	165
Defendant acquitted from liability	3	4	3	3	4
Discontinued	1	1		1	1
Statute of limitation		3	3	4	4
Sentenced to prison sentence	83	87	89	95	95
Sentenced to a fine	37	56	58	84	71

In addition, very few cases were not solved due to Statute of limitations, only 14 during this period, and the only reason why that has happened was due to the unavailability of the perpetrator during the two years period. Majority of perpetrators were sentenced to prison - 449, while 306 were sentenced to a fine, where mitigating circumstances were such that the judge have issued a fine instead of imprisonment.

Table 2. Official statistics from High Judicial Council (HJC) Basic courts[15]

	Matter	Nr. of judges	Unsolved in the beginning	Received	Total in process	Solved competently	Solved in the other way	Total solved	Unsolved in the end
1	DV 2019	248	12	19.154	19.166	19.150	2	19.152	14
2	DV 2020	248	14	19.067	19.081	19.069	1	19.070	11
3	DV 2021	233	11	19.322	19.333	19.326	0	19.326	7
4	DV 2022	245	7	20.567	20.574	20.555	0	20.555	19
5	DV 2023	245	19	20.713	20.732	20.713	0	20.713	19
Total 1-3		XXX	63	98.823	98.886	98.813	3	98.816	70

[15] Acquired from HJC on 08.04.2024. through the request for access to public information.

Table 3. Official statistics from High Judicial Council (HJC) Misdemeanour courts[16]

	Matter	Nr. of judges	Un-solved in the begin-ning	Re-ceived	Total in process	Solved compe-tently	Solved in the other way	Total solved	Un-solved in the end
1	DV 2019	368	71	2.008	2.079	1.962	20	1.982	97
2	DV 2020	377	97	1.900	1.997	1.846	23	1.869	128
3	DV 2021	338	128	2.178	2.306	2.112	28	2.140	166
4	DV 2022	346	166	2.193	2.359	2.094	43	2.137	222
5	DV 2023	337	222	2.110	2.332	2.055	48	2.103	229
Total 1-3		XXX	684	10.389	11.073	10.069	162	10.231	842

DV – Domestic violence

For the purpose of this research, statistical data has been acquired from the HJC as well, regarding the number of cases with elements of domestic violence for the five years period, 2019.-2023. In all the Basic courts in Serbia (Table 2), as well as all the cases received, and solved regarding the violation of urgent measures in all the Misdemeanour courts in Serbia (Table 3). As the statistics, clearly shows, between 337 and 377 Misdemeanour judges were dealing with this type of cases, and 842 cases were unsolved in the end out of 10.389 cases. In the court of Misdemeanors in Belgrade, by the Annual schedule of tasks, all cases regarding the violation of urgent measures (Article 36, Para 1 LPDV) are being dealt with in accordance with Article 308, Law on Misdemeanours, so a conviction is enforced even before its legal enforceability, and the perpetrators are being brought in for trial as soon as they are apprehended by the police. Dealing with these cases in such a manner has shown to be way more efficient as shown in the statistics (Table 1), where only 14 cases out of 807 have not been solved due to limitation, and such cases are being dealt with solely by the three duty judges (being substituted while or vacation or sick leave only), while all the cases in the other courts in Serbia have been dealt with 337-377 judges, where 842 cases were not solved (Table 3). This kind of comparative analyses clearly shows that specialization gives without a doubt a lot better results, and efficiency, which is particularly important in this type of cases, due to its nature, and urgency to provide additional protection to the victim. Bearing in mind that judges in court of Misdemenours are practicing over 700 laws and by-laws, specialization is more than needed for this type of cases, and even though many of the courts in Serbia are small courts, each should appoint one or more judges who would be dealing with this kind of perpetrators.

4. CHALLENGES

The rule of law serves as the foundation of any modern democratic society, providing a framework for regulating and managing social interactions, and it is expected to be objective, impartial, and rational, reflecting a society's values and aspirations. However, the objectivity of law is be tested by the subjective perception and interpretation of lawyers and judges, which

[16] Acquired from HJC on 08.04.2024. through the request for access to public information.

makes the legal problem difficult. The difficulty in reconciling the objective nature of law with the subjective experiences and interpretations of those who apply it is referred to as the hard problem of law. The law is a social construct, created by humans to regulate their behavior, it is not a natural phenomenon, but it is rather shaped by social, political, and cultural forces, which as a result is constantly evolving and adapting to changing circumstances, making its interpretation and application a complex and difficult task. It is a multidisciplinary field that includes criminal civil, constitutional, administrative, and international law, and each branch has its own set of rules, procedures, and principles that govern how it is applied, making law interpretation and application a complex and nuanced exercise. As human himself, no law is perfect as a reflection of us, but it is imperative to create it in a best manner for the society it has been made for.

As any other "new" law, LPDV brought new practices, as a pioneer in our legal system in this area, but new practices always bring along new challenges. As Lex specialis, this law has its own time limits. On the other hand, some were not set at all. Police officer shall render an order imposing urgent measure or measures on the perpetrator and it shall last for 48 hours from the moment of serving the order, and the court may extend the urgent measure for another 30 days.[17] It is properly and detailed with this part of the procedure, regarding the serving of an order on imposing urgent measure, the lawmaker missed the part of the obligation of the perpetrator under which circumstances the extended measure by the court will be served. Having in mind that it has not been specified, Law on General Administrative Procedure will be applied,[18] so if the perpetrator does not come by the police station himself after 48 hours of urgent measure being imposed to get informed weather or not it has been extended, it is considered that the public delivery has been completed when 15 days have elapsed from when it was published in writing on the website and notice board of the authority. Amendments should be made with Lex specialis solution for serving the extended urgent measures, as it has been done for the other parts of the procedure. One of the problems observed in practice is occasional unconscious treatment of both victims and perpetrators of violence. Work is sometimes done according to a system of minimal procedure, without explaining what is allowed and what is not, and with laziness or lack of interest in conscientiously performing the job, which carries a certain responsibility. In a certain number of cases, this can lead to the violation of emergency measures. Considering the circumstance that from the perspective of someone who has judged hundreds of such cases, it can easily be said that at least half of the violators of the urgent measures are regular consumers of alcohol, psychoactive substances, individuals who gamble, as well as individuals of lesser financial means and undereducated people. One of the common ways of violating these emergency measures in practice, which clearly indicates insufficient information on the part of the parties, is the circumstance that a number of parties come to a hearing for violating the emergency measure immediately after its imposition because they come to the address from which they were temporarily removed, or where there is a measure of prohibition of approach and contact (or both) because they were not explained properly that they are not allowed to do so, and fundamentally they do not have much reason to make this up, especially not in such a large number, because they do not dispute the violation of the measure, but only the circumstance that they did not know that by coming to collect their belongings they were violating it.[19]

[17] LPDV, Article 17. and 21.

[18] Law on General Administrative Procedure (The Official Gazette of the Republic of Serbia", Nos. 18/2016, 95/2018), Article 78.

[19] In case the urgent measure of temporary removal of the perpetrator from the apartment is

Although this law was enacted in the spirit of protecting real victims from any form of violence, it happens occasionally to be subject to abuse, especially in cases involving unresolved property relationships, divorce proceedings, where one party wants to portray the other as a perpetrator, child custody issues, debts, leading to situations in court where the same married or unmarried partners, children, and parents often find themselves as violators of emergency measures "in turn" several times, alternately reporting each other for domestic violence. Imposing emergency measures, and their violation, can have serious consequences, of which many, I believe, are not often aware when reporting, so if there really has been no domestic violence, one should be more cautious in their imposition. The 2018 survey shows that for 94% of the orders, the public prosecution makes a proposal to extend emergency measures, and the court adopts 97% of the proposals. In conclusion, of the ten emergency measures, nine are extended. This shows us that the police perform a good risk assessment and adequately pronounce emergency measures. In this way, we wanted to point out what kind of mistakes in reaching conclusions could lead to the use of wrong data (Markovic, 2018). On one hand, this can be seen as one side of the coin, while on the other hand, it can give the impression that the prosecution proposes the extension of emergency measures in 19 out of 20 cases, and that the court approves 97% of the proposals and extends the measures. Is this a result of conscientious work, or are the proposals for extending emergency measures automatically submitted and extended, following the principle of better safe than sorry? It is very important to provide adequate protection to victims, but it is also important not to portray someone as a perpetrator when they truly are not. Continuous training of all those involved in this area is more than necessary to broaden perspectives, rather than opting for what is easier, because we can choose from what is right, and what is easy.

5. CONCLUSION

The prevention of domestic violence is a multifaceted and crucial endeavor that requires a coordinated effort from individuals, communities, policymakers, law enforcement, and service providers. By promoting education, raising awareness, implementing effective laws, policies, providing support to the victims, and holding perpetrators accountable, societies can work towards creating safe and respectful environments where everyone is free from the threat of violence in their homes. It is essential to prioritize early intervention, address root causes, and foster a culture of equality, empathy, and non-violence to prevent domestic violence effectively. Together, by recognizing the importance of prevention and taking proactive measures, we can strive towards a future where every individual can live free from the fear of domestic violence.

Every new law brings solutions and challenges in its implementation, and over time, practice, and acquired experience, it is necessary to identify and correct such shortcomings. Raising awareness on this topic through media, social networks, and other means of public advertising is essential because as statistics clearly show, in both basic and misdemeanor courts, domestic violence is not a rare occurrence, and it is not something that should be taken lightly. It is necessary for all involved parties to establish better cooperation and to establish a Central Record of data on cases of domestic violence.

extended, the person on whom the measure has been imposed may, being escorted by the police officers, take his/her personal belongings from the apartment, (Article 21, para 3 LPDV).

LITERATURE

Bakić, V. (1988). Porodično pravo u SFRJ. Beograd: Savremena administracija

Draškić, M. (2011). Porodično pravo i prava deteta. Univerzitet u Beogradu, Pravni fakultet

Kolarić, D., Marković, S. (2016). Predgovor; Stvarni registar. Zakon o sprečava- nju nasilja u porodici. Beograd: Službeni glasnik

Marković, S. (2019). Measures for prevention of domestic violence and for protection of victims in Serbia's legal system with special reference to emergency measures

Mladenović, M. (1981). Porodično pravo. Beograd: Privredna štampa

William Hazlitt, The Plain Speaker, 1826.

Constitution of the Republic of Serbia (Official Herald of the Republic of Serbia No 98/2006, 115/2021)

Council of Europe, Convention on preventing and combating violence against women and domestic violence, Article 3b, Istanbul, 11.V.2011

Law on Misdemeanors (Official Herald of the Republic of Serbia No 65/2013, 13/2016, 98/2016, 91/2019, 112/2022)

Law on prevention of domestic violence (Official Herald of the Republic of Serbia No 94/2016, 10/2023)

Law on General Administrative Procedure (The Official Gazette of the Republic of Serbia", Nos. 18/2016, 95/2018 (Authentic Interpretation)

https://www.un.org/en/coronavirus/what-is-domestic-abuse

Thematic Session 3: Women's Victimisation

Milana M. LJUBIČIĆ*
Đorđe M. IGNJATOVIĆ**

Original Scientific Paper
DOI: 10.47152/Palic2024.8

POVERTY AND VICTIMIZATION OF WOMEN***

Abstract: The paper will discuss the connection between poverty and victimization of women. Instead of the usual focus on interpersonal violence, this text offers a different view of victimization. Namely, we have dealt with systemic violence which is, by definition, incorporated in social structures and which mostly passes undetected, despite leaving visible consequences. Our primary goal was to point to some of the illustrative examples of women victimization through structural violence and, besides the descriptive analysis, our intention was also to provide the reader with the explanatory analysis which led to two assumptions. The first one refers to etiology, while the second refers to systemic violence in the contemporary social context.

Keywords: women, poverty, violence, systemic violence, interpersonal violence

INTRODUCTION

Malgesini, Cesarini Sforza and Babović (2019) begin their report on gender-based violence and poverty in Europe with a statement, i.e., a common place. These authors, as well as many others before and after them, say that many women experience various forms of violence only because of being – women. According to the data for the period 2000-2018, which refer to 161 countries, one in three females was the victim of sexual and/or physical violence in and outside a partnership relationship. It is estimated that the prevalence of men's violence against women ranges from 20% in the Western Pacific, via 22% in the developed countries of Europe to 33% in the regions of Africa, America and South Asia.[1] There are also data that 15 million adolescents at the age from 15 to 19 were forced to sexual intercourse, that in 91% cases the victim of exploitation was a woman, as well as that in 2020, out of ten victims of human trafficking, six were female.[2]

As far as our country is concerned, the findings of scientific studies almost with no exception warn about the frequency of women victimization through partner violence.[3] We must be worried because of the conclusions: it transpires that every third woman from the age of fifteen was the victim of sexual and/or physical violence by her partner or another (male) person.[4]

* PhD, Full Professor at University of Belgrade, Faculty of Philosophy, https://orcid.org/0000-0002-1400-5705. E-mail: milanaljubicic@yahoo.com.

** PhD, University of Belgrade, Faculty of Law, member of the Scientific Society of Serbia, https://orcid.org/0000-0001-7134-1134. E-mail: ignjat@ius.bg.ac.rs.

*** The realization of this research has been financially supported by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia within financing scientific-research work at the University of Belgrade, the Faculty of Philosophy (Agreement no. 451-03-66/2024-03/ 200163).

[1] https://www.who.int/news-room/fact-sheets/detail/violence-against-women.

[2] https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures#83918.

[3] https://eca.unwomen.org/en/where-we-are/serbia/ending-violence-against-women.

[4] https://www.womenngo.org.rs/konsultacije-za-zene/o-nasilju-nad-zenama/nasilje-nad-zenama/2071-rasprostranjenost-nasilja-prema-zenama-u-srbiji.

Moreover, poverty has been recognized as one of the risk factors of victimization. Nevertheless, as noted by Nilsson and Estrada (2005), criminologists have not dealt in further detail with the causal connection between poverty and victimization. In fact, this question was particularly dealt with first by Meier and Miethe in the 1990s, who pointed to the need for its further examination. Their call passed relatively unnoticed and that is why since then to date a relatively small number of studies has been published about the distribution of victimization between the poor and the wealthier. On the basis of these studies, it may be stated that the differences in living conditions go together with the differences in victimization rates. Therefore, based on the data for the period 1984-2001, Nilsson and Estrada (2005) find that members of different social strata were disproportionately victimized by violent crimes. The conclusion is that the poor were much more frequently exposed to poverty than the wealthier. Similar findings are also reached by the authors of the report *Household Poverty and Nonfatal Violent Victimization*. Analyzing the data for the period 2008-2012, Harell et al. (2014) found that the persons living on or below the poverty line were twice more frequently victimized than those from the middle and higher classes. In that respect, there were no differences between Afro-Americans and white people, or between those living in urban or rural areas. This report does not contain any data about who was more frequently victimized: a poor woman or a poor man, while this question is answered by Nurius, LaValley and Kim (2020). They found out that poor young women, members of minorities, are far more frequently victimized by violence[5] as compared to men from the similar social milieu and the wealthier ones.[6]

Dealing more specifically with partner violence, Malgesini, Cesarini Sforza and Babović (2019) have found out that women stay in a relationship with violent partners mostly because of their economic dependency, while Nikolić Ristanović (2008) states that the risk factors are impoverishment, labour market uncertainty, smaller access to paid jobs – or, in other words, women's material deprivation. Moreover, based on the results of different studies dealing with violence against women (in a partnership relationship), it is clear that poverty has a negative effect on the relations in the family (Nikolić Ristanović, 2008: 108), not only by making a woman economically dependent on a man, but also by questioning hegemonic masculinity (a poor man).

From the above-said we may conclude that interpersonal, i.e., subjective violence (Žižek, 2008: 7) against women is rather widespread, that they are with no exception victimized by men and that poverty is one of the factors placing them into a risk position. If we add the fact that women are still poorer than men at the global level (Fredman, 2016), and that even in the developed countries such as those in the territory of the European Union, there is no special legal instrument for protecting women from violence (Malgesini et al., 2019), we will agree that the situation seems hopeless (Nikolić Ristanović, 2008). This is also proved by the specific language coined in the meantime, which cannot be deviated from either in science or in the domain of practical policies because in that case it will be qualified as political incorrectness[7]

[5] It is not stated what form of violence is in question.

[6] The research was conducted on the sample of 11,222 students of the 8th, 10th and 12th grade in the state of Washington during 2010.

[7] According to Fusaro (2020: 74), political correctness is nothing but single-mindedness which is mostly contributed to by intellectuals. Selling their cultural capital to masters (i.e., the market), they are obliged to agree with the rigorous orthodoxy. Fusaro also says that the task of "intellectual clergy" (2020: 74) is to symbolically mediate between the superior and the subordinate, thus ensuring the submissiveness of the latter.

(Fusaro, 2020). The newly-coined phrases[8] include poverty feminization, migration feminization and survival feminization or, for example, trafficking feminization which, due to the finding that women are far more victimized by this form of violence, has become an object of special social concern (Russell, 2014).

However, we do not consider this view of the things particularly useful, and we have the following question/argument in that respect: how is it possible that since the moment of identifying violence against women as a serious socio-economic problem and challenge which no doubt goes far into the domain of human rights, the victimization rate has not been reduced even in the highly-developed countries? Furthermore, there are serious disagreements regarding the thesis that poverty has a female face (Chhachhi, Troung, 2009). Chant (2008, according to: Chhachhi, Troung, 2009: 167) stands against the idea of poverty feminization by pointing out that the following assumptions have no empirical confirmation: 1. that women are poorer than men; 2. that women's poverty is "worse" than men's material deprivation; 3. that single mothers are the poorest among the poor. Namely, this author claims that there is neither comparative nor longitudinal data base according to which we could reach these conclusions. In fact, this claim is opposed to the smaller and smaller statistical differences between men's and women's respective accomplishments in the domain of education., employment and political engagement, so there are no grounds to speak of "masculinization of wealth and privileges" (Chant, 2008; according to: Chhachhi, Troung, 2009). Finally, Chhachhi and Troung (2009) propose a hypothesis which points to the critical reconsideration of the existing discourse regarding poverty and victimization of women. These authors bring our attention to poor single mothers, saying that the current paradigm about the culture of single motherhood goes together with the new paradigm about poverty which underlines the dysfunctionality of these families and the transfer of dependency patterns. By further elaboration of this hypothesis, a conclusion is reached that these women are not only poor, but also extremely irresponsible persons.

Having in mind the above-mentioned, we find it necessary to introduce a different perspective in perceiving the connection between victimization and poverty of women.[9] In the presentation below, we will deal with systemic violence against women. We would like to underline that it does not mean that we negate the reality of interpersonal, i.e., subjective violence suffered by women (but also by men).

SYSTEMIC VIOLENCE: WHAT IS IT?

The meaning of the notion "structural violence" was first proposed by Johan Galtung[10] (Ho, 2007). This violence is the violence of inequality and injustice (Rylko-Bauer, Farmer, 2016: 47). Its presence is proved every time when negative outcomes, such as death, disease, or injury could have been prevented by the acting of the system, but were not (Evans, 2016). Therefore, we could not claim that a man who died of tuberculosis in the 18th century was victimized by systemic violence, but if someone dies of this disease in a highly-developed society

[8] Žižek (2008: 36) vividly speaks about the use of phrases as about a more fundamental form of (symbolic) violence which belongs to the generally accepted, universal, politically correct language.

[9] In their analysis of the academic data base available in English, for the purpose of analyzing violence against women, Wong and Forget (2024) conclude that none of the consulted sources deals with systemic violence.

[10] Apart from structural violence, Galtung also speaks about personal, structural and cultural violence (Ho, 2007).

three centuries later, it is victimization because such outcome could almost certainly (with the aid of adequate medical care) have been avoided (Ho, 2007).

Systemic violence is not conducted by a specific individual or group. It is incoroprated in social structures: social relations and arrangements (economic, political, legal, religious and cultural) which shape the nature of relations of individuals and groups with the social system. Violent persons are depersonalized, abstract, barely mentioned in discourses, norms, strategies, initiatives and specific victimizing practices, while the only thing we know about them with certainty is that they are much more socially powerful than the victims in question.[11]

This violence is anonymous: it is impossible to point a finger at someone with first and last names as being guilty of children starving to death in Africa or for people in some countries dying of cancer with disproportionate frequency; because of this feature of violence, Žižek (2008: 17) considers it particularly unpleasant. This violence, called "ultra-objective" by Balibar (according to Žižek, 2008: 17), is integral part of neoliberal capitalism and, by force of necessity, it produces and leaves people (the homeless, the unemployed) on the margin. Žižek also brings our attention to yet another danger of systemic violence: it is our complete or selective blindness in noticing its causes and consequences. For example, while those responsible for communist crimes, according to Žižek, are easily identified, it is impossible in the case of other tragedies because the system denies them. Unfortunately, there are many examples. There is an identical interpretation of life stories of the thousands of people who were forcefully displaced from their centuries-long hearths during the Croatian military operations Flash and Storm in August 1995: "These are the consequences of objective (democratic?) processes for which no one bears responsibility (Žižek, 2008).

Systemic violence is particularly dangerous because it affects helpless individuals and groups. Those are quite specific "classes of people" (Rylko-Bauer, Farmer, 2016: 47), replaceable people from the margins (Žižek, 2008), discriminated on the basis of their racial, ethnic and religious affiliation or, for example, their migrant status. In addition, this violence victimizes poor people with no exception.

But, is poverty actually violence? This will be discussed further in the text below.

STRUCTURAL VIOLENCE AND/OR POVERTY?

To explain that poverty is actually systemic violence, the advocates of this thesis cite the theory of social structures. It emerges when economic and political structures systematically prevent (some) groups from fulfilling their needs. In other words, they are deprived of the right to live in wellbeing, to develop personally and to express their human capacities and potentials (Christie, 1997). Inequality and exploitation are in the core of structural violence. Because of that, some participants of social life get more than others in their relations with social structures (Ho, 2007). Such inequalities essentially caused by the absence of decision-making power and by uneven distribution of resources, result in differences in life opportunities (Evans, 2016). That is why, according to Evans, only one conclusion is possible: racism, gender inequalities and, above all, poverty are connected with structural (official?) agendas from slavery to present-day searches for unobstructed economic growth.

[11] To a certain extent, it has several common elements with collective violence which is triggered by a specific motivation directed towards certain economic, social or political goals of a specific group, collective or community (Ignjatović, Simeunović Patić, 2023: 65).

This thesis can easily be illustrated. For example, Sudbury (2005) points out that in the past thirty years there has been a significant increase in the prison populations in European, North American and Canadian prisons. There is also a rather unexpected trend – an increasing number of female prisoners at the global level.[12] Searching for the reasons of mass imprisonment, this author brings our attention to three facts relevant for our topic. The first is the emergence and development of the prison industrial complex as a phenomenon whose promotion involves the participation of penal institutions, politicians and prison companies, while profit is actually the primary goal of such cooperation of the above-listed actors and promoters of the neoliberal discourse of securitization (Ignjatović, 2019). The second fact refers to the increasing stringency of penal policies, while the third fact is a logical consequence of new surveillance and control mechanisms (through penal populism and mass imprisonment) and older systems of patriarchal and racial exploitation. According to Sudbury (2005), that is the key reason why the majority of female convicts are black or coloured and/or of indigenous origin. That minority groups are disproportionately more deprived of freedom is confirmed by the empirical data in New South Wales: in the five-year period, the number of women Aboriginal origin who were deprived of freedom increased by 70%. In the USA, Afro-Americans of poor origin naturally account for 60% of prison population, while in England and Wales about 12% female convicts comes from the Caribbean and West Africa (Sudbury, 2005).

Moreover, Roberts (2011) asserts that based on the analysis of prison and foster care statistics, black mothers happen to be multiply punished. He notes that with the increasing mass imprisonment of women in the USA, there is a parallel increase in the number of children in the foster care system. Due to objective obstacles (deprivation of freedom) which prevent female prisoners from contacting their sons and daughters, children protection agencies interpret it as mothers' failure. In other words, such "abandonment of children" becomes the grounds for depriving mothers of their parental right. In addition, Roberts (2011) claims that coloured women in American prisons are subject to other organized and legally-based inhumane practices. To name but a few, in Californian penal institutions, according to the report of the organization *Justice Now*, there is a common practice of sterilizing female convicts. There is also a degrading procedure conducted during a female convict's labour. In many US federal states, a woman is routinely tied/bound to the hospital bed, while her newborn is immediately placed in foster care families, and mother is quite often deprived of her parental right by children protection laws/acts.

One of the forms of structural violence permitted by law throughout the civilized world, including 13 EU member states, is the forced sterilization of girls and women with psycho-social and/or intellectual disabilities (Nikolić, 2022). Although human rights are gravely violated without women's voluntary agreement to this type of contraception, it is justified by preventing those less valuable members of society from reproduction.

[12] Spencer Beall (Beall, 2018) claims that since the 1970s an abrupt increase in the number of imprisoned women has been recorded in the USA – the imprisonment rate among women increased twice as rapidly than among men. On the other hand, Aisha Khan (Khan, 2022) also calls America a prison state because every 31st American is imprisoned in 6,700 prison institutions. In 2019, the number of imprisoned women in the USA was 231,000. The increasing percentage of imprisoned women was also recorded in England in the second half of the 20th century: Pat Carlen (Carlen, 1990: 10) writes that in 1976 women accounted for 3% of the prison population, while in 1989 the percentage increased by more than 2.6 times and reached 8%.

Taking this into account, we must wonder whether this is a double punishment of the most marginalized women (in American as well as in other societies) and systemic injustice. How is it possible that one group of people suffers disproportionately more than others (Ho, 2007)? It seems that Richie (2012) is right in saying that violence made possible by conservative legal, social, political and economic policies and conducted against poor women, members of racial and ethnic minorities, has never been more serious.[13]

Furthermore, we must agree with McDermott and Vossoughi (2020) who say that poverty is terrible in a two-fold way. The poor have no access to resources, nor can they realize their human potentials,[14] but it is even worse to be treated as poor people. The poor are underestimated by the more powerful ones, they are not trusted, and that is why they are subject to constant examinations by official structures because they supposedly try to cheat the system (social assistance or some other benefits). That ultimately results in their criminalization as well.

This process, which most generally includes imputing otherness in the needy ones who become different from other (*decent*) citizens, their delegitimization, surveillance and, finally, criminalization, is described by Gustafson (2008) in her analysis of the treatment of poor American black women in the social protection system. This author says that the 1960s mark the beginning of a process of introducing control over poor black mothers' behaviour through social transfers.[15] Namely, the fact that Afro-Americans and their children were present above average among the poor could no longer be ignored. However, giving official alms was no longer accompanied by the same rhetoric applied to poor white people, which underlined that the latter were a diligent and moral working class. Instead of it, a new discourse was introduced which began from the assumption about the dubious morality of black mothers, their promiscuity and, finally, responsibility for all social problems: poverty, unemployment and criminality (Gustafson, 2008: 650). Black women were labelled as "social queens" who lived at the expense of taxpayers. That is why a new rule known as "*man-in-the-house*" was introduced, thus strict control of their private lives. Namely, unmarried mothers who lived with their male partners were not entitled to social aid, but their partners had the duty of supporting them. However, women usually did not report such arrangements. That is why a practice was introduced of social workers paying unannounced visits to those women and, in case they found a man in the house, the household of that mother was suspended further social aid because that mother was labelled as morally ineligible.[16]

In the following decades, the system continued *defending itself* from the needy ones (primarily members of minorities, once again predominantly black mothers) through increased

[13] Willingham (2011) concludes that through the analysis of black female prisoners' narrative, a unique insight is obtained into the patterns of social oppression which contributed to their loss of freedom. Furthermore, Willingham also asserts that discrimination based on racial, gender and sexual identity continues through a formal (prison) system.

[14] Disqualifying poverty – characterizing modern societies – implies the culmination of handicap and probably has a decisive effect on the individual's identity (Filipović, 2018). Namely, if the poor cannot buy goods and services with which to build an image of themselves in contemporary consumerist society, they are not deprived of this artificially created need either (Lipovetsky, 2008).

[15] Gustafson (2008) reminds that until the mid-20th century social aid programs were intended solely for the poor white race, while members of other racial minorities were excluded from such allotment.

[16] The division into eligible and ineligible receivers of charity or alms dates back to distant past. Widows, persons with physical disabilities, decent people who did not deserve such poor fate, but became poor because of not having a job, were categorized among the eligible ones, while others were vagabonds – able to work, but lazy, and therefore considered ineligible. They were subject to punishment due to their immorality – laziness (Geremek, 2015).

bureaucracy – complex procedures and non-transparency of necessary information for obtaining help, and through criminalizing users who tried to *cheat* the system. For example, the last decade of the 20th century is marked by the adoption of federal laws on social welfare which introduced aggressive examinations of abuses and criminal proceedings for the ones who got caught (Gustafson, 2008: 659). That is why Gustafson concludes that society does not have the priority of helping the poor but of controlling them.

If we look at a geographically closer social context – the EU member states, we will notice an increasing number of people who have been excluded from the labour market primarily because of the spread of precariat jobs. As a consequence, the number of those receiving different forms of social aid is constantly on the rise (Filipović, 2018). Among the most vulnerable people are women, children, young people (16-24) and the elderly, followed by the unemployed. The families particularly exposed to the risk of poverty are single-parent ones, usually with single mothers, whose risk of poverty is up to 75% higher as compared to structurally complete households (Petrović, 2010).

A similar situation has been recorded in our country. Since the 2000s, wealth redistribution has taken place in the domain of economic policy. However, this redistribution is not based on the idea of solidarity and social cohesion,[17] and, instead towards the poor, it has been directed towards the middle-class people. Social policy measures have systematically excluded the needy categories: rural population, the unemployed, some ethnic groups (for example, Roma), but also some geographical regions (for example, Southeast Serbia) (Vuković, 2010). In addition, there are analyses with great scientific importance which point out that the social services system is not adjusted to the needs of the broad class of the deprivileged ones, as well as that the existing measures and strategies remain mostly at the level of declarative statements (Vuković, 2010).

That the situation in that respect will not improve is corroborated by the fact that our political elite has chosen to follow the social policies of one of the most powerful EU member states (Germany) in order to bring us closer to the European family. It implies the introduction of severity measures, particularly in terms of social allocations for the poor (Sekulović, 2021). As women account for more than a half (53.3%) of those who use social protection services, most often because of being materially deprived, we may assume how difficult their position is. It is also shown by statistical data. The report of the Republic Institute for Social Protection (2023) says that in 2022 monetary social aid was used by 182,777 persons (unknown of which gender), while the number of users is constantly decreasing – for example, in 2021 that number was by 10.5% higher than the following year, as well as that the trend was also present in the previous five years. Sekulović (2021: 8) emphasizes that it is not a real decrease in the number of the needy, but that it refers to more complex procedures and the introduction of new rules[18] which should keep potential users away from the social protection system.

Furthermore, this author identifies yet another form of systemic violence which particularly affects women. This is a normative solution which discriminates working mothers (Law on Financial Support for Families with Children). In this way, employers have been enabled to deprive mothers of adequate income while they take care of their children (Sekulović, 2008: 8).

Misailović (2020) presents several conclusions regarding this matter. She says that pregnancy of employed women implies money allocations for employers that can be avoided by

[17] But on political needs (See: Vuković, 2010).

[18] For example, the adoption of the regulation on social inclusion, in which receiving social assistance is conditioned by asking users to be socially engaged in public works or in volunteer work.

employing men, which is often done in practice. In addition, it can be seen that protection from losing a job for women returning from their maternity leave is most often unguaranteed, particularly if they have a fixed-term employment agreement, and in practice they quite often lose their jobs.[19] Nevena Petrušić, the Commissioner for Equality Protection, has also expressed her opinion about this problem, pointing to the practices imposed on women by employers, e.g., working illegally or signing a blank resignation in the event of pregnancy.[20] We would also like to add that middle-aged women are also exposed to a high risk of losing their jobs and being unable to be active in the labour market. Namely, they are not identified as desirable employees because of their age, despite their work experience (Babović, 2011; Ljubičić, 2023).

This way of treating women indisputably contributes to their economic uncertainty and exposes both them and their children to other risks and reduces their life opportunities. It opens the space for victimization in partner relationships, reduces the feeling of wellbeing, jeopardizes mental health, affects self-perception[21] and finally deprives women of the opportunity to express their potentials in the sphere of work as well. In other words, these women are victimized by systemic violence – the culprit is not specific, but incorporated in social structures that provide opportunities for this form of violence being committed without any legal accountability on the employer's part.

All the above-mentioned takes place in modern developed societies, in which human rights are considered a firmly founded asset (Joas, 2018: 51). We believe the reader will agree with us that it is a paradox of its own – although everyone keeps speaking about the protection of our human rights, these rights are shamelessly violated. In fact, those who are on the margin are deprived of any rights and, with their number constantly on the rise, we may say that there is an increasing number of these deprived of rights in the modern world.[22]

How should this process be understood? Fusaro (2020: 126) believes that the clueless permanent present of neoliberal societies is ensured through subtle tactics of surveillance, control and violence. For example, neoliberal democracies conduct symbolic violence against individuals who are imposed conceptual categories in which they may think, while the precariat and the unemployed, who make up the majority, are forced to live in mass consensus society. In such society, any rebellion is unimaginable because the existing social order is considered to have no alternative. In these circumstances, only sterile opposites, i.e., dichotomies, are socially amplified: in the political domain, the division into the right and the left wings, migrants vs. local population or, most frequently, men vs. women. Such division is aimed at making less visible not only the exploitation of the lower classes by the higher ones19, but also an under-

[19] In a newspaper article we have come across the data (without the cited source, so we must take it with caution) that as many as 30,000 women lose their jobs on a yearly basis because of inadequate legal solutions in this area. Available at: https://www.rts.rs/lat/vesti/drustvo/1257324/.html?print=true.

[20] https://www.rts.rs/lat/vesti/drustvo/1257324/.html?print=true.

[21] Babović (2011) describes one of many cases when women lost their jobs. One of them was dismissed after working for 28 years. She could not find employment due to her age, while in the family she faced with the resentment of her nearest and dearest because of her "inability to find a job". All this affected her self-confidence and reduced her social contacts, subsequently leading to her mental wellbeing.

[22] We would like to add that it is almost certain that in the future an even larger number of people will be victimized by poverty. Until 2030, there will be 7% of the world's population living in absolute poverty (Poverty and Shared Prosperity 2020. Reversals of Fortune, 2020: 6).

[19] Leacock (1959, according to McDermott, Vossoughi, 2020) has already stated that those climbing on

standing that it is necessary to gather all the needy ones under the same flag in order to protect their interests (Fusaro, 2020: 127). The ever-present systemic violence logically remains unrecognized, while the responsibility for life outcomes of specific individuals is not ascribed to cruel exploiting structures of contemporary societies, but to the personal traits of individuals who have not been sufficiently able to use their opportunities.[20]

INSTEAD OF A CONCLUSION

In the modern world, practitioners, politicians and scientists are preoccupied with the topic of direct interpersonal violence. Moreover, they have a clear orientation of neoliberal societies to oppose such violence and to protect the victimized ones21 (Ivanović, 2017; Ignjatović, 2021). This discourse fails when it comes to systemic violence. It is not the subject of public discussions or of the academic debate.

On the other hand, according to Fleurbaey (2007), systemic violence has been continuously present and has not changed its essence from slavery to date. Although today physical violence is usually excluded,22 the actual truth is that there is no difference between the behaviour of a count or a present-day capitalist. A count used to threaten his servants by beating up if they did not fulfil his requests, while four hundred years later, a capital owner leaves two solutions to an employee: to work for a small wage or to sink into absolute. We agree with Fleurbaey (2007) that both the count and the capitalist are not only exploiters, but also oppressors, but we cannot hold them responsible because violence they commit is already integrated and justified through social structures.

On the basis of this thesis, we conclude that structural violence is the violation of human rights. Applied to the topic of our presentation, this hypothesis shows that women are victimized by poverty, that because of it they are deprived of numerous rights, that they are prevented from expressing their capacities. Patriarchate has been identified as the enemy, while Žižek (2008) thinks that the essence is blurred in that manner. It could be summarized in the following way. While there are conflicts among the subordinate, a new Master is taking everything (Fusaro, 2018: 128)! This can be seen on the concrete example of black women who have been deprived of freedom. They are actually a raw material which encourages expansion and ensures profitability of the prison industrial complex (Sudbury, 2005).

The only thing we can do is to express hope that as an academic community in the future we will deal treat the aspects of violence incorporated in social structures with more understanding and care, and discuss less the topics that deserve to be left aside because they do not contribute, either in theory or in practice, to the improvement of the position of victimized women (as well as victimized men).

---

the social ladder do it at the expense of the poor.

[20] In neoliberal societies, a specific psychological and affective life is also pursued. In other words, neoliberalism acts through the psychological spectrum and rules for emotions (Kanai, Gill, 2020).

[21] In developed democracies, punishing perpetrators of certain offences is made into a legal face under the influence of the public opinion (Ignjatović, 2021).

[22] Naturally, not in all cases. Torture is legally permitted among certain categories of people (e.g., terrorists or those suspected of being terrorists) in the name of citizens' security. We may say that the state, under the mask of securitization, conducts systemic violence against others, but also against citizens of own countries who renounce parts of freedom in order to protect themselves from potential harm (Joas, 2018).

Is it perhaps high time we changed our perspective?

REFERENCES

Babović, M. (2011). *Social Inclusion: Concepts, Conditions, Policies*. Beograd: Secons. [In Serbian]

Beall, S. (2018). "Lock her up!" How women have become the fastest-growing population in the American carceral state, *Berkeley Journal of Criminal Law*, Spring, 23(2), 1-39.

Carlen, P. (1990). *Alternatives to Women's Imprisonment,* Philadelphia. Open University Press.

Chhachhi, A., Truong, T. D. (2009). Gender, poverty and social justice. *ISS Working Paper Series/ General Series*, 482, 1-28.

Christie, D. J. (1997). Reducing direct and structural violence: The human needs theory. *Peace and Conflict*, 3(4), 315-332.

Evans, M. (2016) Structural Violence, Socioeconomic Rights, and Transformative Justice. *Journal of Human Rights*, 15:1, 1-20.

Filipović, M. (2018). *Social Seals. Sociological essays*. Beograd. Univerzitet u Beogradu – Fakultet za specijalnu edukaciju i rehabilitaciju, izdavački centar (ICF). [In Serbian]

Fleurbaey, M. (2007). Poverty as a form of oppression. *Freedom from poverty as a human right: who owes what to the very poor,* 133-155.

Fredman, S. (2016). Women and poverty – A human rights approach. *African Journal of International and Comparative Law*, 24(4), 494-517.

Fusaro, D. (2020). *Pensare altrimenti. Filosofia del dissenso*. Beograd: Clio. [In Serbian]

Geremek, B. (2015). *Poverty: A History.* Beograd: Karpos. [In Serbian]

Gilles Lipovetsky, G. (2008). *Le bonheur paradoxal. Essai sur la société d'hyperconsommation.* Zagreb: Antibarbarus. [In Croatian]

Gustafson, K. (2008). The criminalization of Poverty. *J. Crim. L. & Criminology*, 99, 643-715.

Harrell, E., Langton, L., Berzofsky, M., Couzens, L., & Smiley-McDonald, H. (2014). *Household poverty and nonfatal violent victimization, 2008-2012* (p. 18). Washington, DC: US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

Ho, K. (2007). *Structural violence as a human rights violation* (p. 3). Essex: University of Essex.

Ignjatović, Đ. (2019). Supermax facilities and cell isolation: History, conceptual definition and reasons for the spread of application. *CRIMEN*-časopis *za krivične nauke*, (3), 239-256. [In Serbian]

Ignjatović, Đ. (2021). Victimization in the 21st century. *Studia Iuridica Montenegrina*, 3(2), 49-82. [In Serbian]

Ignjatović, Đ., Simeunović Patić, B. (2023). *Victimology – General part*, Beograd: Pravni Fakultet UB. [In Serbian]

Ivanović, M. (2017). Society under surveillance cameras. ČEMU: časopis *studenata filozofije*, 14(25), 69-79. [In Serbian]

Joas, H. (2018). *Sind die Menschenrechte westlich?*. Beograd: Karapatos. [In Serbian]

Kanai, A. Gill, R. (2020). Woke? Affect, neoliberalism, marginalised identities and consumer culture. *New Formations: a journal of culture/theory/politics*, 102, pp. 10-27.

Khan A. (2022). Carceral state – an American story. *Annual Review of Anthropology*, 51, 49-66.

Ljubičić, M. (2023). Ageing From the Perspective of the Extremely Poor Elderly: A Case Study. In: Z. Pavlović (ed.). *Elderly People and Discrimination: Prevention and Reaction*. Institute of Criminological and Sociological Research Vojvodina Bar Association, 267-281.

Malgesini, G., Cesarini Sforza, L., Babovic, M. (2019). *Gender-based Violence and Poverty in Europe.* Available at: https://www.eapn.eu/wp-content/uploads/2019/07/EAPN-Gender-violence-and-poverty-Final-web-3696.pdf (Accessed on 29 March 2024)

McDermott, R., Vossoughi, S. (2020). The culture of poverty, again. *Diaspora, Indigenous, and Minority Education,* 14(2), 60-69.

Misailović, J. (2020). Special Labour Law Maternity Protection. *Zbornik radova Pravnog fakulteta u Nišu*, (86), 237-252. [In Serbian]

Nikolić Ristanović, V. (2008). *Surviving Transition. Everyday Life and Violence in Post-Communist and Post-War Society.* Beograd: Službeni glasnik. [In Serbian]

Nikolić, I. (2022). International legal framework for the prohibition of forced sterilisation of women and girls with disabilities. In: Lj. Kovačević, D. Vujadinović, M. Evola (eds): *Intersectional discrimination of women and girls with disabilities and means of their empowerment.* Beograd: Univerzitet u Beogradu – Pravni fakultet Centar za izdavaštvo, 137-169.

Nilsson, A., Estrada, F. (2005). The inequality of victimisation. Exposure to crime among rich and poor 1984-2001. Occasional Paper, Krakow. Available at: https://www.omct.org/files/interdisciplinary-study/ii_c_1_nilsson_estrada_the_inequality_of_vctimisation.pdf. (Accessed on 14 April 2024)

Nurius, P., LaValley, K., Kim, M. H. (2020). Victimization, poverty, and resilience resources: Stress process considerations for adolescent mental health. *School mental health,* 12(1), 124-135.

Petrović, M. (2010). Conditions regarding poverty and social exclusion in the EU. In: M. Babović (ed.). *Challenges of the New Social Policy*. Beograd: SeConS – Grupa za razvojnu inicijativu, 91-135. [In Serbian]

Poverty and Shared Prosperity 2020. Reversals of Fortune, 2020. Available at: https://openknowledge.worldbank.org/server/api/core/bitstreams/611fc6f2-140b-551e-9371-468eec64c552/content. (Accessed on 11 April 2024)

Republic Institute for Social Protection (2023). Adult Persons in the Social Protection System. Available at: http://www.zavodsz.gov.rs/media/2585/%D0%BF%2022.pdf- (Accessed on 10 April 2024) [In Serbian]

Richie, B. E. (2012). *Arrested justice: Black women, violence, and America's prison nation. In Arrested Justice.* New York University Press.

Roberts, D. E. (2011). Prison, foster care, and the systemic punishment of black mothers. *Ucla L. Rev*., 59, 1474.

Russell, A. M. (2014). "Victims of trafficking": the feminisation of poverty and migration in the gendered narratives of human trafficking. *Societies*, 4(4), 532-548.

Rylko-Bauer, B., Farmer, P. (2016). Structural violence, poverty, and social suffering. *The Oxford Handbook of the Social Science of Poverty*, 47-74.

Sekulović, I. (2021). Eradication of Poverty as A Number One Strategic Priority for Serbia. Beograd: Fondacija Centar za demokrātiju. Available at: http://www.centaronline.org/sr/publikacija/1848/iskorenjivanje-siromastva-kao-strateski-prioritet-broj-jedan-za-srbiju. (Accessed on 6 March 2024) [In Serbian]

Sudbury, J. (2005). Celling black bodies: Black women in the global prison industrial complex. *Feminist review*, 80(1), 162-179.

Vuković, D. (2010). Challenges of Shaping the Socialist Regime in Serbia. In: M. Babović (ed.). *Challenges of the New Social Policy*. Beograd: SeConS – Grupa za razvojnu inicijativu, 193-225. [In Serbian]

Willingham, B. C. (2011). Black women's prison narratives and the intersection of race, gender, and sexuality in US Prisons. *Critical Survey*, 23(3), 55-66.
Wong, M., Forget, E. (2024). Basic Income and Violence Against Women: A Review of Cash Transfer Experiments. *Basic Income Studies*, (0).
Žižek, S. (2008). *Violence. Six Sideways Reflections*. Zagreb: Naklada Ljevak. [In Croatian]

INTERNET SOURCES

https://eca.unwomen.org/en/where-we-are/serbia/ending-violence-against-women
https://www.edf-feph.org/why-is-forced-sterilisation-still-legal-in-the-eu/
https://www.rts.rs/lat/vesti/drustvo/1257324/.html?print=true
https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures#83918
https://www.who.int/news-room/fact-sheets/detail/violence-against-women
https://www.womenngo.org.rs/konsultacije-za-zene/o-nasilju-nad-zenama/nasilje-nad-zenama/2071-rasprostranjenost-nasilja-prema-zenama-u-srbiji

Original Scientific Paper
Slađana JOVANOVIĆ*
DOI: 10.47152/Palic2024.9

STALKING AS A FORM OF GENDER-BASED VIOLENCE IN JUDICIAL PRACTICE IN SERBIA

Abstract: The author analyses conformity of the legal description of one relatively new incrimination – Stalking (Article 138a of the Criminal Code of the Republic of Serbia) with the requirements of the Council of Europe Convention on Prevention and Combating Violence against Women and Domestic Violence - ten years after the Republic of Serbia ratified it. The focus is on its implementation in judicial practice (considering the official statistical data as well as those from the case records of two basic courts in Belgrade in five-year period: 2017-2022). The goal is to map the possible deficiencies in normative as well as in practical sphere, and to make some recommendations related to their overcoming (that would be in accordance with the requirements of the Istanbul Convention) in order to provide better response to this specific form of violence against women in Serbia. Special focus is directed to some criminological aspects of the phenomenon (profile of perpetrators and victims, stalking context, and the imposed sanctions).

Keywords: stalking, criminal offence, gender-based violence, Istanbul Convention

1. INTRODUCTION

The problem of stalking (as systematic harassment of another person causing fear, discomfort and/or endangering the safety, tranquility and privacy of the victim) began to attract attention in the 1990s when it received its first formal conceptual definitions.[1] Otherwise, the term stalking is used to define the actions undertaken in hunting, so it means lurking, tracking an animal in order to create the best opportunity to attack. It is precisely the best illustration of the relationship between the stalker (as hunter) and the stalked person (as prey), who flees, tries to escape the stalker or otherwise strive to find shelter (e.g. protection from the police, the judiciary...).

Stalking is characterized by the duration of activities, their repetition and complexity, and often their hiddenness, perfidy that is manifested in forms that are not punishable or carry negative social connotation. They could be even undertaken for love, sympathy, and courtship (from the aspect of the stalker), but, in fact, more often they are undertaken with evil intent, in order to intimidate the victim or they have harassment and intimidation as their results, thus making stalking phenomenon difficult to define, especially within criminal law context which insists on clear and precise definitions (Jovanović, 2015: 207). As Spitzberg and Cupach put it - somewhere at the nebulous nexus of privacy and possessiveness, courtship and criminality, intrusion and intimacy, lies the phenomenon of stalking (Spitzberg, Cupach, 2003: 345).

The notion of stalking, or more precisely stalker, first appeared in the media, in the United States of America, in connection with cases of stalking of celebrities by unknown obsessive

* PhD, Full Professor at the Union University Law School in Belgrade, https://orcid.org/0000-0001-8300-2594. E-mail: sladjana.jovanovic@pravnifakultet.rs.

[1] The Oxford English Dictionary defined the term stalker in 1997, stating that „it is a person who follows or harasses another person (often a public figure) whom he has become obsessed with" (Nicol, 2006: 15).

fans (U.S. National Institute of Justice, 1996: 4), but it was soon extended to other forms of persistent, unwanted, disturbing, even frightening behavior (from the victim's point of view), especially in the context of partner and domestic violence.

In Europe, the process of recognizing this phenomenon, its dangerousness, and thus criminalization, has gone much slower. Many European states did not feel the need to pass specific legislation, because stalking was not considered a serious social problem and had not given rise to public debate. A second reason to abstain from adopting anti-stalking legislation was the conviction that generic criminal provisions — such as assault, threat or coercion — in combination with protection order schemes would provide adequate protection against the stalking (Van der Aa, 2018: 316). The Republic of Serbia was on the same track (Jovanović, 2015: 212-214). [1]

However, the Convention on Prevention and Combating Violence against Women and Domestic Violence[2] (hereinafter: Istanbul Convention) made an impetus in the process of criminalization of stalking in Europe, with the primary goal of improving the protection of women from gender-based violence (Ibid.).

2. STALKING − A NEW OFFENCE IN THE CRIMINAL CODE OF THE REPUBLIC OF SERBIA

The Republic of Serbia signed the Istanbul Convention on April 4, 2012,[3] ratified it on November 21, 2013,[4] while amendments to the Criminal Code[5] (hereinafter: CC), explained by the necessity of harmonization with the Convention, followed in 2016, but relevant provisions came into force on June 1, 2017.

Stalking (Article 138a of the CC) was one among other newly introduced criminal offences (alongside forced marriage, sexual harassment, female genital mutilation),[6] situated in the Chapter XIV – Criminal Offences against Freedoms and Rights of Man and Citizen. It was waited for a long time, judging by the experience of non-governmental organizations engaged in protection of women from gender-base violence, as they faced specific cases which could not have been classified as existing criminal offences or misdemeanours, because the essence of stalking is in repeating of activities which disturb and threaten other people, but do not individually (or altogether) present a criminal offence (Jovanović, 2015: 208-209). The recommendations to introduce such an offence stayed fruitless despite pointing out the problem in practice and the dangerousness of such behaviour, which often preceded the murder of a woman, and was not given attention even as an aggravating circumstance (Simeunović-Patić, Jovanović, 2013: 164). However, the ratification of the Istanbul Convention made a significant pressure and brought so long wanted changes, so the Government of the Republic of Serbia (in its explanation of the proposed amendments) also pointed out the existence of serious criminal-political arguments which justify introducing of new incrimination (Government of the Republic of Serbia, 2016: 25).

---

[2] CETS No. 210, Full list - Treaty Office (coe.int).

[3] Chart of signatures and ratifications of the Treaty 210, Full list - Treaty Office (coe.int) (accessed on April 25, 2024).

[4] Official Gazette of the RS - International Treaties, No. 12/2013.

[5] Official Gazette of the RS, Nos. 85/2005, 88/2005 - correction, 107/2005 - correction, 72/2009, 111/2009, 121/2012, 104/ 2013, 108/2014, 94/2016, 35/2019.

[6] More about new incriminations in: Jovanović, Vujičić, 2022: 213-238.

The Istanbul Convention defines stalking as: *the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety* (Article 34). The Explanatory Report to the Convention explains that stalking comprises any repeated behaviour of a threatening nature against an identified person which has the consequence of instilling in this person a sense of fear. The threatening behaviour may consist of repeatedly following another person, engaging in unwanted communication with another person or letting another person know that he or she is being observed. This includes physically going after the victim, appearing at her or his place of work, sports or education facilities, as well as following the victim in the virtual world (chat rooms, social networking sites, etc.). Engaging in unwanted communication entails the pursuit of any active contact with the victim through any available means of communication, including modern communication tools and ICTs. Furthermore, threatening behaviour may include behaviour as diverse as vandalising the property of another person, leaving subtle traces of contact with a person's personal items, targeting a person's pet, or setting up false identities or spreading untruthful information online.7

Serbian incrimination of stalking is based on a non-exhaustive list of stalking tactics, thus leaving room for some imaginative stalkers and their actions („similar actions in the manner that may perceptibly jeopardise personal life of the person vis-à-vis whom such activities are undertaken").

The basic form of the offence is as follows: *Whoever over a certain period of time persistently: 1) follows another person without permission, or undertakes other activities with the aim of getting physically closer to such a person contrary to his/her will; 2) contrary to the will of another person attempts to establish contact with him/her directly, through a third person, or through means of communication; 3) abuses personal data of another person, or of a person close to him/her for goods or service in purpose of ordering; 4) threatens to assault life, body, or freedom of another person, or a person close to him/her; 5) undertakes other similar actions in the manner that may perceptibly jeopardise personal life of the person vis-à-vis whom such activities are undertaken, shall be punished with a fine or imprisonment of up to three years.*

Description of the offence contains some vague constituent elements, which could lead to unequal implementation of the incrimination in practice and thus legal insecurity (Jovanović, Vujičić, 2022: 217-218), but it is due to elusive nature of the stalking as phenomenon. In fact, „a certain period of time" is not thoroughly precise constituent element, concerning duration of the activity, i.e. repetitiveness of the activity or activities in time (but what period of time is the question for which practice must provide the answer). „Other actions with the aim of getting physically closer to such a person contrary to his/her will" could also be disputable (as it appears as one new non-exhaustive list within a main, broader list of stalking tactics). The noted problems at the very beginning of the implementation of the incrimination, led to amendments in 2019[8] introducing the element „persistently", in order to emphasize the subjective dimension existing on the side of the perpetrator which makes him/her dangerous. Additionally, it confirms the necessity for duration and repetitiveness of the actions. That same year, definition from paragraph 1, item 3 was altered: instead of the term „offering", now there is „ordering", because it is an open issue whether it implies delivering of advertisements

[7] Explanatory Report to the Istanbul Convention, p. 32, CETS 210 - Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence (istat.it), accessed on April 1, 2024.

[8] Official Gazette of the RS, No. 35/2019.

to someone's postal or e-mail address (which are relatively easy to obtain today) and generally obtrusive and persistent advertising of goods and services which could disturb some people. This activity, although not acceptable from the aspect of correct business dealings, is not rare in practice, but does not deserve to be a criminal offence (Stojanović, 2017: 2).

It is disputable also if the consequence of new offence is a „perceptible jeopardising of the personal life of the person vis-à-vis whom such actions are taken", more precisely, if all listed stalking tactics and other similar ones must be done „in the manner that may perceptibly jeopardise the personal life of the person vis-à-vis whom such actions are taken" or this consequence is required only for „other similar activities" (from paragraph 5) (Stojanović, 2017: 5-6). However, if we take into consideration Article 34 of the Istanbul Convention, we'll conclude that stalking activities must affect other people so that they fear for their safety.[9] It would be most appropriate to consider the whole context, not only individual activities, separately from each other/s, but also in total, and their result from the aspect of the victim (but not relying solely on the subjective feeling in particular case). As the consequence of stalking in the CC is the possibility of jeopardising victim's personal life (which corresponds to the abstract dangerousness, and not immediate one as in the case of the most similar offence, Endangerment of Safety referred to in the Article 138 of the CC) it would be enough to assess comprehensively the stalking actions in the given context (i.e. stalking actions taken by the perpetrator are dangerous in themselves, and as a whole, for the victim in given case/context). Most often, they would cause fear in victims, but it is not necessary for the existence of the stalking as criminal offence in Serbian legislation.

As the Istanbul Convention itself requires certain consequences in the form of endangerment/fear for victim's safety, it could be concluded that the Serbian legislator went a step further by envisaging a consequence that is not of such quality (i.e. more serious one). However, within the acts of stalking, there is an action that could be recognized in the description of the most similar criminal offence – Endangerment of Safety (Article 138 of the CC) which corresponds to the concept of consequence envisaged by the Istanbul Convention. In this regard, the relationship between these two offences could also be disputable (i.e. the joinder of the offences). It seems that it is better to apply the incrimination referred to in Article 138a of the CC, because it is a more serious offence for which a more severe prison punishment is prescribed (imprisonment of up to three years) than for the basic form of the offence referred to in the Article 138 of the CC (fine or imprisonment of up to one year), and that it is not necessary to apply the institute of joinder of the offences (in case of one victim as the stalker's target), unless the elements of the more serious form of the offence referred to in Article 138, paragraph 2 of the CC[10] exist in given case.

Compared to other European anti-stalking laws, it could be concluded that Serbia is among those that pay more attention to the victim, without insisting on the more serious consequences foreseen by the Istanbul Convention itself. Also, the CC provisions could be assessed as better from the victim's point of view, because they don't close the list of possible stalking actions, thus leaving the room for sensitive assessment of the stalking context by state agencies, in order to protect victim of this form of gender-based violence. The offence is

[9] Parties shall take necessary legislative or other measures to ensure that intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her/him to fear for her/his safety, is criminalized.

[10] (2) Whoever commits the offence specified in paragraph 1 of this Article against several persons or if the offence causes anxiety of citizens or other serious consequences, shall be punished with imprisonment of three months to three years.

prosecuted *ex officio*, which is also much better solution from the victim's perspective. Namely, some anti-stalking laws require victim's motion to prosecute.[11]

The offence of stalking has two more (aggravated) forms[12]: the first one exists if a danger to life, health or body of the person vis-à-vis whom the act was committed or a person close to him/her has been caused by an act specified in paragraph 1 of this Article (it is the same consequence as stipulated in the Istanbul Convention). The other form exists if a death of victim or of a person close to him/her occurred (due to an act specified in paragraph 1). The closeness in the relation of the stalker and a victim is not an element of aggravated forms of the offence, which has to be considered in the process of determination of sentence (in order to comply with the requirements of the Istanbul Convention).

In spite of ambiguities and criticism of legal description of the stalking, its introduction is undoubtedly a step forward, bearing in mind the already mentioned needs of the practice, especially in relation to better protection of victims from gender-based violence. Difficulties concerning precise and comprehensive description of this offence exist also in the comparative law. Namely, the elusive nature of stalking appears in the fact that there are large differences in the manner in which different states have interpreted the crime,[13] but nevertheless this incrimination should be welcomed as a better response to one specific form of gender-based violence than is the case of implementation of other, generic incriminations.

Results of the research on femicide in our judicial practice indicate that stalking was not assessed as an aggravating circumstance when deciding a punishment, which indicates insufficient recognition of such behavior, i.e., its dangerousness (Simeunović-Patić, Jovanović, 2013: 164), so the new incrimination is surely welcome in this sense as well.

3. OFFICIAL STATISTICS ON STALKING IN JUDICIAL PRACTICE IN THE REPUBLIC OF SERBIA

According to the data of the Statistical Office of the Republic of Serbia (hereinafter: SORS) (for the period 2017-2022), there is a noticeable increase in the number of criminal complaints for stalking, with relative uniformity in 2019 – 2021 (380 approximately). In 2022 there were 422 reports. However, it should be borne in mind that each year, on average 55% of criminal complaints was dismissed (in 2018, as many as 64%, and the least in 2022 – 53.6 %). In the first place, when it comes to the reasons for dismissal of criminal complaints, there are no grounds of suspicion or it is due to inexpediency of criminal prosecution. From the total number of dismissed criminal complaints, approximately 1/4 is due to the deferring criminal prosecution (Article 283 of the Criminal Procedure Code[14] (hereinafter: CPC)) as well as assessment that the given action

[11] In Belgium, Spain and Italy, where stalking is usually only prosecuted upon the complaint of the victim (motion to prosecute), some vulnerable victims are exempted from this requirement. In their case, criminal prosecution can be initiated by the public prosecution service *ex officio* (Van der Aa, 2018: 323).

[12] (2) If a danger to life, health or body of the person vis-à-vis whom the act was committed, or a person close to him/her has been caused by an act specified in paragraph 1 of this Article, the perpetrator shall be punished with imprisonment of three months to five years. (3) If, due to an act specified in paragraph 1 of this Article, death of another person, or of a person close to him/her occurred, the perpetrator shall be punished with imprisonment of one to ten years.

[13] More about different concepts in the EU states: Van der Aa, 2018.

[14] Official Gazette of the RS, Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – Decision of the Constitutional Court and 62/2021 – Decision of the Constitutional Court.

is not a criminal offence that's being prosecuted *ex officio*. Women as (reported) perpetrators are present in about 16% of cases in average (maximum was achieved in 2022: 20.7%), but they are the most common victims (between 85% and 89%). The most common victims are adults, while minor victims are rare (those over 14 - 3.6% in 2022 as the highest percentage in the observed period, and just one child (under the age of 14)). In other years, the number of minor victims was between two and four. The most common perpetrators are men, which is not unexpected and is confirmed by other recently conducted surveys (Acquadro Maran et. al., 2022; SORS, 2022: 54).

When it comes to the imposed criminal sanctions, the suspended sentence is the most often one (above 50% in average) with a noticeable decline from 2020 (77.3%) onwards: 2021: 56%, 2022: 52%. That should be related to the tightening of the legislative penal policy (which al tackled the provisions on suspended sentence in 2019). Imprisonment, as the most severe criminal sanction, was imposed in the range from 8.2% in 2018 to 22.8% in 2022, and the number of longer-term prison sentences is also increasing (there are more sentences lasting from 6 to 12 months, while in 2022 one third of prison sentences was in duration from one to two years of imprisonment). The percentage of the fine was increasing in the last three years: 2020: 15.5%, 2021: 18.8%, and 2022: 19.5% (most often in the amount of over 10,000 to 100,000 dinars).

The percentage of the security measures imposed on mentally incompetent perpetrators is between 9% and 13%) in total of imposed sanctions (in 2018 – 9%, 2019: 13%, 2020: 13%, 2021: 12% and 2022: 9%). The so-called „home incarceration" was rarely pronounced - in 2018 and 2019 (5%), but the number was increasing: in 2020: 8%, 2021: 10%, while in 2022 it fell to 5%. The community service was pronounced just in two cases (in 2019).

It could be concluded that the judicial criminal policy has been tightening (which is linked to the general tightening of the legislative penal policy), as well as that incrimination has proven itself quite well in practice. The cases of so-called „conditional opportunity" of the public prosecutor office could be interesting for future research, since they are quite present in spite that offence of stalking contains elements of (gender-based) violence, for which the application of opportunity is not recommended, as well as cases of dismissed criminal complaints with the explanation that there are no grounds for suspicion or due to prosecution inexpediency, which indicates the possible application of „unconditional opportunity" referred to in Article 284, paragraph 3 (as from the available statistics it is not possible to conclude what exactly is the most prevalent reason for dismissing of the criminal complaints).

4. STALKING IN THE PRACTICE OF BASIC COURTS IN BELGRADE

In two Belgrade basic courts (the First Basic Court and the Second Basic Court) an insight into the court records (final judgements) for a five-year period (from the beginning of the application of incrimination until June 2022) was obtained. A total of 81 cases were reviewed (44 from the jurisdiction of the First Basic Court and 37 from the jurisdiction of the Second Basic Court in Belgrade). The aim of the research is to determine how the judiciary reacts to this new form of gender-based violence, i.e. how incrimination is applied in practice, bearing in mind the findings of the GREVIO (that this offence is underestimated and trivialized in media and that there is no adequate understanding of its dangerousness even when it comes to professionals). The GREVIO was made aware of a number of high-profile cases of stalking involving members of local municipalities which have not been dealt with according to the law, and that there is a problem in relation to the delimitation of the new incrimination with an less serious, similar offence, such as Endangerment of Safety (Article 138, paragraph 1 of the CC) (GREVIO, 2020: 44).

It was also important to determine the characteristics of the perpetrators and victims (bearing in mind the official statistics contain scarce data on that issue, and only those related to the sex and age of the perpetrators and victims are available (uncompleted also), although the Istanbul Convention insists on conducting research and systematic and detailed data collection, including data on the relationship between the victim and the perpetrator (in this regard, the GREVIO also made some remarks to Serbia) (GREVIO, 2020: 66).

4.1. Results

4.1.1. *Profile of the perpetrator and victim: the context in which the stalking occurred*

When it comes to typology of the stalkers with respect to the relationship between a perpetrator and a victim, one of the simpler typologies is that given by Mohandie et al., (Mohandie et al., 2006: 147-155): stalkers known to the victims (in the first place, current or former spouse/partner, followed by friends, relatives, acquaintances, and strangers. The most common stalkers are persons very close to the victim (the most often male intimate (former) partner), which is in accordance with the research done on large samples (FRA, 2014: 85). Belgrade survey shows the same results: complete strangers were noticed just in two cases (while in the official statistics there is category „known perpetrators", so the number of unknown ones could be easily calculated). For example, in 2022 there were 64 (15%) unknown (reported) perpetrators of stalking (SORS, 2023: 14).

However, somewhat more complex typology of the stalkers is more interesting, as it refers to the characteristics of the stalkers and their motivation, and to the context in which the stalking occurred, thus providing more data necessary for professionals dealing with this issue (in terms of better understanding of the behaviour for the purpose of treatment, but also sanctioning, as well as for assessing the risks to the safety of the victim). Mullen and associates describe five types of stalkers: rejected stalker, resentful stalker, intimacy seeking stalker, incompetent suitor, and predatory stalker (Mullen, Pathé, Purcell, 2009: 17-21). In this regard, the categorization of the perpetrators from the Belgrade sample was carried out.

The most often type is stalking of the former intimate/romantic partner (65%). Victims are predominantly women who have ended the relationship, often already burdened with violence, which generally proves to be a serious risk for victimization by more serious crime, such as murder/femicide (Simeunović-Patić, Jovanović, 2017: 39). The „rejected stalkers" are the most common and dangerous species, often characterized by some personality disorder.15 It is believed that it is not possible to effectively deter them by punishment or threat of punishment. The supervision by a professional person is important for „abstinence", i.e. supportive and directing therapy (by a psychologist, psychiatrist). It is almost impossible to dissuade those involved in a child custody dispute or are pathologically jealous (Mullen et. al., 1999: 1248).

Most often, male partners were rejected, and only in two cases women were stalkers (in one case the woman was a stalker, and together with her husband she stalked the former lover (which is the only case of stalking in co-perpetration)[16]), while in the other case the (married) woman was also convicted of stalking her ex-lover.[17] Rejected male partners are far more aggressive and dangerous when it comes to performing acts of stalking, and they often send

[15] About „rejected obsessive lovers" as perpetrators of murder (after stalking activities): Simeunović-Patić, Jovanović, 2013: 30-31 and 53-63.

[16] K 449/18, II Basic Court in Belgrade.

[17] K 394/19, II Basic Court in Belgrade.

sms or other (written or verbal) messages based on famous phrase: „you will be mine or God's (or no one's)". In addition to declarations of love and threats in the above mentioned sense, the stalking repertoire includes regular and misogynistic insults (whore, slut, scumbag...) and jealous outbursts. Surveys comparing male and female stalkers have the same results. Meloy and Boyd (2003) argue that women stalkers were predominantly single, heterosexual, educated individuals, in their mid 30s, often with borderline personality disorder. Female stalker tactics rarely culminate in violence, but the percentage of violence increases by up to 50% in cases of a previous intimate partner relation with the victim (the use of weapons, and injuries are rare). Unlike male stalkers who often pursue their victims to restore intimacy, female stalkers often pursued their victims to establish intimacy. There are differences also related to duration of the period prior to reporting incidents to police (men wait for longer time to report as they are less inclined to see themselves as victims or for fear (or shame) they are not being believe or taken seriously) (Acquadro Maran et al., 2020).

Minors were less often targeted by the rejected stalkers (in two cases), but persons, usually close to the victims (children, parents, colleagues, friends and especially current partners (real or fictional) were also part of the stalking scenery. The case of a minor girl (whom the perpetrator met through Facebook) is a good illustration for the type of stalker we discuss about: after the breakup she initiated, the stalking intensified (because, according to victim, he was jealous and stalked her during the relationship that lasted 2,5 months; he even put a bug in her phone to control her, waited for her outside the school due to suspicion she has cheated on him, did not allow her to see her friends…so, she broke up with him). He continues to follow her, threatening to make hell for her and her parents if she doesn't come back to him. He began to write messages to her mother (what a scumbag and whore her daughter is), and then start to send photos of victim to her mother and even to her teachers and friends (some of which he took without her knowledge) with insulting text about her: whore, scumbag, etc.[18]

It is noticeable that stalkers from this category more often come from (rural) areas where patriarchal patterns are more intense. One rejected stalker, a Turkish citizen, came after his victim all the way from Türkiye (where they met and had a „summer romance") and was publishing her photos in tabloids. He invested a lot of money in stalking activities, as he used to pay other people to follow her and take pictures, and he also paid for his stay of several months in an expensive Belgrade hotel. He threatened the manager of the store where she worked (and with whom, according to her and his statement, she had nothing), and offered 100 Euros on social media for information about her and him.[19]

Very often, rejected stalkers are subjected to some of the measures that imply a ban on contact with the victim (urgent measures from the Law on Prevention of Domestic Violence[20] prevail, even extended ones) or similar measures from the Criminal Procedure Code (even detention or/and keeping in custody by the police), but as a rule, lighter measures (when the suspect remains at large) do not prove effective in terms of deterrence. Either they don't stop them at all, or stalkers wait for the measure to end, so they go on with stalking as usual.

The following category includes stalking based on efforts to establish a connection, a closeness to the victim (which was not existed previously), and which the stalker wants or believes that it already exists (but it is a delusion). In this type of stalking, various forms of expression

[18] K 606/20, I Basic Court in Belgrade.

[19] Plea Agreement, 824/17, I Basic Court in Belgrade.

[20] Official Gazette of the RS, No. 94/2016, 10/2023.

of admiration and intrusive search for love and establishing a connection with celebrities are recognized, but the same type of stalking exists in any other case of obsessive striving for love/attention from person who does not want the relationship and who does not even know the stalker (or does not know him/her well), and there has never been a connection between them that the stalker insists on. These stalkers are more likely to experience mental disorders, the most dangerous of which is erotomania, because persons with this disorder deeply believe that their love is requited, that they are in a close, loving relationship with the victim and it is difficult to break their delusions. Such stalking is long and painful, and therapies do not have much success (Nicol, 2006: 27). Stalkers in this category are „seekers of love" or „intimacy seeking stalkers" (who need psychiatric treatment, while they view punishment as the price of true love) and „incompetent suitors" (intellectually limited, with rudimentary courtship abilities that need to improve interpersonal sensitivity and communication skills, which proves to be a difficult task, because after being sanctioned and distracted from one victim, they find another) (Mullen et al., 1999: 1248). They do not represent, in general, a great danger, except those with erotomania and pathological infatuation with the victim, who are capable of extreme forms of violence.

There is 23% (therefore, almost a quarter) of the perpetrators of this category in the sample. Just in one case, it was a woman who, through Facebook, harassed the son of the owner of a famous Belgrade restaurant (where she often waited for him, trying to get in closer contact). She was sanctioned by a security measure that includes psychiatric treatment at liberty.[21] Surveys show that women who engage in stalking as intimacy seekers are most often socially isolated with high levels of mental illness and personality disorders (Mullen, Pathé, Purcell, 2009: 140).

In two cases, the famous person was targeted by intimacy seekers (fans) – one radio host and one TV host (in the latter case, the perpetrator took taxi several times to come from another city to the studio where she worked, bringing her gifts, waiting, trying to enter the studio, sending her love messages).[22] In both cases, paranoid psychosis of the erotomanic type was noted, and the sanction was a security measure that involves psychiatric treatment in a medical institution. Just in one case, the victim was a minor, and there was the joinder of offences (Stalking and Sexual Harassment), and one of the most severe punishments – six months of imprisonment and security measure - prohibiting convergence and communication with victim were pronounced,[23] while in just one case the victim was male (stalker met him on Facebook).

In this category of stalkers, those with high(er) education (and mental disorders) are common. When it comes to other relations, the perpetrator meets the victim (but very superficially) in a shop, restaurant, hospital, on the promenade or it is about acquaintances in the sense that the perpetrator performed some work in the victim's house or it was a superficial neighbourly relationship or relations at the level of somewhat better acquaintances. In one case, it all started with the publication of an advertisement for renting a garage,[24] and in one case with the chit-chat in the theatres during the break (both of them were highly educated, theatre-lovers, and the stalker especially skilfully used cyberspace and his IT skills to stalk and harass the victim who did not want a relationship with him).[25] These stalkers often send love messages, gifts, write poems and shower their victims with unwanted attention and courtship. A very common diagnosis among them is unspecified non-organic psychosis.

[21] K 529/21, I Basic Court in Belgrade.

[22] K 1607/17, II Basic Court in Belgrade.

[23] Plea Agreement, 882/17, I Basic Court in Belgrade.

[24] Plea Agreement, 2/20, I Basic Court in Belgrade.

[25] K 2030/19, I Basic Court in Belgrade.

The next category is „resentful stalker", eager to punish the victim for (real or fictional) harm/evil. The stalker seeks vengeance and satisfaction for the injustice done (Ibid: 1249). This type of stalker more often threatens the victim with violence or hurts her/his property, and sanctioning inflames passions and establishes him in revengful intentions. Usually the stalker and the victim know each other, but this does not have to be the case.[26] There is 12% of this kind of stalkers in the sample. Interestingly, several cases are colored by the current political situation in the country. In one case, the stalker - an unknown person stalked the TV presenter because he works on the television advocating ideas of political opposition. In addition to being insulted in a public place, the victim was threatened with murder, often in front of his child, and stalker yelled: „Are you Serb? Who is paying you? Why are you working on that TV? You are a fascist/traitor/foreign mercenary...". The stalker was mentally incompetent (and highly educated).[27] In the other case, a workshop visitor in a NGO began to stalk one of the employees, insulted her, called her also names („a foreign mercenary", etc), and threatened her.[28]

In two cases, the resentful stalkers were focused on their „bad" former bosses, and in other cases they were relatives, neighbours, and the reasons for stalking were mostly money issues (or other often fictional injustice). In perpetrators from this category, there is often some form of mental disorder, and on the victim's side (when it comes to closer relations – neighbours or relatives) could be several persons. In one case, a woman was on the side of the perpetrator – the resentful former tenant who wrote insulting and threatening messages to former landlords (a married couple).[29]

There are other typologies of stalkers, such as: psychotic and nonpsychotic; those who stalk known or unknown persons; political stalkers, stalkers in the role of a professional, contract killer, cyber stalkers, etc.[30] Recognizing the form of stalking, i.e. the type of stalker, is extremely important for creating the most adequate response of society and the victim. It is particularly important for assessing the risk for victim's safety, i.e. the risk of injury and even murder, in order to ensure protection in time. The GREVIO strongly encourages the Serbian authorities to work towards a better understanding of the concept and dangers of stalking among the professionals in the criminal justice system in order to establish better practice in the implementation of Article 138a of the Criminal Code (GREVIO, 2020: 44).

4.1.2. *Sanctions imposed*

Out of the total number of cases in the sample, two ended in acquittal (in one case due to the amendment to the CC and the introduction of the new constituent element „persistently" to the description of the offence, which was judged to be more favourable to the perpetrator, and in the other case there was no evidence that former partner was the person in disguise, who banged on doors, windows, etc., while in one case the court pronounced rejecting judgement (because the public prosecutor has dropped the charges).

At the first glance, the high percentage of the plea agreements was noticed – even more than one third (37% when it comes to the First Basic Court and 32% when it comes to the

[26] In „predatory stalkers" category (sociopaths, serial rapists or murderers), stalking leads to the realization of sexual fantasies and the satisfaction of sadistic needs (Nicol, 2006: 28).

[27] K 1045/20, I Basic Court in Belgrade.

[28] K 830/20, I Basic Court in Belgrade.

[29] Plea Agreement, 136/21, I Basic Court in Belgrade.

[30] See: Nikolić-Ristanović, Kovačević-Lepojević, 2007:7-8.

Second Basic Court), which implies faster completion of the proceedings, but also the privilege for the perpetrators in terms of (milder) sanctioning. The predominant sanction is the conditional sentence (63%) which is always accompanied by a security measure – prohibiting convergence and communication with victim. In 23% of cases, there were mentally incompetent perpetrators (twice as often the sanction was a security measure of compulsory psychiatric treatment at liberty compared to the safety measures of compulsory psychiatric treatment and confinement in a medical institution). The sentence of imprisonment was imposed in three cases, and the „home incarceration" in four ones. The fine and community service were imposed in two cases each. The security measures pronounced alongside suspended sentence are the expulsion of a foreigner from the country (one case), the compulsory alcohol addiction treatment (one case) and confiscation of object (one case).

The pronunciation of a security measure - prohibiting convergence and communication with victim was very common and in stalking cases undoubtedly appropriate. The courts ordered these measures very diligently (always alongside suspended sentence), even in cases of sanctions with which this measure could not be ordered (imprisonment or a security measure of compulsory psychiatric treatment (in medical institution or at liberty) that is imposed on a mentally incompetent offender as an individual sanction)). In this regard, the legislator should be urged to correct the controversies made in regulating this security measure, bearing in mind the Article 80, paragraph 6 and the Article 89a, paragraph 2 of the CC, which are colliding. One could welcome the court's handling of security measure – prohibiting convergence and communication with victim, but this problem should be solved on the basis of the legal intervention. Undoubtedly, it would be interesting to find out what have happened after the sanctioning of the offender, i.e. whether there has been a repeat offence, bearing in mind the previously mentioned about the need for appropriate treatment and supervision of offenders from certain categories (e.g. rejected stalkers).

The suspended sentence with protective supervision was not pronounced in any case, though it seems to be much better solution. In this state of play, only security measure from the Article 89a of the CC should ensure the separation of the stalker and the victim, which is disputable, given stalkers' actions when it comes to the CPC measures and urgent measures from the Law on the Prevention of Domestic Violence that often were not effective.

When it comes to sanctioning, the reasons for decisions on sanctions were rare, and where they were present, there were: the correct conduct before the court, previous non-conviction and confession to the offence, while the aggravating circumstances were extremely rare – prior conviction, and in one case - the punishment (with longest duration of imprisonment in the sample) was determined according to the provisions on repeated offence (Article 55a of the CC). Also, since Serbian incrimination does not know the close relationship between the stalker and the victim as a constituent element of the offence, it should be considered (bearing in mind the previously mentioned about rejected partners and their dangerousness) or the judges must take this (aggravating) circumstance into account in determination of the sentence, thus making stalking against certain groups of „qualified" victims subjected to aggravated penalties (which would be in compliance with the requirements of the Istanbul Convention, Article 46).[31] The Victim Directive 2012/29/EU also stipulates that EU Member

[31] For example, this circumstance is a constituent element of the aggravated form of the offence in Croatia. See: Criminal Code of the Republic of Croatia (Aricle 140, paragraph 2), NN (Official Gazette of the Republic of Croatia), Nos. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21,114/22, 114/23, 36/24.

States have to develop extra protection measures for vulnerable victims.[32] In some countries, stalking a(n) (ex)spouse or other (former) romantic partner, family members, or persons under their care or authority leads to elevated sentences.[33]

5. CONCLUDING REMARKS

Serbia has undoubtedly invested a lot of effort in the field of protection of women from violence, which was commended by the first GREVIO`s baseline report on Serbia (GREVIO, 2020: 63), but there are lot of improvements to be made in order to avoid criticism that many provisions are more of a declarative nature, introduced under pressure of international obligations and the EU integration processes, without genuine interest in the problem, and even its comprehensive recognition.

Namely, it is not sufficient to create an image of fulfilment of requirements for joining the EU, designed without real understanding of the problem and the compliance with the existing national and international requirements (such as requirements of the Istanbul Convention). Among the reasons for persisting difficulties in practices are lack of understanding of the seriousness and dangerousness of some forms of gender-based violence, such as stalking, their trivialization in the media and in public discourse.

Stalking as a relatively new crime is regulated quite well in terms of compliance with the requirements of the Istanbul Convention, even some provisions make a step forward in relation to the requirements of the Convention, as well as in relation to the anti-stalking laws of some other European states (no serious consequences are sought in terms of endangering the safety and instilling fear in victim (for the basic form of the offence), the offence is prosecuted *ex officio*, without requesting the motion to prosecute from the victim, the list of stalking tactics is non-exhaustive, there is room left for other similar stalking actions). However, the provisions don't pay attention to the connection between the perpetrator and the victim, and the vulnerability of the victim (that some countries have entered into the description of the incrimination of stalking itself), and the Istanbul Convention requires that circumstances to be assessed as aggravated in determination of the sentence (which has not be done in cases from Belgrade sample).

The incrimination, nevertheless, functions quite well in practice, (we could say that it „works") but it should be researched what is the reason for such a high proportion of dismissed criminal complaints, whether professionals understand well dangerousness of certain forms of stalking (especially when it comes to stalking as a form of gender-based violence and the most common form of stalking by former partner that can also be a prelude to victimization by murder), because as it was previously said – the percentage of the plea agreements is quite high; the percentage of „classical" conditional sentences is high (much better choice would be a conditional sentence with protective supervision with well-chosen obligations that include supervision and some kind of treatment); the relationship between the perpetrator and the victim, i.e. vulnerability of the victim, is not sufficiently taken into account (in terms of assessing this circumstance as aggravating in determination of sentence); the existing measures of

[32] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, *Official Journal of the EU, L 315/57, 14.11.2012, p. 57–73.*

[33] More details in: Van der Aa, 2018: 322-323.

protection of the victim from secondary victimization in criminal proceedings are not applied (provisions on especially vulnerable witness were not applied in Belgrade sample cases).

Education of the police officers, public prosecutors and judges on requirements of the Istanbul Convention, focusing on better understanding of the dangerousness of gender-based violence, which is obvious in stalking, is one of the suggestions. The other is related to further and deeper research on this topic (to collect data not only on the sex and age of the victims (and they are also incomplete in official statistics), but also on the nature of the relation between the perpetrator and the victim, which is also required by the Istanbul Convention).

Finally, let us remind of the still burning problem of femicide in Serbia – there are no official statistics about it either, but it is very well known that it happens very often after victimization by domestic violence or stalking being reported to authorities, but not responded to in a timely and adequate manner.

REFERENCES

Acquadro Maran, D., Varetoo, A., Corona, I., Tirassa, M. (2020) Characteristics of the stalking campaign: Consequences and coping strategies for men and women that report their victimization to police. *PLoS One, 15*(2), https://doi.org/10.1371/journal.pone.0229830;

Criminal Code, Official Gazette of the RS, Nos. 85/2005, 88/2005 - correction, 107/2005 - correction, 72/2009, 111/2009, 121/2012, 104/ 2013, 108/2014, 94/2016, 35/2019;

Criminal Code of the Republic of Croatia, NN (Official Gazette of the Republic of Croatia), Nos. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21,114/22, 114/23, 36/24;

Criminal Procedure Code, Official Gazette of the RS, Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – Decision of the Constitutional Court and 62/2021 – Decision of the Constitutional Court;

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, *Official Journal of the EU, L 315/57, 14.11.2012;*

EU Agency for Fundamental Rights (FRA) (2015) *Violence against Women: an EU-wide Survey*. Luxembourg: Publications Office of the European Union;

Explanatory Report to the Istanbul Convention, p. 32, CETS 210 - Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence (istat.it), accessed on April 1, 2024;

GREVIO (2020) Baseline Evaluation Report on Legislative and other Measures giving Effect to the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Serbia. Final report on Serbia (coe.int), accessed on March 1, 2024.

Jovanović, S. (2015) Proganjanje u svetlu postojećih inkriminacija i međunarodnopravnih zahteva (Stalking in light of existing incriminnations and international law requirements). In: Kolarić, D. (ed.) *Suprotstavljanje savremenim oblicima kriminaliteta – analiza stanja, evropski standardi i mere za unapređenje.* Beograd: Kriminalističko-policijska akademija, Fondacija „Hans Zajdel", vol. 1, pp. 207-216;

Jovanović, S., Vujičić, N. (2022) Requirements of the Istanbul Convention in Domestic Crimnal Law and Court Practice. In: Popovic, D. V. Kunda, I., Meskic, Z., Omerovic, E., (eds.) *Balkan Yearbook of European and International Law 2021*, Springer, pp. 213-238 DOIhttps://doi.org/10.1007/978-3-030-97431-2_10;

Law on Ratification of the COE Convention on Preventing and Combating Violence against Women and Domestic Violence, Official Gazette of the RS - International Treaties, No. 12/2013;

Law on Prevention of Domestic Violence, Official Gazette of the RS, No. 94/2016, 10/2023:
Meloy, J. R., Boyd, C. (2003) Female Stalkers and Their Victims. *Journal of the American Academy of Psychiatry and the Law*, *31*(2), pp. 211-219;
Mohandie, K., Meloy, J. R., Green-McGowan, M., Williams, J. (2006) The RECON typology of stalking: reliability and validity based upon a large sample of North American stalkers. *Journal of Forensic Sciencies, 51*(1), pp. 147-155. doi: 10.1111/j.1556-4029.2005.00030.x.
Mullen, P. E., Pathé, M., Purcell, R. (2009) *Stalkers and their victims.* Cambridge and New York: Cambridge University Press;
Mullen, P. E., Pathé, M., Purcell, R., Stuart, G. W. (1999) A Study of Stalkers, *American Journal of Psychiatry, 156*(8), pp. 1244–1249
Nicol, B. (2006) *Stalking*. London: Reaktion Books;
Nikolić-Ristanović, V., Kovačević-Lepojević, M. (2007) Proganjanje: Pojam, karakteristike i društveni odgovori (Stalking: Notion, characteristics and social responses). *Temida*, *10*(4), pp. 3-12. DOI:10.2298/TEM0704003N;
Republički zavod za statistiku (2023) Punoletni učinioci krivičnih dela u Republici Srbiji, 2022. (Adult Perpetrators of Criminal Offences in the Republic of Serbia 2022). Bilten 702. Beograd;
Republički zavod za statistiku (2022) Punoletni učinioci krivičnih dela u Republici Srbiji, 2021. (Adult Perpetrators of Criminal Offences in the Republic of Serbia 2020). Bilten 689. Beograd;
Republički zavod za statistiku (2021) Punoletni učinioci krivičnih dela u Republici Srbiji, 2020. (Adult Perpetrators of Criminal Offences in the Republic of Serbia 2020). Bilten 677. Beograd;
Republički zavod za statistiku (2020) Punoletni učinioci krivičnih dela u Republici Srbiji, 2019. (Adult Perpetrators of Criminal Offences in the Republic of Serbia 2019). Bilten 665. Beograd;
Republički zavod za statistiku (2019) Punoletni učinioci krivičnih dela u Republici Srbiji., 2018. (Adult Perpetrators of Criminal Offences in the Republic of Serbia 2018) Bilten 653. Beograd;
Republički zavod za statistiku (2018) Punoletni učinioci krivičnih dela u Republici Srbiji, 2017. (Adult Perpetrators of Criminal Offences in the Republic of Serbia 2017) Bilten 643. Beograd;
Simeunović-Patić B, Jovanović S (2013) Žene žrtve ubistva u partnerskom odnosu (*Women Victims of Murder in Intimate Partner Relation*). Beograd: Institut za kriminološka i sociološka istraživanja;
Simeunović-Patić, B., Jovanović, S. (2017) Intimnopartnerski umori v Srbiji: pojavne značilnosti, dejavniki tveganja in spolne (ne)simetrije (Intimate-partner homicides in Serbia: Phenomenological characteristics, risk factors and gender (a)symmetries). *Revija za kriminalistiko in kriminologijo*, *68*(1), pp. 31–42;
Spitzberg, B.H., Cupach, W.R. (2003) What mad pursuit?: Obsessive relational intrusion and stalking related phenomena. *Agression and Violent Behavior*, *8*(4), pp. 345-375, https://doi.org/10.1016/S1359-1789(02)00068-X, accessed on March 20, 2024;
Stojanović, Z. (2017) Proganjanje – novo krivično delo u Krivičnom zakoniku Srbije (Stalking – New Criminal Offence in the Criminal Code of the Republic of Serbia). In: Ignjatović, Đ. (ed.) *Kaznena reakcija u Srbiji* (*Penal Reaction in Serbia*). Beograd: Pravni fakultet Univerziteta u Beogradu, Beograd, pp. 1-10;
U.S. Department of Justice, National Institute of Justice (1996) *Domestic Violence, Stalking, and Antistalking Legislation*. stlkbook.pdf (ojp.gov), accessed on March 28, 2024;
Van der Aa, S. 2018, New Trends in the Criminalization of Stalking in the EU Memer States. *European Journal of Criminal Policy and Research* (2018) 24:315–333
DOI 10.1007/s10610-017-9359-9.

Original Scientific Paper
Angelina STANOJOSKA*
DOI: 10.47152/Palic2024.10

GENDER-BASED VIOLENCE IN CYBERSPACE: A CONTINUUM OF VICTIMIZATION IN BETWEEN WORLDS

Abstract: Today in 2023, digital technologies are ubiquitous. They are present in our everyday lives, but also, they are mostly present in everyday crimes. The combination of smartphones with cameras, widely used social networks, and easy access to the Internet, form a triangle that makes it possible for offenders to start or continue their sexual, violent, and abusive acts online.

North Macedonia has seen several cases of gender-based violence (GBV) in the digital space in recent years, with some very well-known in public and the media, like the cases "Public Room" and "Public Room 2", but also cases where female journalists, politicians, and other public female figures have been subjected to online sexual harassment, online threats for rape, online misogyny, and cases where offenders were recording their sexual assaults and making the public online.

The paper aims to explain the present situation in North Macedonia with certain online forms of gender-based violence (GBV), the present legal framework, and victimization consequences.

The methodology includes previous desk review and content analysis (legal solutions, previous research, reports by NGOs and international organizations, academic papers, and books), as well as police reports and court decisions in the cases "Public Rooms 1 and 2".

Key words: cyberspace, gender-based violence, North Macedonia, prevention, victimization

INTRODUCTION

Modern life brings many challenges in being secure as a human being in this ever-changing world. From macro-level or global risks[1] such as terrorism and war conflicts, to micro-level acts such as individual, and criminal behavior as possible sources of insecurity and victimization, each person is endangered. So, at which moment we could say that we are secure?

Fisher & Green (2004: 21) conclude that we are secure when a *stable, relatively predictable environment* is implied*, and in which an individual or group may pursue its ends without disruption or harm and without fear of such disturbance or injury*. It is the "*alleviation of threats to cherished (core) values*" (Williams, 2012: 13).

The diverse and still no clear understanding of security (Manunta, 1999; Brooks, 2010), results in different meanings of the concept for different social actors, and that is why security can be national security, crime prevention, community police, risk management, etc. Each of those gives protection to certain values important to different segments of human life and existence.

Similar to the concept of security, when we attempt to find the one definition of cybersecurity, we have the same problem as before. Still, there is no commonly agreed definition and

* PhD, Faculty of Law, University "St. Kliment Ohridski" – Bitola, North Macedonia, https://orcid.org/0000-0002-0587-1222. E-mail: angelina.stanojoska@uklo.edu.mk.

[1] Global risk is defined as the possibility of the occurrence of an event or condition which, if it occurs, would negatively impact a significant proportion of global GDP, population, or natural resources (WEF Global Risk Report, 2023: 5) available at https://www.weforum.org/reports/global-risks-report-2023/ [08.11.2023].

how is the concept explained depends on the level of application of security in the cyber world (Slupska, 2019). Understood in this direction, cybersecurity can and is applied on a national level, but also on an individual level. It can protect (critical) infrastructure, systems, spaces, data and information, and people. Mentioning people is why cybersecurity should not be only understood as the protection of critical infrastructure and continuity of state operations, with clearly only technical understanding, excluding the societal level it certainly has.

Hofstetter & Pourmalek (2023) are talking about a human-centric approach to cybersecurity, based on human rights. Such a concept includes technological, but also social, and legal aspects of the phenomenon. It means that it only covers national security, but also the guarantee and respect of digital human rights and protects individuals from victimization and disinformation in cyberspace. It also widens up and mixes the pool of threat actors and potential victims (each being state or non-state), with shifting roles.

Talking about gender, and women's experience in cyberspace, it is the human-centric approach that actually points out the many threats directed, especially, towards women and LGBTIQ+ people, in the cyber world, better incorporating their needs and rights in the social framework and public policy. Thinking like this means that even in the digital world, there are gender differences, and depending on gender identity and other demographic characteristics, individuals experience different types of cyber victimization, threats, and harm. Actually, we have the same patriarchal, gender norms and oppression from the offline, just copied into the online world. This continuum of vulnerability and marginalization creates an even more dangerous position for certain individuals.

Experiences in cyberspace of women and other potential victims of gendered violence are different from those of other people. In most cases, violence starts in the digital world, where offenders have more freedom in acting, and continue or go hand in hand with its offline forms. This is why, when we talk about cybersecurity, we must not forget that non-traditional threats are present in cyberspace, such as gender-based violence, misogyny and hate speech, human trafficking, etc.

The paper aims to explain the present situation in North Macedonia with offline and online forms of gender-based violence (GBV), the factors that correlate with its persistence in the digital world, the legal framework, types of online GBV, and victimization consequences. The analysis of these points should help us to underline what has been and what needs to be done for GBV (in both worlds) to be tackled and suppressed, offenders sanctioned, and victims protected.

"TRADITIONAL" GENDER-BASED VIOLENCE FORMS IN THE OFFLINE WORLD (IN NORTH MACEDONIA)

Gender-based violence and violence against women and girls still remain one of the more persistent problems faced by women and girls globally (SIGI Report, 2023). Violence against women is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in or are likely to result in, physical, sexual, psychological, or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (art. 3, par. a, Istanbul Convention).

In the discussion of how to name the many harmful acts against women, Boyle (2019) acknowledges the limitation of using the term violence against women, pointing out that such a term only implies who is the victim and is in a vulnerable position, but not the offender and

the responsible side. Still, on the other hand, underlines that by using gender-neutral terms, we are "forgetting" who does it, what does it, and to whom it is done.

And because of using gender includes socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for women and men (art. 3, par. c, Istanbul Convention), gender–based violence is used as a gender-neutral term, which should overcome the heteronormative idea of identities and relationships, including LGBTIQ+ people (trans and non-binary individuals). It identifies cultural gender division as the primary factor in violent victimization (Mandolini, Sinalo, 2023).

Gender–based violence can be defined as any act of violence directed against a person because of that person's gender or violence that affects persons of a particular gender disproportionately (European Commission, 2020). Understood in this way, GBV addresses an extensive range of different types and criminal manifestations including rape and other types of sexual violence, domestic violence and intimate partner violence, femicide, sexual harassment, stalking, human trafficking, genital mutilation, and unfortunately many other acts.

North Macedonia ratified the Istanbul Convention in 2018, which is, maybe, the most far-reaching international document tackling gender-based violence. The first major step in implementing the many state obligations was the adoption of the Law on Prevention of and Protection from Violence against Women and Domestic Violence[2] and the Action Plan for the Implementation of the Istanbul Convention. Afterward, other relevant laws have been changed, and in 2023, finally, the Criminal Code has been amended[3] with important changes to the criminal incriminations covered by the Convention, such as including a definition of rape and sexual assault based on consent; including gender–based violence as a special type of homicide; criminalization of stalking, sexual harassment, and female genital mutilation (GREVIO Report, 2023).

Gender stereotypes about traditional gender roles are significantly present in North Macedonia. Women are mostly related to domestic care and obligations, and childcare, and less with professional careers. This also means less participation of women in culture, sports, leisure, voluntary, and charitable activities (Stanojoska, 2023: 110). What is even more disturbing is the fact that "*Macedonian society shows a tacit tolerance of violence towards women, considering it "normal" or "usual", as part of the traditional culture of the society*" (AIRE, 2023: 39).

Violent victimization of women is correlated with women's age, level of education, rural or urban area of habitat, unemployment, and financial dependence (BRIMA, UNDP, 2012).

Table n.1 *Domestic violence in North Macedonia in the period 2017-2022*

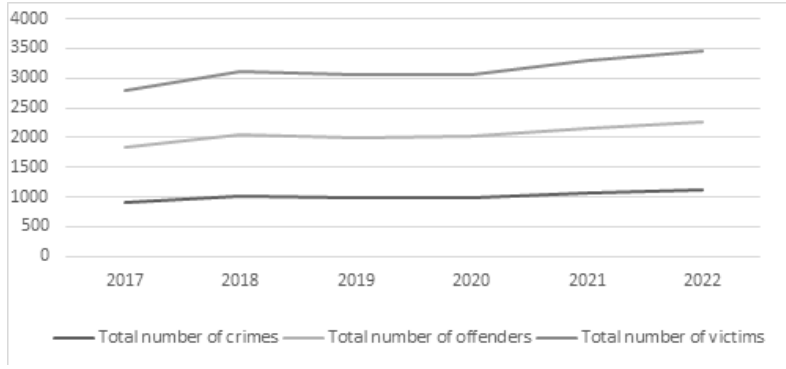
Year	Total number of crimes	Total number of offenders	Total number of victims
2017	904	925	977
2018	1006	1037	1081
2019	989	1013	1061
2020	992	1025	1051
2021	1056	1097	1155
2022	1117	1154	1191

Source: Ministry of Internal Affairs of RNM

[2] Official Gazette of RNM, 24/21.

[3] Official Gazette of RNM, 36/23.

Graph n.1 *Domestic violence in North Macedonia in the period 2017-2022*



Source: Ministry of Internal Affairs of RNM

In 2023, the period between January and March, the Ministry of Internal Affairs registered 221 crimes connected to domestic violence, with 226 registered offenders. There were 230 victims registered 181 – women, and 49 – men, within most cases the victims were the present or former intimate partners (54.7% - with 91.2% women), parents (18.7%), children (10.8%), and others (15.6%). And from the 226 offenders, 55.7% were present or former intimate partners (51.7% were men), parents (10.6%), children (19.5%), and others (14.1%) (MOI, 2023).

OSCE Survey and Report from 2019 have shown that more than 45% of women have been victims of any type of violence from an intimate partner (OSCE, 2019).

The most common crimes connected to domestic violence are "Bodily Harm" and "Endangering Security", but what is also present every year are homicides as a result of violent behavior between partners and in the family.

Table n.2 *Murder and Murder connected to domestic violence in North Macedonia in the period 2017-2022*

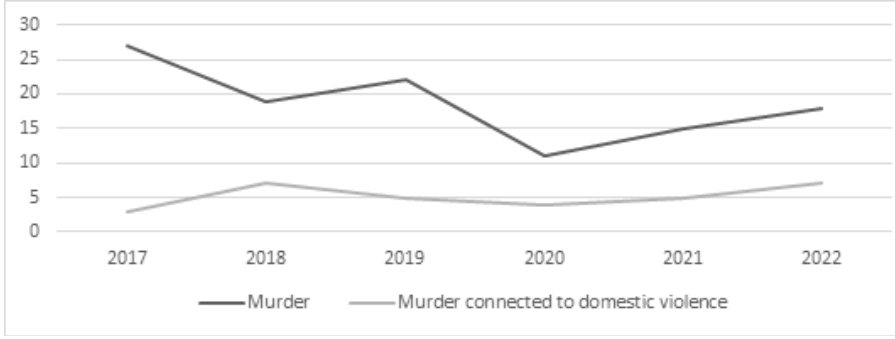
Year	Total number of Murder	Total number of Murder connected to domestic violence	Total number of offenders	Female offenders
2017	27	3	4	/
2018	19	7	8	/
2019	22	5	3	2
2020	11	4	5	1
2021	15	5	3	2
2022	18	7	6	1

Source: Ministry of Internal Affairs of RNM

In the period 2018 – 2022, 17 cases of femicide were registered in North Macedonia (AIRE, 2023). Another research from 2021 concluded that more than 60% of the offenders have been intimate partners of the victim with whom they were living together, making the home the most unsafe place (UNDP, 2021).

The legal framework does not use the term femicide, but the incrimination clearly states the victims' gender and the offender's motive, and of course, there are no separate statistics on these cases from state institutions.

Graph n.2 *Murder and Murder connected to domestic violence in North Macedonia in the period 2017-2022*



Source: Ministry of Internal Affairs of RNM

GREVIO Baseline Report shows that traditional beliefs are a very challenging issue in combating violence against women and girls, especially because there is still a perception of domestic violence as a private matter, and of women as subordinate to men (GREVIO, 2023: 6).

Table n.3 *Rape in North Macedonia in the period 2017-2022*

Year	Total number of crimes	Total number of offenders
2017	55	37
2018	31	35
2019	35	30
2020	38	40
2021	25	25
2022	18	19

Source: Ministry of Internal Affairs of RNM

Sexual violence as another type of gender-based violence when it happens is in most cases connected to deeply rooted gender stereotypes.

What even makes this area more difficult to tackle and suppress these crimes is the stigma that surrounds sexual violence, which consequence in high dark figures. Also, North Macedonia still has a lack of rape crisis and sexual violence call and help centers (GREVIO, 2023: 6).

The data and research on other forms of gender-based violence are sporadic, and still, there is no systematic following of these crimes. This means that still there are no available publications on female genital mutilation, forced abortion, forced sterilization, stalking, sexual harassment, etc. There were few on sexual harassment (Stanojoska et al., 2022) and stalking before their incrimination, and of course, there is no research on the digital dimensions of gender-based violence. Also, still haven't been analysis on violence against certain social groups of women who are more vulnerable to violent victimization, because of their vulnerability to intersectional discrimination, such as elderly women, women sexual workers, LBTI women, women in rural areas, women migrants, women from ethnic minorities, women with disabilities, etc. (GREVIO, 2023: 29).

Another problem is the failure to practice gender-responsive policymaking from many institutions in North Macedonia, as a result of a lack of correct understanding of the meaning of gender. Furthermore, it is still common to assign gender with birth as the biological sex, although

the concept of gender has evolved far away from the restrictive framework and is a deeply felt and experienced sense of self, which is far more than the biological sex (DCAF, 2023: 97).

WHAT IS GENDER – BASED VIOLENCE IN CYBERSPACE?

Violence against women and girls either happening offline or online is the most severe form of gender-based discrimination. When it is happening in cyberspace, it goes hand in hand with the traditional forms of gender-based violence and has the same mechanism of patriarchy as other "offline" forms have. It's the result of the mirroring of gender and social inequalities and disbalance between genders from offline into the online world.

EIGE (2019) in a UK study on cyberstalking found that 54% of online stalking involved an encounter in the offline space (EIGE, 2019). More than one-third of women in the world have been abused online, and 50% of them are younger women (EIGE, 2019), with 58% of girls who have experienced online harassment. Half of them, said they experience more online harassment than on the street (Plan International, 2020). In an Amnesty International Survey, 46% of women who were abused online or harassed, said that the nature of the acts was misogynistic or sexist (Amnesty International, 2017).

Cyber violence is "the use of computer systems to cause, facilitate, or threaten violence against individuals that results in, or is likely to result in physical, sexual, psychological or economic harm or suffering, and may include the exploitation of the individual's circumstances, characteristics or vulnerabilities." (Council of Europe, 2018: 5).

Cyber-violence against women is an act of gender-based violence perpetrated directly or indirectly through information and communication technologies that result in or is likely to result in, physical, sexual, psychological, or economic harm or suffering to women and girls, including threats of such acts, whether occurring in public or private life, or hindrances to the use of their fundamental rights and freedoms. Cyber-violence against women is not limited to but includes violations of privacy, stalking, harassment, gender-based hate speech, personal content sharing without consent, image-based sexual abuse, hacking, identity theft, and direct violence. Cyber violence is part of the continuum of violence against women: it does not exist in a vacuum; rather, it both stems from and sustains multiple forms of offline violence (European Commission, Advisory Committee on Equal Opportunities for Women and Men, 2020).

Gender-based violence in cyberspace includes various forms of deviant and/or criminal behavior, such as online hate speech (mostly misogynic), cyberstalking, online sexual harassment, other forms of cyber harassment, cyberbullying, image-based sexual abuse, and other forms. Technology "enables" offenders in acts such as tech-enabled sexual assault; image-based sexual abuse, cyberstalking and criminal harassment, online sexual harassment, gender-based harassment, and hate speech (Henry, Powell, 2014).

The online forms of gender-based violence follow or precede the ones happening "traditionally", but their consequences are as important and harmful as the other ones. Their position in the criminal process is "as a continuum of violence" (McGlynn, Rackley, Houghton, 2017: 36). Cyber-based violence represents another form of abuse of women and girls, which is embedded in the gendered social structure and power relations. "*The violent acts taking place through technology are an integral part of the same violence that women and girls experience in the physical world, for reasons related to their gender*" (GREVIO, 2021).

Technology-facilitated abuse is used as a tool to silence individuals, and to limit freedom of speech and human rights advocacy. In most cases, women who are in public and political roles

are targeted by campaigns of disinformation, with an intent to discredit, humiliate, intimidate, and silence them in public life (DCAF, 2021: 9). Women who are high public figures are often victimized online (Al-Nasrawi, 2021).

Powell and Henry (2017) talk about sexual violence in cyberspace as "technology-facilitated sexual violence" and define it as every act where information and communication technology are used "to facilitate or extend sexual and gender-based harm to victims" (Powell, Henry, 2017: 205). Such terms and definitions give a broader understanding of gender-based violence in the digital space. It is a concept that refers to criminal, civil, or any other type of harmful sexually aggressive, and harassing behavior being committed by aid or use of technologies (Powell, Henry, 2017).

WHY GENDER-BASED VIOLENCE HAPPENING IN THE DIGITAL SPACE IS SO PERSISTENT, AND IT IS MORE DIFFICULT TO BE RESTRICTED BY GOVERNMENTS, AND SOCIETY IN GENERAL?

Since the development of technology, scholars from the feminist-informed studies of technology and society have been examining the gendered nature of technology (Bimber, 2000). Their views were in a certain way even too optimistic, explaining that technology will help society evolve and enable it to "*imagine a world without gender*" (West, Zimmerman, 1987; Butler, 1990). On the other hand, feminism argues that technology is gendered, because people in technology are mostly men, popular and cultural images are associated with "*hegemonic masculinity*", and knowledge and practice in tech areas are gendered, so technologies have become an alternate area where traditional hierarchical gender relations are replicated.

Wajcman (2004) talks about techno feminism, using it to argue the mutually shaping relationship between gender and technology, where both are the source and consequence of gender relations and vice versa (Wajcman, 2002: 356; Wajcman, 2004). Technology is not neutral, but it is an embedded and co-constituting feature of society. Together with social practice and norms, it constructs technologically mediated social orders (Ito, Okabe, 2005).

Technology should not be understood as either a tool for crimes or as a force that changed the phenomenology of crime, but as an alternate and/or parallel world where gender relations are reproduced, and even worse, violent cultures and sexual violence practices are also copied and present.

Where is the law here? As technology evolves, the law is struggling to keep pace with all the new possibilities of the digital world. There are different legal approaches to tackling and incriminating the new/old forms of gender-based violence happening in cyberspace. The major difficulties and challenges in the new legislation are to capture the harms of these acts, but to also, provide adequate remedy to victims, detect offenders, and punish them, especially when they are located elsewhere, in another country's jurisdiction, they have managed to hide their IP address. Further challenges are international service providers, which happens with social media or smartphone social applications. Sometimes, Internet and telecommunications service providers do not cooperate with the police. When this happens, it is an even bigger barrier to obtaining evidence to support legal action, and to achieve justice for the victims (Powell, Henry, 2016). Other times, tech and social media lack mechanisms to address online gender-based violence.

Furthermore, the drive to raise the regulation and to decentralize the power of big tech companies, can actually be abused by governments in limiting the users' rights, censorship,

surveillance, and manipulation. The best solution would be to have a legal framework that will be in compliance with international documents and human rights principles (Freedom House).

Another challenge that is crucial is the victim-blaming discourse. With consequences which are experienced in all areas of life so severe, and include, but are not limited to, mental and psychological harm, damage to career development, invasion of privacy, withdrawal of public life and/or debate, etc. Victim blaming happening every day makes victims more reluctant to come forward and report the acts to the police, and also, makes them not believe that even if they report the experience, the police will not take it seriously. We should work on both suppressing these criminal acts, but also, on the sensibilization of police officers working on such cases, and on prejudices about who is to be blamed when crime happens, especially these types of crimes.

METHODOLOGY

The research aims to explain the present situation in North Macedonia with certain online forms of gender-based violence (GBV), the present legal framework, and victimization consequences.

The methodology includes previous desk review and content analysis (legal solutions, previous research, reports by NGOs and international organizations, academic papers, and books), as well as police reports and court decisions in the cases "Public Rooms 1 and 2".

NORTH MACEDONIA AND THE DIGITAL FORMS OF GENDER-BASED VIOLENCE

In North Macedonia, the data on other forms of gender-based violence are sporadic, and still, there is no systematic following of these crimes. This means that still there is no research on the digital dimensions of gender-based violence. Still haven't been done analysis on violence against certain social groups of women, such as elderly women, women sexual workers, LBTI women, women in rural areas, women migrants, women from ethnic minorities, women with disabilities, etc., who are more vulnerable to intersectional discrimination and abuse (GREVIO, 2023: 29).

In an OSCE public survey about gender-based violence, 7% of women have been stalked by an unknown person (53%) or intimate partner (30%). In 48% the stalking process lasted for a few months, and besides being followed physically, the victims received phone calls, SMS, e-mails, and messages on social media (OSCE, 2019: 34-35).

Before the new incriminations related to GBV, in North Macedonia, many women and girls have been victims of gender-based violence in cyberspace, in cases such as Public Room and Public Room 2, and other cases where photos and videos of girls and women have been shared without their consent.

Most of the victims were lured into sending intimate photos, and afterward, their photos were shared in groups on social media. Such actions have shown that authorities did not take any steps to help victims, although some of them have reported the actions, but also it has shown the level of education on security in cyberspace and the consequences of unauthorized use of personal data.

CASE STUDY AND DISCUSSION: THE CASES OF "PUBLIC ROOM" AND "PUBLIC ROOM 2"

If we use Statista as the source of information, we could conclude that Telegram is one of the ten most popular social apps, and desktop and mobile messaging platforms with more than 700 million users.[4] Since 2021 in North Macedonia, we have witnessed an emerging number of Telegram groups, where explicit photos and videos have been shared. Actually, the groups were created to share explicit photos and videos, but also personal information, residential addresses, phone numbers, and Facebook and Instagram profiles of women and girls (some of them were even underaged) whose photos and videos have been shared.

Why offenders have been using Telegram? Because as a messaging platform, this application is anonymous. Telegram has a feature called "Anonymous admin" which allows group admins to go anonymous, and to disappear from the list of members of the group. It means that other members (except admins) cannot see other members. Also, messages sent by admins, only show the group's name, but not the sender's name.[5]

The first publicly known group was the so-called "Public Room" where more than 10,000 photos and videos of women and girls have been shared among more than 7000 members (who were males).[6] The group was publicly unveiled by NGOs to whom victims went to ask for help, as institutions were not cooperative enough to work on the matter, shutting down the groups, and finding the perpetrators. After going public with the matter, police started an investigation.

The "Public Room" case was unveiled at the beginning of 2020, in January. The Ministry of Internal Affairs (MIA) confirmed that Telegram is not cooperating and does not want to provide any electronic evidence regarding its members. The material that was shared included personal photos and videos from social media, but also other private and explicit photos and videos.

The investigation has been led by the Sector for Computer Crime and Digital Forensics in coordination and collaboration with the Public Prosecutor's Office (PPO). As the investigation started, the number of members in the groups significantly decreased.

At the end of the investigation, the result was the identification of the admins of the group (creator and administrator) and the confiscation of their electronic devices for electronic evidence.

The official report from MIA included information that the criminal offenses in this matter are Article 149 "Abuse of personal data" (67 crimes), Article 193 "Showing pornographic material to a child" (15 crimes), and Article 193a "Production and distribution of child pornography" (nine crimes).

But, actually besides all of the mentioned crimes, also the case included a non-consensual intimate image because the whole case included many women and girls whose victimization included sharing their photos and videos which were originally sent to their ex-partners.

---

[4] https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/ [10.10.2023].

[5] https://www.techmesto.com/manage-remain-anonymous-mode-telegram-group/ [09.10.2023].

[6] https://www.dw.com/mk/%D1%98%D0%B0%D0%B2%D0%BD%D0%B0-%D1%81%D0%BE%D0%B1%D0%B0-%D1%81%D0%BE-%D0%BC%D1%80%D0%B0%D1%87%D0%BD%D0%B8-%D1%82%D0%B0%D1%98%D0%BD%D0%B8/a-56363266 [11.11.2023].

What is important for this case is the fact that only two people were *ex officio* criminally charged (the creator and the admin of the group) for the crime from article 193a "Production and distribution of child pornography". No member of the group was criminally charged because the other identified criminal acts were prosecuted after the crime was reported by the victims. And the victims because of secondary and re-victimization, and stigmatization, did not even report any type of violence.

Such results of the investigation actually encouraged offenders who create another group on Telegram, the so-called "Public Room 2". The investigation was the same as it was for the previous case. The authorities have sent a request to Telegram for data about the creator, the admins, and the members of the second group, which until today are not sent back to Macedonian MIA and PPO. Furthermore, while investigating the second group, two more have been opened in Telegram.

The most important thing that characterized all similar cases is the fact that the victims have suffered secondary victimization and re-victimization because the public has condemned them instead of condemning those who were sharing the explicit material, and who afterward were sexually cyber harassing and cyberstalking the victims. It is the psychological impact of online GBV that can be devastating. Victims suffer stress, anxiety, and panic attacks, aren't able to sleep, to concentrate for longer periods, and experience lower self-esteem, loss, or low self-confidence.

"The psychological impact of reading through someone's really graphic thoughts about raping and murdering you is not necessarily acknowledged. You could be sitting at home in your living room, outside of working hours, and suddenly someone is able to send you an incredibly graphic rape threat right into the palm of your hand." (Laura Bates, Everyday Sexism Project).

CONCLUSIONS AND RECOMMENDATIONS

The digital world is the reality we live in, an alternate one, different than the physical, but a reality where the social relations are completely the same, as patriarchy has been just copied. But it doesn't mean that our digital interactions should not be safe. Digital rights are also human rights and are closely linked with freedom of expression and the right to privacy.

Being secure and safe in the digital world should be guaranteed as it is in the physical world. Unfortunately, as crimes happen in the physical world, they also, are happening in the digital world. As we already concluded before, they are not only new, modern crimes, connected to hackers, and big multinational companies, but they are also conventional, traditional crimes, which are just happening in cyberspace. Many types of gender-based violence are also happening there, in cyberspace, where offenders, as in the real world, and even more, are not sanctioned for their acts.

Not sanctioning encourages others to continue with their criminal behavior, and discourages victims from reporting their painful experiences. More importantly, not helping victims, discourages others from reporting such criminal acts.

RECOMMENDATIONS

Gender-based violence should be on the agenda of the authorities, and they should focus mainly on:

1. INSTITUTIONS

- More scientific and institutional research and data on digital forms of GBV – the first step in preventing and suppressing the phenomenon is knowing its phenomenology;

- Stronger legal framework – even with the new crimes that have been incorporated in the Criminal Code, still there are types of online GBV that have not been addressed in the incriminations, and those types that are addressed ask very well-trained law enforcement and public prosecutors, and public awareness campaigns;

- Stronger collaboration between government institutions and community representatives with Internet, website, social media, and other service providers – this will help in order to promote agreements and community codes of conduct;

- Training for law enforcement, lawyers, and public prosecutors – through these trainings, all actors who are part of the investigation and prosecution will be able to finish the more effectively and efficiently criminal procedures, and to sanction the offenders;

2. VICTIMS

- Strategies for victims and other users – how they should act to report content that is in violation of codes of conduct and violates their privacy;

- Development of information resources and help for victims – this is how they will be advised on their legal and non-legal options, and it could be delivered through information services for legal aid, health aid, national hotlines, and services for victims of crime;

- Development of prevention strategies – such strategies should include public education campaigns through traditional and digital media, at workplaces, and in schools; they should identify and challenge to change social norms and cultural practices that support the stigma and re-victimization of victims of gender-based violence in the cyberspace, and should redirect such responsibility only towards offenders.

Suppression and prevention of GBV in general and in cyberspace, as all other forms of criminal behavior ask for full cooperation between state institutions, NGOs working on the matter, and other service providers in society.

Present and potential offenders must be identified and sanctioned, biases, blame, and stigma should shift and be directed toward them, not the victims (Powell, Henry, 2017: 229). This is the way a just society should look like.

REFERENCES

AIRE. (2023). *Femicide in the Republic of North Macedonia: The state of affairs, the legal framework and judicial practice (2018-2022).* AIRE;

Bimber, B. (2000). Measuring the gender gap on the Internet. *Social Science Quarterly, 81*(3), 868–876;

Butler, J. (1990). *Gender trouble: Feminism and the subversion of identity*. London: Routledge;

DCAF. (2021). *Cyber Violence against Women and Girls in the Western Balkans: Selected Case Studies and a Cybersecurity Governance Approach.* Geneva: DCAF

DCAF. (2023). *Online actions, offline harms: Case studies on gender and cybersecurity in the Western Balkans.* Geneva: DCAF;

EIGE. (2022). *Combating Cyber Violence against Women and Girls.* Luxembourg, EIGE;

GREVIO. (2023). *Baseline Evaluation Report on North Macedonia.* Council of Europe;

ICRW (2018). *Technology-faciltated Gender-based Violence: What is it, and how do we measure it?*. ICRW;

Ito, M., & Okabe, D. (2005). Technosocial situations: Emergent structuring of mobile email use. In M. Ito, D. Okabe, & M. Matsude (Eds.), *Personal, portable, pedestrian: Mobile phones in Japanese life* (pp. 257–273). Cambridge, MA: MIT Press;

Powell, A., & Henry, N. (2016). Policing technology-facilitated sexual violence against adult victims: Police and service sector perspectives. *Policing and Society*;

Powell, A., & Henry, N. (2017). Sexual Violence in a Digital Age. Melbourne: Palgrave Macmillan;

Sinalo Williamson, C. & Mandolini, N. (Eds.) (2023). *Representing Gender-Based Violence: Global Perspectives.* Palgrave Macmillan;

Stanojoska, A. (2023). The Feminist Pathways Perspective: The Pathways to Crime of Female Murderers in the Republic of North Macedonia. In A. Stanojoska, D. Dimovski & E. Maksimova (Eds.), *The Handbook on Female Criminality in the Former Yugoslav Countries* (pp.105-132). Springer;

Stanojoska, A., Aslimoski, P. (2019). *Criminology.* Bitola: Faculty of Law;

Stanojoska, A., et al. (2022). *Sexual Harassment at Universities in North Macedonia.* Bitola: Faculty of Law;

Stevanovic, A. et al. (2021). *Cyberbullying, Stalking and Online Harassment in North Macedonia and in Serbia*. WEASA;

Sukaina Al-Nasrawi, Combating Cyber Violence Against Women and Girls: An Overview of the Legislative and Policy Reforms in the Arab Region, (2021), Available at: https://www.emerald.com/insight/content/doi/10.1108/978-1-83982-848-520211037/full/html;

Wajcman, J. (2002). Addressing technological change: The challenge to social theory. *Current Sociology, 50*(3), 347–363;

Wajcman, J. (2004). *TechnoFeminism*. Cambridge, UK: Polity Press;

West, C., & Zimmerman, D. H. (1987). Doing gender. *Gender & Society, 1*(2), 125–151.

Ana PARAUŠIĆ MARINKOVIĆ*
Aleksandar IVANOVIĆ**

Original Scientific Paper
DOI: 10.47152/Palic2024.11

VICTIMIZATION OF WOMEN AND GIRLS IN URBAN AREAS: THE CASE STUDY OF NOVI PAZAR

Abstract: The study aims to explore the various facets of victimization of women and girls in public urban areas and perception of security of spaces they use in everyday life. For this purpose, 776 girls and women aged 10 to 65 from the area of Novi Pazar was surveyed. Research results indicate that women and girls greatly fear for their safety in public spaces and are daily exposed to different forms of violence and harassment. Unlit streets, lack of video surveillance, absence of police officers, lack of adequate night public transportation, presence of male persons abusing PAS are some of the occurring factors that make women and girls uncomfortable when using urban public spaces. Although respondents fear physical violence, especially sexual harassment, rape, being followed or stalked, the types of victimization they frequently experience are related to verbal violence such as intrusive and offensive questions about private life, insults, sexually suggestive jokes, comments about their appearance, inappropriate looking etc. Bearing in mind that these experiences greatly influence their daily lives, mobility, social activity, and overall quality of life, it is important to create urban security policies and strategies which will take into consideration women`s and girls` experience of victimization in urban areas.

Key words: victimization of women and girls, violence, harassment, public spaces, Novi Pazar

1. INTRODUCTION

Violence against women is a universal phenomenon and it occurs in different areas of life, in all segments and spheres of human interaction. All societies, regardless of their political and/or economic context, the level of institutional development achieved, the influence of religion, accepted cultural values, dominant norms and attitudes of the community or the very level of development of the culture of human rights, face violence against women and girls (Konstantinović Vilić et al., 2022). Violence against women, as gender-based violence, its models and patterns, its way of existence, are part of patriarchal or traditional understandings of the relationship between women and men, which are manifested through gender patterns and gender roles, which are reflected in other parts of the social structure (Archer, 2006). How widespread it is testifies the fact that every second woman in the EU has experienced sexual harassment since the age of 15.

It should be mentioned that women and girls face violence and harassment in private as well as in public sphere. While the topic of domestic violence or workplace harassment is well researched, victimization women and girls experience in public spaces is yet to be systematically studied, although the scientific and professional interest about the phenomenon is

* PhD, Research assistant, Institute of Criminological and Sociological Research in Belgrade, https://orcid.org/0000-0002-7880-7379. E-mail: parausicana@gmail.com. The current paper is part of a re-search endeavor funded by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia, conducted by the Institute of Criminological and Sociological Research, 2024, number 451-03-66/2024-03/200039.

** PhD, Associate professor at the Faculty of Law, University Vitez in Travnik. E-mail: a.ivanovicmonitor@gmail.com.

growing especially in recent decades (Fairchild, Rudman, 2008; Lenton et al., 1999; Bowman, 1993). Some authors identify two reasons for the lack of interest in dealing with the topic: 1) in public places, harassment is not illegal if it is not an attack, it can even be interpreted as trivial or as a compliment; 2) public places are places of casual passage and are not subject to the same strict norms of behaviour as more formal places, such as workplaces or educational institutions (Horvat, Perasović Cigrovski, 2014 according to Lenton et al., 1999; Ilijevski, Stanojoska, Shushak Lozanovska, 2023). Moreover, harassment of women and girls in public places, such as occurring insults, stalking, and touching from unknown men, is often trivialized or considered an inevitable part of public life (Gardner, 1995). Nevertheless, different experiences of violence against women and girls in public places reduces the feeling of security and prevents women and girls from fully participating in society, thus significantly contributing to the broader social problem of inequality and discrimination against women. Although harassment and violence can happen to people of both genders, research and statistics indicate the "overrepresentation" of women and girls among those who are harassed and those who are subjected to violence (Horvat, Perasović Cigrovski, 2014 according to Borić, 2007:82).

Bearing in mind the severity of the problem of victimization of women and girls in urban areas and the notion that this topic is under researched, the subject of the paper is to explore the various facets of victimization of women and girls in public urban areas and their perception of security of spaces they use in everyday life. Specifically, we will explore the security of women and girls in Novi Pazar through several segments: general sense of fear in public space, specific fears for personal safety in public areas, experience of victimization in public spaces of women and girls and factors and activities that might enhance personal security of women and girls in public spaces of Novi Pazar.

2. WOMEN AND URBAN SECURITY

Women are exposed to violence or may be victims of violence and harassment in all areas where their daily lives take place. So is the public space, like the sphere of people's everyday life, the environment in which gender-based violence against women and girls continuously occurs. Public spaces are all those spaces that people in the local community can freely use such as squares, parks, markets, public city transport stops, public transport, sidewalks, streets, paths, promenades, etc (Đan, Stakić, 2016: 11). Harassment in public places is common in urban areas (Bowman, 1993; Kearl, 2010), and is less common in small towns/villages where most people know each other.

More than one century feminist organizations have been protesting and marching to "take back the night" as a way of expressing concerns about raging sexual violence and threat of violence in public space (Listerborn, 2015). However, only in the last three decades has greater awareness of the women`s public experience of fear shifted to policy agenda. Introducing the issue of urban security as part of women's everyday social reality has recast women's needs and identities in relation to their unique urban experience (Kallus, Churchman, 2004: 198).

There are some notions about architecture design of cities not suitable for women's` needs. In recent years there has been a growing awareness of the fact that men and women use and experience urban public space differently and that architecture design of cities are not suitable for women's` needs. Women do not enjoy the same freedom as men do in using public spaces (Boys, 1984; Day, 1999; Lofland, 1984), and despite the improvements in women's social position over the years, urban public spaces are still less available or accessible to women than to men (Franck, Paxson, 1989; Kallus, 2001). As a result, one of the most important and decisive

factors influencing the way in which women use public space is related to their feeling of safety (Epstein, 1998; Koskela, 1997; Valentine, 1990). The potential presence of violence determines to a large extent the place, time and kinds of activities in which women participate (Keane, 1998; Morrell, 1996; Nasar, Jones, 1997; Valentine, 1990; Wekerle, Peterson, Morley, 1981). Urban areas are more than often places of fear and not spaces where women can walk without harassment (Kern, 2020). Research and analysis of violence against women in public space show that it is a lasting phenomenon and largely affects perception of urban security.

Safety, and the perception of safety, are critical to the vitality of any city and to the wellbeing of all citizens. It affects individuals' personal behaviour as it shapes daily routines, and influences neighbourhoods and the city as a whole. A full understanding of urban insecurities cannot be gender neutral, and must take into account that women and men experience violence differently and thus develop different fears (Epstein, 1998; Koskela, 1997). Women are far more likely than men to be concerned about crime and to consequently restrict their own and their children's activities, which greatly impact their urban mobility. Hence, most women practice a „strategy of avoidance" regarding public places after dark. This reduces their ability to be educated, work and participate in public life, use basic services and enjoy cultural and recreational activities, which negatively affects their overall health and well-being in community life.

Women generally express a higher degree of fear than men, they perceive the risk of victimization to a greater extent and more ofte apply various protective measures against crime (Đurić, Popivić-Ćitić, 2013). Moreover, men and women have different concerns regarding the types of endangering behaviour thay face in public urban places. Sexual assault, the crime most often feared by women, is a far more terrifying crime to contemplate than robbery, which is the crime most feared by men (Toronto Safer City Guidelines, 1997). Morover there are other various types of threats to women's safety in public space that range from simple staring, looking sideways, all the way to stalking, robbery, physical and/or sexual assault. Harassment of women and girls in public places refers to a wide spectrum of unwanted behavior towards women and girls from insults, suggestions and comments, offensive and discriminatory remarks and jokes, to physical contacts such as stalking, obstructing the passage, touching and grabbing, exposing a person to sexual content, and similar behaviors that can exceed harassment and begin to include different forms of violence (Kearl, 2010). Therefore, the problem of women's safety in public space is not only related to their physical safety and protection, but also to perception of safety and fear of violence.

Overall built environment (infrastructural elements such as lighting, maintenance of spaces, signage, presence of alleyways, etc.), the social environment (how people use the space, the kinds of people using the space, sense of community in the area, presence of cultural activities), and girls' and women`s own experience and perceptions impact the sense of security (Women in Cities International, Plan International, UN-HABITAT, 2013). Moreover, it is important to incorporate all three elements in the policy and strategies cerating cycle in order to produce urban spaces safer for women and girls, but ultematelly for all users of public spaces.

3. METHODOLOGY

3.1. Participants

Research sample consisted of 779 women and girls aged 10 to over 65 years from the area of Novi Pazar. When it comes to age of the respondents, 76(9.76%) girls are 10-14 years old, 206(26.44%) girls are 14-18 years old, 188(24.13%) women are aged 18-30, 210(26.96%)

women aged 30-40, 75(9.63%) aged 40-65, while 13(1.67%) aged over 65. More than half of the respondents are unmarried, one third is married, less than 4% is divorced, around 1% are widowed and less than 1% live in common law marriage or same sex relationship. Regarding the nationality, more than 60% of respondents are Bosnian and one third are Serbs. Little less than 70% of surveyed women and girls are Muslim, while around 25% are Orthodox Christians.

3.2. Instrument

The questionnaire consisted of 32 questions was created for the purpose of the research project. The questions were grouped in several batteries. The first battery consisted of socio-demographic questions regarding the public space respondents usually use, age, marital status, nationality, religious believes etc. (11 questions). The second category of questions measure the general sense of fear, i.e. security of the respondents in selected public spaces (4 questions). The next category consisted of questions concerning specific fears for personal safety in public areas (4 questions). The goal of this questions was to determine which characteristics of public spaces make women and girls unsafe, what do they fear most in public space and who are the actors in public spaces respondents are mostly afraid of in Novi Pazar. Beside that surveyed women and girls addressed the behaviours and actors they think contribute do their sense of personal safety in public space. Exploring the experience of victimization in public spaces of women and girls was the goal of the next battery of question (12). The aim was to provide answers about the causes of unsafety for the respondents, whether it is the result of personal experience, knowledge, or the fact that someone else was the target of violence and harassment in public space. Final 2 questions related to factors and activities surveyed women and girls believe will enhance their personal security in public spaces.

3.3. Procedure

The data was collected in the period from February 1st till June 18th 2023. The survey was conducted on five locations in the city of Novi Pazar: 1) Pedestrian zone in city centre; 2) Recreational centre; 3) City Park; 4) Promenade on the Raška river and 5) Area around sport fields on Deževski road.

4. Results

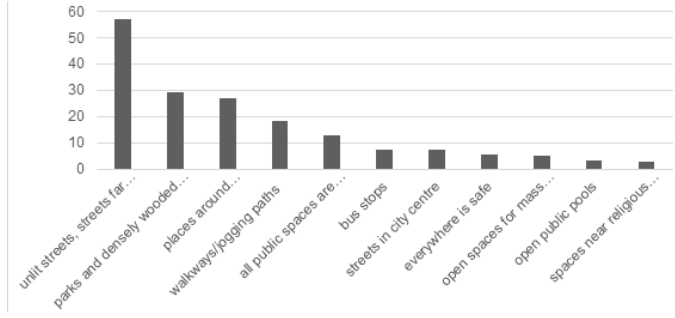
The perception of urban security in public spaces of women and girls was measured through a set of questions related to the feeling of security and the level of fear from certain forms of crime. Several questions were aimed at assessing the state of security in public space as well as identifying actors and factors that have impact on the personal safety of the respondents.

The majority of respondents feel very safe (34.05%) or safe (28.69%) in the public space they use during the day. However, when it comes to the feeling of security during the night, the situation is much less favourable. Almost 14% of respondents feel unsafe, and 5.36% feel very unsafe. A positive sense of security was expressed by 42.73% of women and girls. Comparing responses regarding the perception of safe during the day and at night shows that women feel much safer during the day than at night. The number of women with a negative sense of security during the night is almost three times higher than those who have such a feeling during the day.

Table 1. The perception of security during day and at night

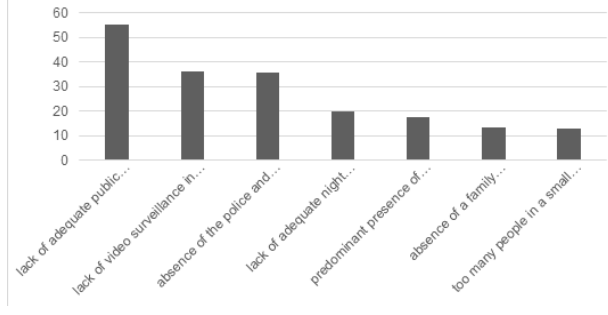
	Very safe	2	3	4	Very unsafe
Day	34.05	28.69	17.26	5.6	2.14
Night	15.71	27.02	25.48	13.93	5.36

The most unsafe places in the city of Novi Pazar women and girls addressed unlit streets and/or streets far from the city centre (56.9%). Little less than 30% of surveyed women and girls consider parks and densely wooded parts of the city as extremely unsafe public spaces, as well as places around nightclubs/bars/places selling alcohol. Relatively large number of respondents rated walkways/jogging paths as extremely unsafe (18.33), while slightly more than 13% of surveyed women and girls believe that all public spaces are equally unsafe. The least number of respondents rated spaces near religious buildings as extremely unsafe.



Graph 1. Assessment of the safety of public spaces in Novi Pazar

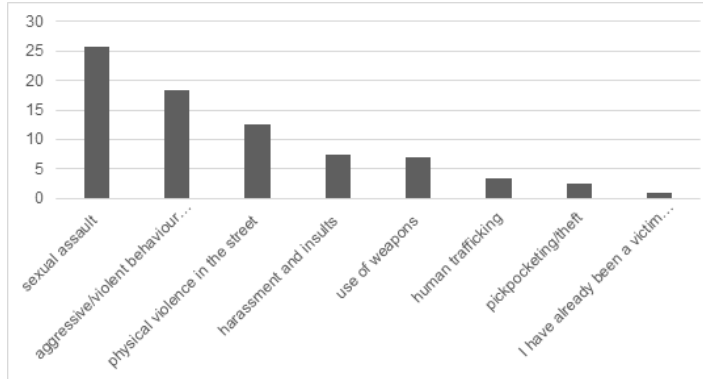
When answering the question about the characteristics of public space that make it unsafe, more than half women and girls highlighted the absence or lack of adequate public lighting (55%). Many surveyed women and girls believe that the problem is the lack of video surveillance in public areas (36.07%) and the absence of the police officer and subjects of formal social control (35.71%). A relatively large number of respondents indicated the lack of adequate night public transport (19.88%) and the predominant presence of men in a certain public space (17.62) as characteristics that make a public space unsafe.



Graph 2. Characteristics of public spaces that make them unsafe.

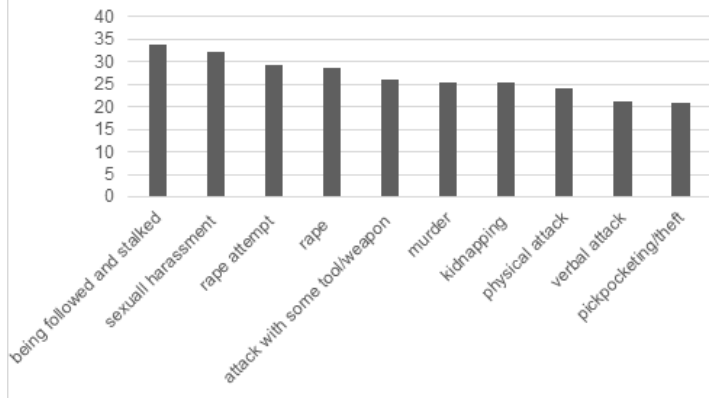
When it comes to the causes of fear of women and girls in public space, around a quarter of the respondents fear being sexually assaulted (rape or attempted rape) (25.6%), followed by aggressive/violent behaviour due to abuse of alcohol and psychoactive substances (18.33%), while the third most prevalent is the fear of physical violence in the streets (12.62%). The

number of respondents whose cause of fear is harassment and insults (7.38%) and the use of weapons (6.90%) is also considerable.



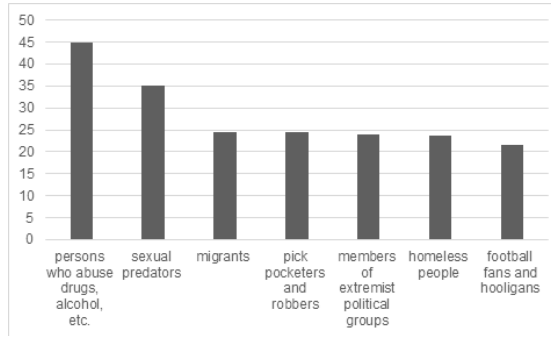
Graph 3. Causes of fear in public space

The level of fear of the surveyed women and girls varies in relation to specific forms of violence or harassment. Respondents most often reported that they were afraid of being followed and stalked (33.77%) or sexually harassed (32.14%), that they would be exposed to a rape attempt (29.24%) or be raped (28.52%). In a slightly smaller percentage surveyed women and girls indicated that they were afraid of being attacked with some tool/weapon (25.93%), killed (25.48%), kidnapped (25.42%), physically attacked (23.96%), verbally attacked (21.12%) and pickpocketed (20.71%).



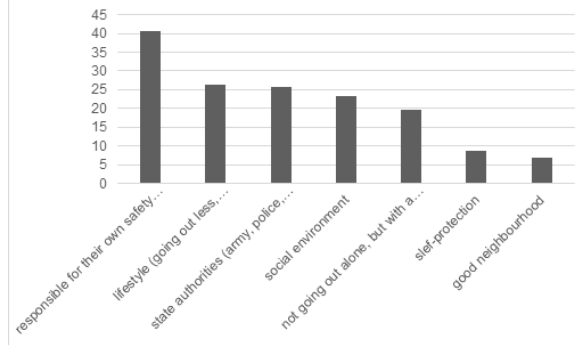
Graph 4. The level of fear of different forms of violence and harassment in public space

Women and girls also spoke about actors in public space who cause them to fear for personal safety. Almost half of all the respondents fear persons who abuse drugs, alcohol, etc. (44.87%), while around 35% of the surveyed women and girls indicate sexual predators (35.16%) as their biggest fear. A slightly smaller number of women and girls are afraid of migrants (24.58%), pick pocketers and robbers (24.4%), members of extremist political groups (23.87%), homeless people (23.75%) and football fans and hooligans (21.69%).



Graph 5. The level of fear of certain actor in public areas

Apart from the causes and level of fear for personal safety in public space, the surveyed women and girls answered the question about who they consider responsible for their safety. In ensuring personal safety, women primarily rely on their own strategies, which include limiting their own mobility and length of stay in public space. Over 40% of respondents believe that they are responsible for their own safety because they are careful and take care of their behaviour. In the sample, 26.31% of the respondents answered that their lifestyle has an impact on personal safety, i.e. they go out less, or spend more time at home, while 19.76% of women estimate that they achieve personal safety by not going out alone, but with a family member. These answers imply that women feel threatened when are outside the safety of their own home or when they are alone in a public space. A little more than a quarter of respondents stated that they believe that state authorities (army, police, etc.) contribute to their personal safety, while for 23.33% of them, the environment in which they live is a factor responsible for their safety.



Graph 6. Perception of responsibility for personal safety

According to the findings of the research regarding the experience of victimization in public spaces, most respondents experienced intrusive and offensive questions about their private life 4 or more times (22.86%) and inappropriate looking, whistling, sexually suggestive jokes, honking from the car (21.76%). In addition to this, a relatively larger number of female respondents often experienced insults and comments regarding their physical appearance or clothing (13.93%) and violent behaviour and/or disruption of public order (12.74%). Occasionally (1-3 times), the most surveyed women and girls experienced inappropriate staring, whistling, sexually suggestive jokes, honking from the car (23.57%), followed by indecent gesturing (23.33%), intrusive and offensive questions about private life (22,74%), violent behaviour and/or disturbance of public order (20.48%), following and stalking (20%), insulting remarks and comments

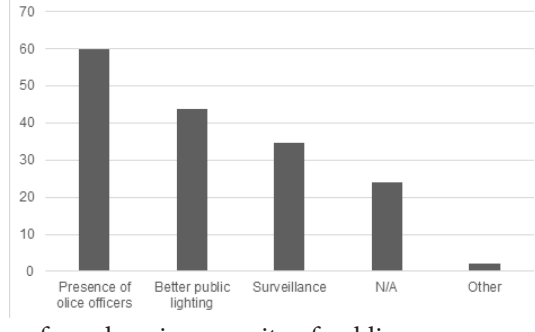
regarding physical appearance and clothing (19.4%) and cursing and insults (18.81%). Based on the answers of women and girls, it can be concluded that stealing purses or wallets, physical attacks and exhibitionism are the phenomena that happen rarely in public space.

Table 2. Prevalence of victimization of women and girls in public spaces

Type of violent/harassing behaviour	Not once %	1-3 %	4 or more %	Do not want to respond %
Intrusive and offensive questions about private life	30.83	22.74	22.86	1.07
Inappropriate looking, whistling, sexually suggestive jokes, honking from the car	31.31	23.57	21.79	0.83
Insults and comments regarding physical appearance or clothing	43.10	19.4	13.93	1.07
Violent behaviour and/or disturbance of public order	43.81	20.48	12.74	0.48
Following and stalking	48.57	20	7.98	0.95
Cursing and insults	50.24	18.81	7.74	0.71
Inappropriate gesture	46.19	23.33	7.38	0.6
Unwanted touching, hugging, and kissing	65.24	9.17	1.55	1.55
Grabbing and pinching body parts	64.76	10.24	1.43	1.07
Exhibitionism	67.86	7.98	0.83	0.83
Physical attacks	72.26	3.93	0.71	0.6
Stealing purses or wallets	73.81	3.21	0.12	0.36

Results regarding the victimization of women and girls in public space, lead to the conclusion that many women and girls are daily exposed to behaviours that make them feel unsafe in public space. Although the majority of surveyed women and girls were not victimized by direct physical violence, verbal violence, harassment, following and stalking are risks that women and girls face every day in public space, which have a direct impact on the perception of personal safety.

In order to create a holistic insight about women`s and girls` perception of security in public space, in addition to the prevalence of violence and harassment and the experience of victimization, strategies and approaches that could enhance the security of the specific areas are addressed. Therefore, the respondents answered the question about what would increase the sense of security in their city. Most respondents (60%) believe that they would feel safer if there were more police officers in public space. Also, a significant number of surveyed women and girls (43.81%) point out that better lighting would make a public space they usually use safer. Slightly more than a third of all respondents believe that video surveillance would contribute to a greater sense of security in public space.



Graph 7. Suggestions for enhancing security of public spaces

5. DISCUSSION

Some important conclusions could be derived from conducted research on victimization of women and girls in Novi Pazar. As we expected, women and girls fear greatly for their safety when walking at night. Similar results are found in the study "Program for leaders in security and rule of law" conducted by Standing Conference of towns and municipalities (2014), where 44% of women feel occasionally unsafe walking at night in the neighbourhood, while the same felling reports around 20% men.

One of the key characteristics that makes a place unsafe, according to the results of our research, are unlit streets which is an issue addresses in similar studies. In 2012 study to understand how safe and inclusive cities were for adolescent girls carried out in Cairo, Delhi, Hanoi, Kampala, and Lima, the issue of lighting emerged as the most tangible element of the built environment that has an important impact on how safe adolescent girls feel in different spaces. Girls knew the streets or alleys that were well lit and those that lacked lighting, which then influenced the paths they try to avoid at night (Women in Cities International, Plan International, UN-HABITAT, 2013: 22). According to the research on security of women in public spaces of Novi Pazar conducted in 2015, women feel unsafe due to the dark streets and lack of public lighting (Radovanović, Đan, 2015). In the research conducted by the Women's Room (Mamula, 2006) the most common places of harassment were different public places such as cafes, the street, buses, and trams. Hollaback Croatia, the Croatian branch of the international movement against harassment in public places, conducted a survey which included 446 women aged 13 to 74 (Perasović Cigrovski, Horvat, Komšić, 2012). The streets as a place of harassment were mentioned by 57% of women, followed by public transport (17%) and bus stops (7%).

Interesting finding of our study is relating to the fear from aggressive and violent behaviour due to the abuse of alcohol, drug et. Moreover, the women and girls in our study are most fearful of persons that consume psychoactive substances (PAS). Similarly, adolescent girls in research conducted in 2012 in Cairo, Delhi, Hanoi, Kampala, and Lima highlighted that the presence of people abusing drugs or alcohol caused them to feel unsafe (Women in Cities International, Plan International, UN-HABITAT, 2013: 23).

Women and girls usually really on themselves when ensuring the safety in urban areas, and accordingly adjust their behaviour to avoid victimization in public places, as our research indicates. Other studies also found that women use different types of behaviour to escape violence and harassment in public spaces such as taking care what they wear, walking in groups, avoiding unlit parts of the city, holding phone in hands etc. (Radovanović, Đan, 2015).

One of the main findings in our research point to the conclusion that women and girls are frequently exposed to victimization in urban public spaces such as intrusive and offensive questions about private life, inappropriate looking, whistling, sexually suggestive jokes, honking from the car, insults and comments regarding physical appearance or clothing. These types of behaviour are usually overlooked and dismissed as "not serious" because they do not include physical damage or injury. In the study conducted in 2015, women in Novi Pazar are exposed to insults and scorn from their surroundings daily. Most often, comments are directed at them because of their "inappropriate" clothing (Radovanović, Đan, 2015: 9). Research by the Women's Room on a sample of 1,491 women (Mamula, 2006) found that 55% of women in Croatia experienced unwanted sexual remarks and vulgar offers, and 43% experienced unwanted body touching. In the research conducted by Hollaback Croatia 99.6% of respondents confirmed that they were exposed to at least one form of harassment in public places. The research suggests that

less threatening forms, such as staring (experienced by 94% of women), unwanted comments about appearance (93%) or whistling (92%) are more common than more threatening ones, such as stalking (53%), touching (55 %) or sexual assault (32%) (Perasović Cigrovski, Horvat, & Komšić, 2012).

Besides direct emotional or physical consequences of violence and harassment, victimization of women and girls in urban areas has wider social impact. Women try to normalize situations in which they are exposed to verbal violence by taking "responsibility" for such behaviour of men and justifying their behaviour with their "inappropriate" appearance. From a young age, women are used to avoiding certain behaviour to avoid violence. These strategies limit women's freedom and are based on the principles of "blaming the victim", according to which women are most responsible for the violence they experience. Therefore, it is important to create policies and strategies for improving urban security that will be evidence based and integrate the gender dimension in policy cycle, the issue we will briefly discus in the conclusion of the paper.

6. INSTEAD OF THE CONCLUSION – CREATING GENDER-BASED POLICIES AND STRATEGIES FOR URBAN SECURITY

Conducted research on victimization of women and girls in Novi Pazar indicates that they greatly fear for their safety in public spaces and are daily exposed to different forms of violence and harassment. Unlit streets, lack of video surveillance, absence of police officers, lack of adequate night public transportation, presence of male persons abusing PAS are some of the occurring factors that make women and girls uncomfortable when using urban public spaces. Although respondents fear physical violence, especially sexual harassment, rape, being followed or stalked, the types of victimization they frequently experience are related to verbal violence such as intrusive and offensive questions about private life, insults, sexually suggestive jokes, comments about their appearance, inappropriate looking etc. Bearing in mind that these experiences greatly influence their daily lives, mobility, social activity and overall quality of life, it is important to create policies and strategies of urban security which will take in consideration women`s and girls` experience of victimization in urban areas, but also have women and girls actively participate in the different steps of the policy and strategy creating cycle (planning, budgeting, implementing, evaluating).

In western cities, gender perspective is widely incorporated in urban safety and crime prevention initiatives. But more than just crime and violence prevention actions, programs of enhancing women`s security in public spaces include urban design, public transportation, domestic violence, and educational programs for the police (Listerborn, 2015). This stems from the fact that there is a clear relationship between public violence, fear of crime and the urban built environment. Safety of women in the urban environment must be recognized as an issue that requires the attention of the planning profession and of municipal governments (Kallus, Churchman, 2004: 199).

Cities and communities that are safe and free from violence against women enable and support the creation of equal opportunities for women and men. When safe and comfortable, public spaces in cities offer opportunities for the participation of women and girls in all spheres of social life. The creation of cities and communities that are safe for the daily life of women and girls depends on the elimination of violence and feelings of insecurity, which prevent women and girls from freely using public spaces (UN Women, 2018). Because of all this, it is necessary that gender differences are included in the planning of the development

of cities, public spaces and public transportation, which will improve women's well-being and safety (UN Women, 2020). The process of programming safe cities and safe public spaces assumes and implies that men and women acquire and possess different personal experiences of living and working in the city, so the process itself requires that the concept of gender be placed at the center of urban planning and design. Modeling public spaces to suite men and women imply the use multisectoral, holistic, long-term approach that focuses on comprehensive and systematic changes. Research and programming on safe cities for women should be based on a clear understanding that making cities safe for women makes cities safer for all.

REFERENCES

Archer, J. (2006). Cross-cultural differences in physical aggression between partners: A social-role analysis. *Personality and social psychology review*, *10*(2), pp. 133-153. https://doi.org/10.1207/s15327957pspr1002_3

Boys, J. (1984) Women and public spaces. In: Matrix (Ed.) *Making Space, Women and the Man-Made Environment*. London: Pluto Press, pp. 37–54.

Bowman, C. G. (1993) Street harassment and the informal ghettoization of women. *Harvard Law Review, 106*(3), pp. 517–580 https://doi.org/10.2307/1341656

Day, K. (1999) Embassies and sanctuaries: women's experience of race and fear in public space. *Environment and Design D: Society and Space*, *17*(3), pp. 307–328 https://doi.org/10.1068/d170307

Đan, A. i Stakić, I. (2016) *Priručnik za istraživanje bezbednosti mladih žena i muškaraca u javnom prostoru (Rodna analiza bezbednosti - studija slučaja Vranje)*. Beograd: Beogradski centar za bezbednosnu politiku.

Đurić, S. i Popović-Ćitić, B. (2013) Strah od kriminala: rodne razlike u percepciji rizika. *Sociološki pregled, 47*(4), str. 537-554. https://doi.org/10.5937/socpreg1304537D

Epstein, D. (1998) Afraid/not: psychoanalytic directions for an insurgent planning historiography. In: L. Sandercock (Ed.) *Making the Invisible Visible, A Multicultural Planning History.* Berkeley: University of California Press, pp. 209-226.

European Women`s Lobby (2017) *Disrupting the continuum of violence against women and girls*. Brussels: European Women`s Lobby.

Fairchild, K. & Rudman, L. A. (2008). Everyday Stranger Harassment and Women's Objectification. *Social Justice Research*, 21 (3), pp. 338–357. https://doi.org/10.1007/s11211-008-0073-0

Franck, K. & Paxson, L. (1989) Women and urban public space: research, design, and policy issues. In: I. Altman & E. Zube (Eds) *Public Places and Spaces.* New York: Plenum Press, 121-146.

Gardner, C. B. (1995). *Passing By: Gender and Public Harassment*. Berkeley, CA: University of California Press.

Horvat, M., & Perasović Cigrovski, B. (2014). Uznemiravanje žena na javnim mjestima–osvrt na uzroke, oblike i učestalost problema uznemiravanja u Hrvatskoj i svijetu. *Sociologija i prostor: časopis za istraživanje prostornoga i sociokulturnog razvoja*, *52*(3 (200)), str. 293-312. https://doi.org/10.5673/sip.52.3.4

Ilijevski, I., Stanojoska, A. & Shushak Lozanovska, I. (2023) Sexual harassment: taboo topic at universities – legal framework in North Macedonia. *Journal of Criminology and Criminal Law, 61*(3), pp. 29-45. https://doi.org/10.47152/rkkp.61.3.2

Kallus, R., (2001) From the abstract to the concrete: subjective reading of the urban space. *Journal of Urban Design*, *6*(2), pp. 129–150 https://doi.org/10.1080/13574800120057818

Kallus, R., & Churchman, A. (2004). Women's struggle for urban safety. The Canadian experience and its applicability to the Israeli context. *Planning Theory & Practice*, *5*(2), pp. 197-215. https://doi.org/10.1080/14649350410001691754

Keane, C. (1998) Evaluating the influence of fear of crime as an environmental mobility restriction on women's routine activities. *Environment and Behavior*, *30*(1), pp. 60–74. https://doi.org/10.1177/0013916598301003

Kearl, H. (2010). *Stop Street Harassment: Making Public Places Safe and Welcoming for Women*. Santa Barbara: Bloomsbury Publishing.

Kern, L. (2020) *Feminist City: Claiming Space in a Man-made World*. London and New York: Verso.

Konstantinović Vilić, S., Petrušić, N., Beker, K. i Žunić Natalija (2022) *Nasilje prema ženama i devojčicama u javnom prostoru*. Pančevo: FemPlatz.

Koskela, H. (1997) 'Bold walk and breakings': women's spatial confidence versus fear of violence. *Gender, Place and Culture*, 4(3), pp. 301–319. https://doi.org/10.1080/09663699725369

Lenton, R., Smith, M. D., Fox, J., & Morra, N. (1999). Sexual harassment in public places: Experiences of Canadian women. *Canadian Review of Sociology/Revue canadienne de sociologie*, *36*(4), pp. 517-540. https://doi.org/10.1111/j.1755-618X.1999.tb00962.x

Listerborn, C. (2016). Feminist struggle over urban safety and the politics of space. *European journal of women's studies*, *23*(3), pp. 251-264. 10.1177/1350506815616409

Lofland, L. (1984) Women and urban public space. *Women and Environments*, *6*(2), pp. 12–14

Mamula, M. (ur.) (2006). *Stanje seksualnih prava žena u Hrvatskoj – rezultati istraživanja*. Zagreb: Ženska soba.

Morrell, H. (1996) Women's safety. In: C. Booth J. Darke & S. Yeandle (Eds) *Changing Places: Women's Lives in the City*. London: Paul Chapman, pp. 100–110.

Nasar, J. L. & Jones, K. M. (1997) Landscapes of fear and stress. *Environment and Behavior*, 29(3), pp. 291–323. https://doi.org/10.1177/001391659702900301

Radovanović, G. i Đan, A. (2015) *(Ne)bezbedne u javnom prostoru, Kvalitativna studija o bezbednosti žena u javnom prostoru u Novom Pazaru*. Beograd: Beogradski centar za bezbednosnu politiku.

UN Women. (2018) *Safe cities and safe public spaces*. New York: UN Women.

UN Women. (2020) *Safe Public Spaces*. New York: UN Women.

Valentine, G. (1990) Women, fear and the design of public space. *Built Environment*, 16(4), pp. 288–303.

Wekerle, G. B., Peterson, R. & Morley, D. (Eds) (1981) *New Space for Women*. Boulder: Westview Press.

Women in Cities International (WICI), Plan International & UN-HABITAT (2013). *Adolescent Girls' Views on Safety in Cities*. UNHABITAT

Thematic Session 4: Children as Victims of Crime

Ivana STEVANOVIĆ*
Ljubinka MARKOVIĆ**

Original Scientific Paper
DOI: 10.47152/Palic2024.12

THE POSITION OF JUVENILE VICTIMS AND WITNESSES IN CRIMINAL PROCEEDINGS: WHERE ARE WE NOW AND WHAT IS NEXT

Abstract: In this paper, the authors analyze the position of juveniles who are victims and witnesses in criminal proceedings in the Republic of Serbia and the compliance of the national legislative framework with international and European standards regarding the rights, support and protection of juveniles as particularly vulnerable victims and witnesses. Emphasizing the importance of defining a strategic framework and the necessity of improving the normative framework, the authors insist that the greatest challenge in this field will be establishing a network of Victim and Witness Support Services at the national level and, in order to achieve this, a precise plan for gradually enhancing the availability of the network is essential, both in terms of geographical coverage and diversity of available services, with a clearly defined development timeline. They also indicate that without dedicated rooms featuring audio and visual transmission devices, it is impossible to prevent secondary victimization of minors during their testimonies in criminal proceedings. Furthermore, continuous specialized training and education for all participants in the process are crucial.

Keywords: juveniles, victims, witnesses, position improvement

1. INTRODUCTORY REMARKS

With the adoption of the European Union Directive establishing minimum standards on the rights, support, and protection of victims of crime (hereinafter referred to as the "Directive")[1], and the strengthening of victims' position within the criminal justice system, Serbia, as an EU candidate country, has the obligation to align its national legislative framework with the provisions of the Directive. To fulfill the tasks set by the European Commission for the Republic of Serbia, a comprehensive set of activities is outlined in the Action Plan for Chapter 23 (based on the Revised Action Plan for Chapter 23).[2] First of all, the Action Plan includes a set of activities aimed at improving the position of victims in general, regardless of the type

* PhD, Senior Research Fellow and Director of the Institute of Criminological and Sociological Research, Belgrade, https://orcid.org/0000-0002-4588-3447. E-mail: ivanacpd@gmail.com. The current paper is part of a research endeavor funded by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia, conducted by the Institute of Criminological and Sociological Research, 2024, number 451-03-66/2024-03/200039.

** Psychologist, senior advisor to the Department for Juveniles of the High Court in Belgrade. E-mail: ljubinka.markovic@bg.vi.sud.rs.

[1] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA (OJ L 315 of 14 11. 2012).

[2] Revised Action Plan for Chapter 23 & Report 3/2023 on the implementation of the revised Action Plan for Chapter 23, Belgrade: December 2023, available at: http://www.mpravde.gov.rs/files/Akcioni%20plan%20PG%2023.pdf.

of criminal offence. Additionally, the Action Plan outlines various activities in different segments aimed at improving the position of specific, particularly vulnerable categories of victims. Furthermore, the EU has emphasized that Serbia should ensure access to basic support services and facilitate referrals to victim assistance organizations by the police. The EU has called on Serbia to actively promote and monitor the implementation of these rights, as well as to organize an adequate number of related training sessions.[3]

Appreciating the importance of the planned activities outlined in the Action Plan for Chapter 23 (that is, the Revised AP for Chapter 23), within the framework of the IPA 2016 program, the European Union has approved funding for the implementation of the Project to Support and Assist Victims and Witnesses of Criminal Offences in the Republic of Serbia. As part of the project activities, among other things, expert support has been provided to the relevant working group responsible for developing the National Strategy on the Rights of Victims and Witnesses of Crime in the Republic of Serbia (hereinafter referred to as the "Strategy") and its accompanying action plan. During the period from July 2018 to July 2019, after numerous working group meetings and two cycles of public consultations, the final draft of these strategic documents was prepared and adopted by the Government of the Republic of Serbia under the title "National Strategy on the Rights of Victims and Witnesses of Crime for the Period 2020-2025",[4] with its implementation specified through two three-year action plans. The basic source of EU standards on which the objectives of these strategic documents and planned measures are based is the Victims' Rights Directive and within the comprehensive approach to improving the position of victims and witnesses of crime, significant attention in the Strategy and both Action Plans is devoted to improving the normative and institutional framework, as well as establishing training systems in this field.

Bearing in mind the above, the primary goal of this paper is to emphasize the importance of implementing international standards on criminal law instruments for the protection of victims and witnesses in criminal proceedings into the national normative framework, primarily with the aim of improving the position of children (minors) who are victims and witnesses as particularly vulnerable categories of victims from the aspect of reducing the consequences of secondary victimization during their testimonies.

2. IMPROVING THE POSITION OF PARTICULARLY VULNERABLE CATEGORIES OF VICTIMS

Protecting the rights of particularly vulnerable categories of victims and ensuring their full implementation in practice represent a central aspect of building the new system outlined in the Strategy and Action Plan. Notably, during criminal proceedings, a particularly vulnerable category of victims refers to individuals for whom special protective measures are deemed necessary based on individual assessment. The application of these measures includes the following: 1) Taking statements from victims in designated rooms; 2) Taking statements by professionals trained for that purpose; 3) Allowing a person of the same sex as the victim to take the statement, especially in cases of sexual violence, gender-based violence, and violence in intimate partner relationships, unless the statement is taken by the prosecutor or judge; 4)

[3] European Union Common Negotiation Position for Chapter 23, available at: *http://mpravde.gov.rs/files/Ch23%20EU%20Common%20Position.pdf*.

[4] *National Strategy on the Rights of Victims and Witnesses of Crime for the Period 2020-2025*, "Official Gazette RS", no. 30/18.

Using audio-visual methods for recording statements; 5) Using the opportunity to conduct victim interviews in separate rooms rather than in the courtroom; 6) Avoiding unnecessary questioning related to the victim's private life and 7) Allowing a hearing to take place without the presence of the public (Article 23 of the Directive).

Child victims in the course of criminal proceedings have special guaranteed rights according to the Directive. Within the meaning of Article 24 of the Directive, EU member states are required to ensure that all interviews with child victims during investigations are audiovisually recorded and such recorded interviews may be used as evidence in criminal proceedings. In accordance with national criminal law, member states should appoint a special representative for child victims where the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest, or where the child victim is unaccompanied or separated from the family. Where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility. Where the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim shall, for the purposes of this Directive, be presumed to be a child (Kolaković-Bojović, 2018: 175-178).

Furthermore, it is important to note that the European Court of Human Rights has concluded in some of its judgments that certain categories of witnesses, who are also victims of criminal offenses, have special interests in criminal proceedings and, due to specific types of offenses committed against them and other circumstances, such as gender, age, lifestyle, etc., fall into the category of so-called "particularly vulnerable" witnesses. This especially applies to children who are victims of crimes against sexual integrity and crimes of domestic violence. According to the opinion of the court, there is a high degree of risk of "secondary victimization" with this category of witnesses, so the court was of the opinion that such individuals would be significantly traumatized by facing the accused during the trial, which is why it is justified to take certain measures to protect both the intimate sphere of these witnesses and victims, i.e. persons harmed by criminal offences, as well as their psychological well-being, which could be seriously threatened or injured if these persons appeared directly in court (Stevanović, Vujić, 2020: 97). Additionally, the European Court of Human Rights pays special attention to the "possibility" of using statements made by witnesses during earlier stages of criminal proceedings, particularly during investigations. Namely, as pointed out by theorists such as professor Škulić, "the court in some of its decisions: *Windisch,*[5] *Unterpertinger*,[6] *Saidi*,[7] *Rachdad*,[8] concluded that the use of statements from earlier stages of criminal proceedings, without directly examining witnesses during the main trial before the court, which should decide on the subject of criminal proceedings, is not excluded in principle, but that it is possible only under certain restrictive conditions" (Škulić, 2011: 348-366). In such situations, according to the opinion of the court, it is essential that the witness objectively cannot be present at the trial, either due to reasons such as being untraceable, because his whereabouts are unknown, or because he is deceased, or there is some other objectively serious and legitimate reason for the witness's non-attendance at the main hearing. Also, it is important that the defense, in the previous stages of the proceedings in which such a witness gave his testimony,

[5] Case of Windisch v. Austria (*Application* no.12489/86), judgment dated 27 September 1990.

[6] Case of Unterpertinger v. Austria (*Application no.9120/80*), judgment dated 24 November 1986.

[7] Case of Said*i* v. France (*Application no.14647/89*), judgment dated 20 September 1993.

[8] Case of Rachdad v. France (*Application no. 71846/01*), judgment dated 13 November 2003.

had the opportunity to examine him, and that, in addition, the official actors of the criminal proceedings, as well as the state authorities in general, are not held responsible for the witness's absence in the specific case (Škulić, 2015: 19-22).

At the level of international standards, there is a particular emphasis on the need to establish special measures for the protection and assistance of children, i.e. defining provisions that promote the necessity of establishing national and international cooperation in the prevention and suppression of violence against children (Stevanović, 2014: 33). An important step also involves the implementation of proclaimed standards within the normative framework of the Republic of Serbia, which arises from the ratification of the Optional Protocol to the *Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography* (hereinafter referred to as the *Protocol*)[9] and the *Council of Europe convention on the protection of children against sexual exploitation and sexual abuse*,[10] as well as amendments and additions to the relevant criminal procedural framework in accordance with ratified conventions.

Besides ratified international treaties and 'soft law,' such as *Guidelines on Justice in matters involving child victims and child witnesses of crime*, serve as important guidance for states in developing a normative framework in the observed field.[11] In the spirit of the *Guidelines on Justice in matters involving child victims and child witnesses of crime,* children should be treated with care, taking into account their personal situation, immediate needs, age, gender, disability, and level of maturity, while fully respecting their physical, mental, and moral integrity (*right to dignity of a child*). Child victims and witnesses should have access to justice without discrimination based on race, skin color, gender, language, religion, political or other opinions, national, ethnic, or social origin, property, disability, or other status (*right to protection against discrimination*). Additionally, child victims and witnesses, their parents or guardians, and legal representatives should be adequately and promptly informed, of, *inter alia*: a) the availability of health, psychological, social, and other relevant services and support; b) the role of child victims and witnesses in the proceedings, timing, location, and manner of testimony; c) the course of criminal proceedings and all decisions related to them; and d) opportunities to make property claims in criminal or civil proceedings (*right of a child to information*). It is essential to ensure that child victims and witnesses can freely express their views and concerns related to their involvement in legal proceedings, in line with their age (*right of a child to express views*). Experts should develop and implement measures to support child victims and witnesses, facilitating their testimony and understanding of the stages of criminal proceedings (*right to expert support*). Also, child victims and witnesses should enjoy the right to privacy (*child's right to privacy*). Professionals should especially consider the sensitivity of child victims and witnesses during interviews conducted in rooms specifically designated for examining children, as well as adapt the course of court proceedings to their needs by taking recesses during a child's testimony, hearings scheduled at times of day appropriate to

[9] *Law on Ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography,* "Official Gazette of the FRY - International Agreements", no. 22/02.

[10] *Law on Ratification of the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse,* "Official Gazette of the FRY - International Agreements", no. 1/2010.

[11] Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Annex, Section, V-XIV, ECOSOC Resolution 2005/20, *http://www.un.org/en/ecosoc/docs/2005/resolution%20 2005-20.pdf*, 23.7.2017.

the age and maturity of the child, as well as an appropriate notification system between relevant authorities to ensure the child goes to court only when necessary. At the same time, it is necessary to reduce the number of interviews and hearings of child victims and witnesses to the minimum possible extent in order to avoid unnecessary contact with other participants in the proceedings. In addition, it is recommended that child victims and witnesses be protected from cross-examination by the defense (*right to protection of children during court proceedings*). Where the safety of a child victim or witness may be at risk, appropriate measures should be taken to protect the child from such risk before, during and after the justice process. Such safeguards could include: a) avoiding direct contact between child victims and witnesses and the accused; b) ordering pre-trial detention of the accused, placing the accused under house arrest, or other forms of deprivation of liberty for the accused; c) ensuring police protection for child victims and witnesses (*ensuring security*). Experts should develop and implement comprehensive and tailored strategies and interventions in cases where there is a risk of secondary victimization of child victims. When devising strategies, the nature of victimization should be taken into account, whether it is domestic violence or abuse in an institutional environment, sexual exploitation, or human trafficking (*right to protection from secondary victimization*). Finally, child victims should have access to reparation to achieve full redress, reintegration, and recovery. Reparation may include restitution from the offender, aid from victim compensation programmes administered by the state and damages ordered to be paid in civil proceedings (*right to reparation*).

Compliance of the national normative framework with international standards

The Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (hereinafter referred to as the Law on Juveniles)[12] basically contains norms aimed at reducing the consequences of secondary victimization for juvenile victims when they testify as witnesses. However, what lies ahead is the necessity for normative alignment, primarily with the provisions of the Criminal Procedure Code related to prosecutorial investigations, as well as more precise solutions concerning the use of audio-video links, explicit prohibitions on confrontation, and the impossibility of cross-examination and asking suggestive questions to juveniles. This is because, according to the opinions of experts and the scientific community, the most significant practical problem arises from the fact that although the Criminal Procedure Code[13] generally prohibits asking witnesses leading questions (suggestive questions), it allows such questions during cross-examination at the main trial (Article 98 of the Criminal Procedure Code). In our opinion, the current solution does not exclude the possibility of cross-examination of particularly vulnerable witnesses, including situations where the witness is a minor. According to some authors, this is a flaw that is not rectified even by Article 104, paragraph 1, which stipulates that an especially vulnerable witness may be examined only through the authority conducting the proceedings, since the questions are formulated by the examining party, which would mean that they can be suggestive in nature. A potential solution to the current situation would be a complete ban on asking suggestive questions to minors (Škulić, 2014: 43-63; Škulić, 2016; 77-78; Stevanović, 2019: 164)

Furthermore, we believe that even though the legislator generally excludes confrontation between the juvenile victim, who falls into the category of particularly vulnerable individuals,

[12] *Zakon o maloletnim učiniocima krivičnih dsela i krivičnopravnoj zaštiti maloletnih lica, "Službeni glasnik RS"*, broj 85/05.

[13] *Zakonik o krivičnom postupku*, "Službeni glasnik RS", broj 72/11, 101/11, 121/12, 32/13, 45/13 и 55/14.

and the accused, in practice, this norm is not consistently followed in every specific case. The *ratio legis* behind this provision is rooted in the fact that confrontation is inherently a highly tense procedural action, the essence of which is to provoke an appropriate "conflict" between two opposing witnesses, with the aim of inducing one of them to deviate from a false statement or in order to enable the judge to form a more immediate impression of the credibility of evidence and the overall reliability of conflicting testimonies. However, in practice, confrontation rarely leads to deviations from previously given statements; it is generally considered an ineffective procedure. Consequently, in cases involving criminal offenses against minors, where confrontation is formally prohibited when the minor is in an especially vulnerable state (categorized as "particularly vulnerable individuals"), we believe that confrontation, as an action that is at the same time extremely tense and of a conflicting nature in principle, and is not effective enough in practice, as a rule, should not even be carried out (Škulić, M., 2015: 22-26). We are of the opinion that the above should be made impossible by establishing an explicit prohibition of confrontation for all criminal offenses against minors involving an element of violence, in accordance with Article 150 of the Law on Juveniles (Stevanović, Vujić, 2020: 100).

It is necessary to harmonize provisions related to the legal representative that a juvenile victim must have from the first interrogation of the accused. According to the current solution, if a minor does not have legal representative, the presiding judge will appoint an attorney with specialized knowledge in child law and criminal protection of minors, which does not align with the spirit of the existing Criminal Procedure Code, where the prosecutor oversees both the investigative and pre-investigative proceedings. In this regard, we believe that it should be stipulated that the "procedural body" appoints a legal representative in cases where the minor lacks one (Stevanović, Vujić, 2020: 100-103).

Additionally, it is essential to emphasize the significance of provisions related to victims' right to information and access to information. Relevant international norms and standards address three key aspects concerning these rights: a) establishing a list of information that must be accessible to victims from their initial contact with the procedural body (even before filing a criminal complaint); b) determining a list of information must be available to victims during the criminal proceedings (after the criminal process has been initiated) and c) defining the methods of informing victims, i.e. ensuring their access to information.

These provisions, by their nature, serve as an operational framework for exercising the rights guaranteed by the Criminal Procedure Code, rather than directly prescribing those rights within this law. However, there are exceptions to this rule, as certain segments of criminal legislation are still not fully aligned with relevant standards (particularly Directive (2012)029EU).[14] We are of the opinion that neither the Criminal Procedure Code nor the Law on Juveniles adequately address the obligation of the procedural authorities to provide the injured party with information, starting from the first contact with the procedural authority, in a language he understands, in accordance with the provisions of Art. 4 and 6 of Directive 2012/029EU, which would lead to the compliance with Article 31 of the *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Lanzarote, 25.X.2007 (Lanzarote Convention)*.[15]

---

[14] *Directive of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime on the strengthening of the position of victims of crime (EU/2012/29).*

[15] *Law on Ratification of the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse,* "Official Gazette of the FRY - International Agreements", no. 1/2010-70.

Also, the national criminal legislation does not recognize the right of the victim to be informed about the release of the defendant/convict, in accordance with Art. 32-33 of the Directive. Furthermore, as already indicated, all relevant information, in line with the Council of Europe Guidelines on Child-Friendly Justice, should be provided in a language that the child understands and that is appropriate for the child (see more: Kolaković-Bojović, Stevanović, Vukićević, 2022: Kolaković-Bojović, Stevanović, Vukićević (2022) *Analysis of the Normative and Institutional Framework of Child Friendly Justice in Serbia: summary report and recommendations.).*

The right of the juvenile victim to express their opinion and actively participate in the proceedings is manifested through two sets of procedural rights provided by the Criminal Procedure Code and the Law on Minors. In accordance with the regional tradition, the victim in criminal proceedings is granted a comprehensive set of rights that enable him not only to be heard as a witness in the proceedings in the capacity of the injured party as a prosecutor, private prosecutor or simply as an injured party, through attending procedural actions and actively participating in them, with the right to access case files, propose evidence, examine the accused, witnesses, and experts, as well as the extensive right to appeal. Both aspects of the right are age-restricted but in different ways. Regarding the right to express their opinion, there is no strict age limit, as the Criminal Procedure Code excludes the possibility of testimony by a minor who: "considering their age and mental development, is incapable of understanding the significance of the right not to testify." As for undertaking procedural actions, the limitation is only relative, as the age limit of 16 years does not prevent a minor from exercising legally guaranteed rights, but only from doing so directly. Specifically, according to Article 56 of the Criminal Procedure Code, in case the injured party is a minor or a person completely lacking business capacity, his/her legal representative shall be authorised to make all statements and perform all actions to which the injured party is entitled under this Code. Having regard to all the above, the right of the juvenile victim to express his/her views and actively participate in the proceedings according to the criminal legislation of the Republic of Serbia is fully in accordance with the relevant international standards.

3. TECHNICAL EQUIPMENT, ENGAGED HUMAN RESOURCES, AND ORGANIZATION OF PROCEEDINGS WITH CHILD VICTIMS AND WITNESSES OF CRIMINAL OFFENSES IN THE REPUBLIC OF SERBIA

As we have already pointed out, the improvement of the position of victims and witnesses in criminal proceedings in the Republic of Serbia occurs through two closely related processes. One refers to the improvement of the application of all statutory process requirements that protect victims and witnesses in the criminal proceedings themselves, aiming to reduce the consequences of secondary victimization and create optimal conditions for obtaining valid testimony. The other process is related to improving the position of victims and witnesses of criminal offenses, aimed at addressing the broader needs of individuals who find themselves in this role, enabling their access to and exercising of all guaranteed rights, both during the criminal proceedings and after its conclusion. As demonstrated in the previous section, both of these processes are accompanied by intensive efforts to improve the existing primary and secondary legislation in accordance with the highest international and European standards, and when it comes to juvenile victims or witnesses of criminal offenses, to create conditions for the full implementation of Special provisions regarding the protection of minors as victims in criminal proceedings, in terms of technology, organization and personnel.

Juvenile victims/injured parties and witnesses of criminal offenses have had a special position, i.e. the status of particularly vulnerable witnesses, even in previous legislative solutions, but it was the Law on Juveniles that defined more precisely the procedural possibilities to protect the child/minor witness from secondary victimization during criminal proceedings and negative consequences for their development.

The beginning of the implementation of this law is characterized by the absence of resources that would enable the full application of Article 152 of the Law on Juveniles. The lack of technical means for image and sound transmission and the absence of experts who have undergone appropriate training on children's rights in contact with the law underscore the importance of applying the Law on Juveniles both in proceedings involving minors and in regular criminal proceedings resulted in the fact that the provisions on protection of juvenile victims have been applied sporadically and rarely, mostly within juvenile justice, i.e. proceedings involving minors.

Soon, massive, and intensive training sessions related to children's rights, the implementation of the Law on Juveniles, and training related to the protection of victims and witnesses began. These training sessions included members of the police, prosecution, judiciary, and guardianship authorities. A certificate of completed training became essential for handling cases where minors are perpetrators or where minors are witnesses or victims of criminal offences. Although all representatives were aware of the suffering that child victims endure during criminal proceedings, they assumed it was necessary to establish facts and render well-founded judgments against the perpetrators. The training sessions highlighted the negative consequences of inadequate treatment of minors in criminal proceedings and provided guidelines for preventing such issues with new solutions introduced by the Law on Juveniles at that time. However, provisions regarding the protection of juvenile victims (which apply to the most serious criminal offenses) have almost never been applied in regular criminal proceedings. Only a few judges have decided to take statements from children during the main trial using two networked computers and Skype.

In 2014, thanks to donations from the Kingdom of Norway, special rooms equipped with video conferencing connected to the courtrooms were installed in five higher courts in Serbia (with the highest number of cases involving child victims). The Higher Courts in Belgrade, Novi Sad, Niš, Valjevo, and Vranje now have the capability to hear testimony from juvenile victims and witnesses during the main hearing, when necessary, with measures in place to protect against secondary victimization.

In 2015, with the aim of improving the protection of child victims, within the project "Advancing child rights through strengthening the justice and social welfare systems," implemented by UNICEF, in collaboration with the Ministry of Justice and the Ministry of Labor, Employment, Veteran, and Social Affairs, Units for Assistance and Support to Children who are Victims and Witnesses in Criminal Proceedings were established. These units are formed at the headquarters of all four courts of appeal. They are mobile, equipped with a car and portable technical equipment for transmitting images and sound, with the capability of recording and connecting to the prosecutor's office or the court handling the case. This has created the possibility for a child to give testimony and answer questions while staying in a safe space outside the courtroom or prosecutor's office, covering the entire area of the court of appeal. The units consist of experts (psychologists, educators, social workers) who have prior experience working with abused and neglected children within the social welfare system and have undergone additional specialized training to support child victims and witnesses in criminal

proceedings. They have also received training in forensic interviews. Initially, they were primarily retained by the prosecutor's office (due to prosecutorial investigations), but they were also retained by courts and social welfare centers during the assessment process to determine whether a child had been exposed to violence within the family. The technical and highly professional personnel skills of these Units, coupled with the fact that their services were available throughout the territory of the Republic of Serbia, constituted one of the effective responses of the system to the needs of protecting children as particularly vulnerable witnesses in criminal proceedings. The units were involved in an exceptionally large number of criminal cases. In almost all cases where a child's statement was recorded during the prosecutorial investigation, it was accepted by the court as valid evidence. Police officers, prosecutors, judges, and representatives of guardianship authorities felt significant relief in their work because they were confident that children, as particularly vulnerable witnesses, would have the optimal conditions and not only would secondary victimization be prevented, but the likelihood of a child providing a credible and detailed statement in criminal proceedings would also be higher. However, by discontinuing the Units three years after their establishment (due to the project's termination and the authorities' unwillingness to make this service and the unit itself permanent and sustainable), the process of improving the position of child victims and witnesses took several steps backward.

It is essential to note that despite the dissolution of the Units and the lack of technical equipment for transmitting images and sound in most courts and prosecutor's offices, these two projects, along with the continued training, had an exceptionally positive impact on changing attitudes, increasing sensitivity, and readiness to treat children, as particularly vulnerable witnesses, adequately in criminal proceedings. All representatives of institutions involved in criminal proceedings emphasize the priority of improving their own knowledge, the technical equipment of their institutions, and the need to involve appropriate experts in the child's hearing process.

3.1. Technical Equipment – Current Status

Through a project and donation from the OSCE in partnership with the Ministry of Justice of the Republic of Serbia, four additional courts have been equipped with AV rooms during the period from 2021 to 2023: the Higher Court in Kragujevac, the Higher Court in Kruševac, the Higher Court in Novi Pazar, and the Higher Court in Šabac. In addition to these four higher courts, an AV room has been reinstalled at the Higher Court in Belgrade because the previously existing technical equipment was incompatible with the new electronic system after the renovation of the Court building, i.e., the Palace of Justice. The electronic system server used in these video conference connections at the courts has been installed at the Judicial Academy.

In communication with the OSCE representative, it was reported that the project plans to equip an additional five courts with special rooms for taking statements from children and particularly vulnerable witnesses during this year (equipped with video conference links for audio-visual transmission to courtrooms, commonly known as "AV rooms") and other courts will be equipped in the coming years as well. The Ministry of Justice determines the priority list based on the number of cases involving juvenile victims.

The following table presents data on the technical capabilities of higher courts to conduct hearings via video conferencing with children or minors as victims or witnesses outside the courtroom:

Table: Higher Courts in Serbia - Technical Equipment for Implementing Article 152 of the Law on Juveniles, April 2024

	Higher courts	A special room for taking statements from children and other particularly sensitive witnesses	Installed audio-visual equipment
1	Belgrade	yes	yes
2	Valjevo	yes	yes (But they point out that the equipment is outdated and without the possibility of connecting to premises outside the court)
3	Vranje	yes	yes
4	Zaječar	no	no
5	Zrenjanin	no	no
6	Jagodina	no	no
7	Kragujevac	yes	yes
8	Kraljevo	no	no
9	Kruševac	yes	yes
10	Leskovac	no	no
11	Negotin	no	no
12	Niš	yes	yes
13	Novi Pazar	yes	yes
14	Novi Sad	yes	yes
15	Pančevo	no	no
16	Pirot	no	no
17	Požarevac	no	no
18	Prokuplje	no	no
19	Smederevo	no	no
20	Sombor	no	no
21	Sremska Mitrovica	no	no
22	Subotica	no	no
23	Užice	no	no
24	Čačak	no	no
25	Šabac	yes	yes
	Total	9 have an AV room. 16 do not have an AV room.	9 have installed AV equipment. Of the 16 courts that do not have AV technology, the majority state that they use some form of assistive technology or the AV technology of the higher public prosecutor's office they share the building with.

As part of the preparation for this paper, all higher courts in Serbia were contacted. Interviews were conducted with secretaries, judges specializing in juvenile cases, and, in two instances, with court presidents. They reiterated the priorities emphasized by representatives of other institutions within the system police, prosecutor's offices, and social welfare centers: enhancing their own knowledge, improving the technical equipment of their institutions, and the need to involve appropriate experts in the child's hearing process.

Regarding some basic technical capabilities, all courts have ramps to facilitate entry for individuals with locomotor system issues.

When it comes to attending court and avoiding the possibility of victims and witnesses encountering the accused, in some courts, this is technically challenging due to space constraints and overcrowding in buildings shared with prosecutor's offices and other courts. To address this issue, particularly vulnerable witnesses are invited slightly earlier than the

scheduled hearing time. Until the hearing, they wait in an AV room or a designated office for representatives of the Service for Assistance and Support to Victims and Witnesses.

The problem of overcrowded court buildings exists in almost all courts. Most interviewees from courts without AV rooms highlighted the difficulty of finding suitable space for AV room installation within the court. Another challenge is finding suitable rooms for housing the Service for Assistance and Support to Victims and Witnesses. Representatives of this service often share office space with other judicial assistants.

In the communication with the representatives of the higher courts lacking the capability for hearing through the video conference connection installed in the AV room, it is clear that they recognize the need for special protection for minors as victims and witnesses. They state that they strive to find appropriate approaches in each individual case. Some utilize technical equipment for audio-visual transmission from the prosecutor's office if available within their building. Many use other (hand-held) technical devices for audio-visual transmission and/or recording, and install the connection *ad hoc*.

Courts that have AV rooms, at the request of other (primary) courts or prosecutor's offices, and in accordance with their schedule, approve the use of this room (and the corresponding courtroom). In cases where it was not possible for a minor to be heard via video-conference link, as some court representatives have stated, the hearing was conducted in such a way that the accused was relocated to the back of the courtroom, and the child was directed by security personnel or parents not to turn around and to communicate only with the judge.

Certainly, this model, if there are no technical means, is protective, but it still carries a high risk of secondary victimization. The child is positioned between the defendant and their defense attorney, unable to control the situation even with his/her glance; he/she can hear their comments and questions (including those that the judicial panel will reject because they do not serve to establish facts but rather to destabilize witnesses), resulting in a high level of negative distress for the child throughout the hearing. In addition to secondary victimization, the validity of the obtained statement is also questioned.

3.2. Human Resources – Expertise of Professionals Today

Regarding engaged human resources, it is important to reiterate that certification for completing training on the application of the Law on Juveniles and knowledge of children's rights, as well as training on handling victims and witnesses of criminal offenses, is mandatory for all police officers, prosecutors, and judges. The problem arises due to frequent and expected career fluctuations within the prosecutor's office and courts. These trainings are also necessary for lawyers. Attorneys for children as particularly vulnerable witnesses can be appointed ex officio only if they possess these certificates. If the chosen attorney for the child does not have the certificate, the authority conducting the proceedings must inform the parent or guardian about this.

However, the step that is most demanding in terms of organization and finances during the alignment process with the Directive, in our opinion, is the establishment of an efficient and qualified network of Services for Support to Victims and Witnesses, since, for years, efforts in this area have mostly been based on various project activities, which has also raised questions about sustainability in ensuring continuity in service quality and the establishment of specialized training systems (Kolaković-Bojović, 2017: 144-146). Currently, in practice, the Services for Assistance and Support to Victims and Witnesses are designed as primary protection for individuals appearing as victims or witnesses in criminal proceedings before the prosecution

and court. The role of these Services extends beyond mere assistance and support in criminal proceedings. This relatively new institution (introduced into the judiciary about a decade ago) has an exceptionally demanding role – to provide conditions that will not cause secondary victimization to the witness during their participation in the proceedings, but also to provide them with information crucial for their protection, rehabilitation, and realization of all their rights. Representatives of the Service collaborate directly with victims and witnesses, their families, competent judges, and prosecutors, as well as with all relevant contact points of the National Network for Assistance and Support to victims and witnesses.

Numerous strategic documents have been developed, several manuals for procedures have been created, and various training sessions have been conceptualized, implemented, and continue to be carried out, several of which focus on children as victims and witnesses, but the effects of the invested efforts are not yet proportional to the achievements. In positive examples, the personal qualities of engaged Service representatives and the commitment of relevant personnel within the court or prosecution play a dominant role.

This points to the problem of the lack of criteria for selecting judicial or prosecutorial associates for this Service. In 2015, the High Judicial Council determined in its Instructions on access, work system, and procedures of the Service for Assistance and Support to Victims and Witnesses that judicial and prosecutorial associates should be engaged in this activity. This raises some open questions in the domain of labor law relations, such as evaluating and promoting these associates as civil servants, as well as how they can meet the performance criteria for selecting judges and prosecutors. These are undoubtedly demotivating factors for the engagement and effectiveness of judicial associates within the Service. Often, these associates also handle other (regular) tasks. Simultaneously, the attrition of trained representatives of the Service negatively impacts the quality, stability, and continuity of this (judicial) service, directly affecting the users of their services.

This complex role becomes even more challenging when victims and witnesses are children, i.e., minors, whose needs are specific and require specialized knowledge not taught in legal studies. Let us remind ourselves that only three psychologists are employed in the public prosecutor's offices and courts in Serbia – at the Higher Public Prosecutor's Office in Belgrade, the Higher Court in Novi Pazar, and the Higher Court in Belgrade (where this position has existed in the Department for Juveniles since 1970). Certainly, all representatives of the Service must have knowledge about children's rights, international and domestic standards related to the special protection of child victims and witnesses in criminal proceedings, including provisions of the Criminal Procedure Code and the Law on Juveniles, as well as the position and rights of the child arising from the Family Law.

Established trainings and printed manuals, in addition to referring to the mentioned legal framework, aim to provide all representatives of the Service with basic knowledge about specific developmental and other characteristics and needs of the child, on the manner how to communicate with the child (and their parents), when to involve the guardianship authority, how to recognize the child's special needs, and how to engage relevant experts (e.g., in the Manual for Dealing with Child Victims and Witnesses in Criminal Proceedings (Cerović, Marković, 2023: 68-74), a proposal for a rapid assessment scale for children's needs is provided); the role of the Service in this context, as well as how to create a collaborative network, are also addressed, all while respecting the primary jurisdiction of the authority conducting the proceedings. All of this is intended to facilitate the easy and efficient development of an

initial individual action plan for child victims/witnesses in criminal proceedings, with regular revisions of this plan.

In this way, a significant number of prosecutorial and judicial associates have been trained. However, not all trained associates are actively engaged in the Service. The Services within courts and prosecutor's offices themselves operate quite diversely. This diversity may be due to varying needs, such as the number of cases involving child (juvenile) victims or witnesses. Most contacted representatives from higher courts have emphasized that they handle a small number of cases where children are victims or witnesses. They have also noted that there is still no well-established need/habit for citizens (as adult witnesses) to reach out to this service. In some courts, representatives of the Service are even involved as examiners, leading discussions about events defined as criminal offenses and asking questions to children on behalf of the authority conducting the proceedings.

The capacities and roles of the Service fall within the domain of support, protection, and assistance to children as they navigate the stressful process of participating in criminal proceedings. It is not founded for representatives of this Service to actively participate in questioning the child, i.e., to ask questions through them. Even when members of the Service are psychologists or other experts in related fields, assuming the role of "questioning" the child diminishes or at least undermines their protective function. Even in specialized services, such as our Units for Assistance and Support for Child Victims and Witnesses in Criminal Proceedings, the person conducting a forensic interview with a child does not participate in providing support or psychological treatment. This is "procedurally" determined in the sciences related to psychological treatment, as well as based on knowledge in the field of caring for victims of criminal offenses, and it remains questionable even when discussing the criminal proceedings themselves.

For services such as forensic interviews or indirect questioning determined by the criminal procedure authority, other experts must be engaged, specifically qualified to encourage i.e. elicit the child's memories in an appropriate manner, avoiding questions that might bias or contaminate their responses, and at the same time, they should closely monitor emotional reactions and respond appropriately as needed. These specialized experts are essential when dealing with particularly vulnerable children (those of younger age, with developmental or other disorders, mental illnesses, severe consequences resulting from exposure to criminal offences, children without adequate parental care, children from marginalized groups, and those living and working on the streets, etc.).

As we have already indicated, the units for assisting and supporting child victims and witnesses of criminal offenses had this profile of experts. With the dissolution of these units, the question arises: which experts can the court or prosecutor's office engage for the specific support of child victims/witnesses and for the criminal proceedings themselves? Article 300, paragraph 9 of the Criminal Procedure Code, as well as Article 152, paragraph 1 of the Law on Juveniles, serve as the basis for engaging these experts. However, the criteria for selection remain unclear, especially when there is no official list of such experts.

In order to better address these dilemmas, in 2023 (within the framework of the project "Improving the Rights of Child Victims and Witnesses of Criminal Offences in the Republic of Serbia," implemented by ASTRA in partnership with UNICEF), an Advocacy Document was drafted to enhance the treatment of child victims and witnesses in criminal proceedings.

Considering that effective performance in these roles requires not only knowledge and skills related to the primary activities of psychologists, child psychiatrists, and other related

professions but also familiarity with the basic procedural requirements for engagement in criminal proceedings, it is proposed that specialized training be organized and that this type of service be licensed. This approach would allow the Ministry of Justice to supplement the existing list of experts with these specialized professionals. This would significantly facilitate the selection of these experts by judges and prosecutors and, overall, improve the protection of child victims and witnesses in criminal proceedings.

3.3. Other aspects that aggravate the position of juvenile victims and witnesses in criminal proceedings

In criminal law practice, several other issues have been identified that hinder the improvement of protection for child victims and witnesses. One of these relates to the lack of records regarding victims or injured parties. Although the Court Rules of Procedure[16] provide for a Register of Injured Parties and Witnesses, intended for the Service for Assistance and Support to Injured Parties and Witnesses, this register is not practically implemented (except in the Special Department for War Crimes and the Special Department for Organized Crime and Corruption at the Higher Court in Belgrade). This situation arises from a justified fear that within the system, data about victims could be compromised, as well as the fact that the Services are still not adequately structured. The register itself is meant to be internal, accessible only to representatives of the Service through a password.

Prosecutors' offices also lack a formally designated register of victims/witnesses who are injured parties. Consequently, it is nearly impossible to gain insight into the total number of victims, including juvenile victims, in criminal proceedings and to plan the organization of their protection at the level of the criminal justice system. While records based on the type of criminal offenses can reveal cases where the victim's youth is a qualifying factor or an aggravating circumstance, they do not provide information on the actual number of victims.

The lack of proper records is not only significant for analysis and planning. In some cases, the lack of records further complicates the position of juvenile victims. For instance, in cases involving the criminal offense of producing, acquiring, or possessing pornographic material and exploiting a minor for pornography, multiple suspects are prosecuted, which are sometimes not discovered and prosecuted at the same time, and the same juvenile victim may be interviewed in multiple cases. This situation also occurs in other types of cases, where proceedings are organized based on the defendants.

In the following example, in addition to other existing problems, the issues mentioned above are evident:

****

Minor A.B. (17 years old) simultaneously appears as an injured party in three separate cases before the juvenile court.

She also appears as an injured party in a prosecutor's investigation against a 64-year-old individual for the criminal offenses of human trafficking and procuring a minor.

In one juvenile case, proceedings are underway against two juvenile girls for human trafficking and procuring.

---

[16] Although the Court Rules of Procedure "Official Gazette RS" no.110/2009, 70/2011, 19/2012, 89/2013, 96/2015, 104/2015, 113/2015, isp 39/2016, 56/2016, 56/2016, 77/2016, 16/2018, 78/2018, 43/2019, 93/2019 i 18/2022.

In two independent cases (handled by different judges), proceedings have been initiated against two minors for rape. These two juvenile girls have previously been involved in other criminal proceedings and have been assigned to judges who are already handling their cases.

The presiding judge in the case involving the two juvenile girls has already included a court psychologist in the preparatory process. By agreement, the court psychologist contacted the parents by phone and offered them the opportunity to come to court for a discussion prior to the hearing, at their convenience and if they wish, to prepare for giving their testimony. The parents readily accepted.

During the conversation, the parents provided information about other cases in which the juvenile girl had been called to testify.

The girl is undergoing treatment at the Counseling Center for Victims of Human Trafficking (CCVHT).

An interview was also held with CCVHT, which highlighted the girl's vulnerability and the high risk associated with testifying in all four criminal proceedings.

An examination of all three "juvenile" cases and communication with the competent Social Welfare Center revealed that there will be highly likely negative consequences if the girl is questioned in all these cases.

The girl is the first of two children. Her parents are very caring and concerned. Due to her reduced mental abilities, the parents have been overly protective. The family environment is favorable. The minor A.B., as a child with special needs, attended a special elementary school for developmentally challenged children. With the introduction of inclusive education, she enrolled in a vocational beauty school.

She was drawn into the chain of prostitution by two school friends (against whom proceedings are being conducted). For several months, her family did not recognize the problem because most of the problematic activities occurred during school hours (from which the minor was absent). Her going out and socializing even pleased her parents, who thought she had finally found friends.

The first signs of trouble emerged when the girl ran away from home for a few days and then had to undergo a gynecological examination and treatment due to a sexually transmitted disease. During that visit, she informed the doctor and her parents that she had been having sexual intercourse with various, mostly unknown men for several months, all of whom were acquainted with her (minor) friends. She often had intercourse with multiple men simultaneously (in an abandoned shack near the school). It hurt, and she didn't like it, but her friends convinced her that she was "grown up now and that's how it should be." They frightened her, saying that if she told her parents, she would no longer be allowed to attend regular school. These friends organized these "gatherings," and she didn't know if or how much money they took from these men.

During her escape from home, she stayed at the house of the 64-year-old man. She had visited him even before, as these "friends" of hers lived there.

Other juvenile judges and the senior public prosecutor leading the investigation against the 64-year-old man were contacted. He had already ordered the expert examination of the girl. Only after the experts' findings are obtained, he plans to appoint a legal representative and make statements.

The court psychologist prepared notes for all four cases and provided notice that it was essential for the girl, as a particularly vulnerable witness, to be interviewed with professional guidance, i.e. the interview should be conducted with the assistance of the Unit for Child Protection in criminal proceedings (which was active at that time)

Despite the written and oral notifications (and warnings), one of the juvenile judges, who was the first to call the minor victim, questioned the girl about all criminal offenses in four proceedings.

The girl was questioned in the presence of her father and a psychiatric expert, without legal representative. Her statement was confusing, lacking clear details, with no distinction among events; she didn't remember most of the incidents or described them in an identical manner.

Not only was the girl subjected to secondary victimization, but it is evident that the obtained statement is of questionable validity.

This statement, obtained in this way, did not carry the weight of substantiated evidence. The criminal proceedings against the accused man, juvenile girls and the juvenile boy were suspended due to lack of evidence.

Losing the status of a human trafficking victim, the girl was left without the possibility of treatment at the CCVHT counseling center.

The court psychologist attempted to contact the girl's parents, but they refused to respond.

The girl's father answered one call. He said that everyone felt very bad. The girl is almost under house arrest. She's afraid to go out. She has withdrawn into herself. Mostly, she sleeps and watches TV. She cries frequently. She doesn't attend school. She will take her grade exam to avoid meeting other students. They don't want to seek other protection, and the girl doesn't want to go through everything again. He added that their younger daughter, who is 15 years old, has also withdrawn into herself. She's ashamed and afraid to leave the house. She's struggling in school… He thanked her and requested that no one from the court or prosecutor's office call them anymore, as it greatly upsets them.

4. CONCLUSION

Improving the normative and institutional framework is of particular importance for the protection of victims and witnesses during criminal proceedings, especially the protection of juvenile victims and witnesses. In order to enhance the legal framework for victims' and witnesses' rights, and considering specific research and analyses aimed at assessing the current situation, we note that the Republic of Serbia has already taken important steps towards alignment with international legal standards, particularly the provisions of the Directive. However, certain amendments are still necessary, including, but not limited to: 1) improving the right to legal assistance, 2) rights to information (timely and accurate information about the victim's rights and the status of the criminal case in which they appear as the injured party), 3) the right to make property claims for juvenile victims, 4) establishing an "individual assessment" to determine specific needs in each specific case, etc. The authors of this paper emphasize and point out that, in addition to amending criminal procedure legislation, specific interventions are also necessary within the appropriate institutional framework.

However, we must reiterate that the most challenging aspects in organizational and financial terms will be the establishment of a network of support services for victims and witnesses throughout the territory of the Republic of Serbia. This system should be based on three key principles: accessibility, maximum utilization of existing resources, and sustainability. Maximum territorial coverage must be the rule, thereby avoiding the previous concentration of service providers exclusively in larger cities, especially Belgrade. To achieve this, a precise plan for gradually improving network accessibility is essential, both in terms of geography and the diversity of available services, with a clearly defined development timeline. Also, without

technically equipped special rooms with installed devices for audio and visual transmission (AV rooms), there are no conditions to prevent secondary victimization of children who are questioned in criminal proceedings.

Furthermore, it is necessary to continue with regular and continuous specialized training and education intended for all participants in the process. Training programs must be designed for several target groups: providers of primary and specialized support, representatives of the judiciary (judges and deputy public prosecutors), lawyers, police officers, and court guards. Additionally, organizing and holding scientific and expert conferences and making printed materials available enhance the sensitivity, capacity, knowledge, and skills of all involved experts and contribute to establishing good practices for handling child victims and witnesses in criminal proceedings.

BIBLIOGRAPHY

Although the Court Rules of Procedure "Official Gazette RS" no.110/2009, 70/2011, 19/2012, 89/2013, 96/2015, 104/2015, 113/2015, isp 39/2016, 56/2016, 56/2016, 77/2016, 16/2018, 78/2018, 43/2019, 93/2019 and 18/2022.

Cerović, I. & Marković, Lj. (2023) Prilog 2 – Smernice za procenu potreba deteta I izradu individualnog plana za svako dete žrtvu ili svedoka u krivičnom postupku – Skala brze procene: *Priručnik za postupanje sa decom žrtvam i svedocima u krivičnim postupcima*, Beograd: ASTRA – Akcija protiv trgovine ljudima.

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA (OJ L 315 of 14 11. 2012).

European Union Common Negotiation Position for Chapter 23, available on: *http://mpravde.gov.rs/files/Ch23%20EU%20Common%20Position.pdf.*

European Union Common Negotiation Position for Chapter 23, available on: *http://mpravde.gov.rs/files/Ch23%20EU%20Common%20Position.pdf*.

Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Annex, Section, V-XIV, ECOSOC Resolution 2005/20.

http://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf, 23.7.2017.

Kolaković-Bojović, M. (2018) "Child Victims in Serbia - Normative Framework, Reform Steps and EU Standards", ed: Stevanović, I. (ed.) *Child Friendly Justice*, Belgrade: Institute of Criminological and Sociological Research.

Kolaković-Bojović, M. (2022) *Konačni izveštaj o praćenju sudske prakse o položaju maloletnih žrtava krivičnih dela pred sudovima u RepubliciSrbiji u 2020. godini.* Institut za kriminološka i sociološka istraživanja, Beograd.

Kolaković-Bojović, M., Stevanović, I., Vukićević, V. (2022) *Analysis of the Normative and Institutional Framework of Child Friendly Justice in Serbia: summary report and recommendations.* Institute of Criminological and Sociological Research, Belgrade.

Law on Ratification of the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse,"Official Gazette of the FRY - International Agreements", no. 1/2010 (*Zakon o potvrđivanju Konvencija Saveta Evrope o zaštiti dece od seksualnog iskorišćavanja i seksualnog zlostavljanja*, „Službeni glasnik RS - Međunarodni ugovori", br. 1/2010).

Law on Ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, "Official Gazette of the FRY - International Agreements", no. 22/02 (*Zakon o potvrđivanju Fakultativnog protokola uz Konvenciju o*

pravima deteta o prodaji dece, dečjoj prostituciji i dečjoj pornografiji,„Službeni list SRJ- Međunarodni ugovori", br. 22/02).

National Strategy on the Rights of Victims and Witnesses of Crime for the Period 2020-2025, "Official Gazette RS", no. 30/18 (*Nacionalna Strategija za ostvarivanje prava žrtava i svedoka krivičnih dela za period 2020-2025 godina*, "Službeni glasnik RS", broj 30/18).

Revised Action Plan for Chapter 23 & Report 3/2023 on the implementation of the revised Action Plan for Chapter 23, Belgrade: December 2023, available at: *http://www.mpravde.gov.rs/files/Akcioni%20plan%20PG%2023.pdf.*

Škulić, M. (2011) "Postupak u kome se pojavljuje oštećeno maloletno lice" u: *Maloletničko krivično pravo,* Beograd: Pravni fakultet Univerziteta u Beogradu & "Službeni glasnik".

Škulić, M. (2016) "Položaj žrtve/oštećenog u krivično-pravnom sistemu Srbije uopšte i u odnosu na Direktivu EU 2012-29", u: Ignjatović, Đ. (ur.) *Kaznena reakcija u Srbiji, VI deo*, edicija *Crimen*, Pravnifakultet Univerziteta u Beogradu.

Škulić, M., (2014) "Zaštita dece/maloletnih lica kao oštećenih i svedoka u krivičnom postupku", u: Vučković-Šahović, N. i dr., *Zaštita dece* žrtava *i svedoka krivičnih dela*, Beograd: International Management Group – IMG.

Škulić, M., (2015) *Normativna analiza položaja* žrtve *krivičnog dela/oštećenog krivičnim delom u krivičnopravnom sistemu Srbije: aktuelno stanje, potrebe i moguće promene*, Misija OEBS-a u Srbiji (dostupno na sajtu: www.podrskazrtvama.rs).

Stevanović, I. (2014) "Krivičnopravn sistem i zaštita maloletnih lica (nacionalni normativni aspekt)", u: Vučković-Šahović, N. i dr., *Zaštita dece* žrtava *i svedoka krivičnih dela*, Beograd: International Management Group- IMG.

Stevanović, I. Vujić, N. (2020), "Maloletno lice i druge posebno osetljive kategorije žrtava krivičnih dela (međunarodni pravni standardi i krivično-procesno zakonodavstvo Srbije)" u: Bejatović, S. (ur.), Žrtva *krivičnog dela i krivičnopravni instrumenti zaštite (Međunarodni pravni standardi, regionalna krivična zakonodavstva, primena i mere unapređenja,* Beograd: Misija OEBS-a u Srbiji.

Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštit imaloletnih lica,„Službeni glasnik RS", broj 85/05.

Zakonik o krivičnompostupku, „Službeni glasnik RS", br. 72/11, 101/11, 121/12, 32/13, 45/13 i 55/14.

Ljubinko MITROVIĆ*
Veljko IKANOVIĆ**

Review Paper
DOI: 10.47152/Palic2024.13

CRIMINAL OFFENSES OF SEXUAL ABUSE AND EXPLOITATION OF CHILDREN IN REPUBLIKA SRPSKA – NORMATIVE AND LEGAL FRAMEWORK AND CURRENT SITUATION

Abstract: In mid-January 2024, almost all media outlets in Republika Srpska (Serb Republic) published a rather worrying news item with the headline: Alarming data: In Republika Srpska, there are 36% more crimes involving children as victims. Behind such a difficult qualification and a journalistic headline that should definitely ring an alarm for all competent institutions lies hidden information according to which, based on statistical data from the Ministry of Internal Affairs of Republika Srpska, the number of crimes against sexual integrity, as well as sexual abuse and exploitation of children in Republika Srpska for 11 months last year have grown by as much as 36%. Namely, according to the data of the aforementioned Ministry, in 11 months of last year, 102 crimes against the sexual integrity of children were recorded, which is 27 more crimes or a percentage of 36% compared to the same period in 2022. What is also very devastating is the severity of the mentioned crimes, therefore, in just 11 months, 13 rapes involving children, 12 sexual harassments, three sexual blackmails, three criminal acts of fornication and one criminal offense of assaulting a helpless person were registered.

The focus of attention of the author of this article is on the criminal acts of sexual abuse and child exploitation provided for in Chapter XV of the current Criminal Code of Republika Srpska. In this report, the authors will give their normative-legal framework in the context of this group of criminal acts, as well as their view of the situation in Republika Srpska.

Keywords: child, criminal offense, Criminal Code of Republika Srpska, sexual abuse and exploitation.

1. CRIMINAL OFFENSES OF SEXUAL ABUSE AND CHILD EXPLOITATION IN GENERAL

Sexual abuse and exploitation of a child is not a phenomenon of the past. Years and decades ago, it was, and still is today, extremely widespread and it leaves long-term consequences for the child victim. Thus, in addition to cruel punishment and killing of children, sexual abuse[1] and exploitation of children were known even in the earliest cultures (Grbić-Pavlović,

* PhD, Full professor at the Faculty of Legal Sciences of the Pan-European University APEIRON in Banja Luka and research associate at the Institute of Comparative Law in Belgrade, https://orcid.org/0000-0002-3809-4183. E-mail: ljubinko58@gmail.com.

** PhD, Full professor at the Faculty of Legal Sciences of the Pan-European University APEIRON in Banja Luka and judge of the Supreme Court in Banja Luka. E-mail: veljko.ikanovic@pravosudje.ba.

[1] The World Health Organization (WHO, 2006) defines child sexual abuse as the involvement of a child in a sexual activity that they do not fully understand, for which they cannot give consent or for which the child is not developmentally prepared, and which represents a violation of the law or social taboos. According to the definition by the American Academy of Child and Adolescent Psychiatry (2014), child sexual abuse is defined as: 1) any sexual act between an adult and a minor or between two minors if one has power over the other, and 2) forcing or persuading a child to participate in a sexual act of any kind (with or without contact). Sexual abuse also includes exhibitionism, exposure of children to

2016: 32). Every day, millions of children in the world are victims of violence, psychological and physical abuse and sexual exploitation. Crimes of this type occur in the family, school or in the environment in which the child lives, and the perpetrators are very often those whom the children trust the most and who certainly should not be the abusers (their parents, teachers, adoptive parents...) (Mitrović, Grbić-Pavlović, 2017: 203-225).

The term "child abuse" refers to a wide set of behaviors, as a rule, of adults who are at risk from the point of view of children and adolescents (bullying, violence, neglect, child abuse, etc.), which are manifested, above all, by parents, others family members or other guardians (Mitrović, Grbić-Pavlović, 2017: 203-225). In the literature, three basic forms of child abuse are most often emphasized, although it is possible for a child to be abused simultaneously and in several ways during his life: emotional (or psychological) abuse, physical abuse and sexual abuse (Đuderija et al., 2006: 7). In addition to the listed forms of abuse, many authors often add the category of neglect, to be precise, child neglect (Jovašević, Ikanović, 2012: 56-57). On the other hand, we must always bear in mind that all the mentioned forms of violence against children can be combined with each other, which especially refers to sexual violence, which in terms of its content represents a special form of violence against children, but in terms of its consequences, it is usually of a combined type. What is absolutely certain and seems completely indisputable is that child abuse and neglect represent a social and public health problem with high mortality and morbidity worldwide (Roje-Đapić, Buljan-Flander, Galić, 2021: 19-45).

The Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse (Lanzarote Convention) defines sexual abuse as: a) participation in sexual activities with a child who, according to the relevant provisions of national law, is younger than the legal age for sexual activities; b) participating in sexual activities with a child, in which coercion, force or threats are used; or abuse of a recognized position of trust, authority or influence over the child, including within the family or abuses a particularly vulnerable situation of the child, especially due to mental or physical disability or a situation of dependency. Along with the Lanzarote Convention, one of the most important documents in this area is certainly the United Nations Convention on the Rights of the Child (1989) – the so-called Constitution for Kids, with two accompanying protocols, namely: the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Pornography (2000) and the Optional Protocol to the Convention on the Rights of the Child on the Prohibition of Children's Participation in Armed Conflicts (2000). In addition to them, on the regional level, the activities of the Council of Europe and two extremely important recommendations are of particular importance, namely: Recommendation R (91) 11 on sexual exploitation, prostitution and trafficking of children and young people and Recommendation Rec (2001) 16 on child protection from sexual exploitation. These documents mainly promote and regulate the protection of children, while they also contain principles and provisions that refer to the obligation of each member state and its state authorities in relation to the protection of children from certain types of violence in the wider social environment (Simović, 2015: 253).

pornographic content, voyeurism and sexualized communication over the phone or the Internet. According to Buljan Flander and Ćosić (2012), sexual abuse of children refers to cases in which an adult forces a child to participate in some sexual activity, using the child to satisfy their own sexual desires, which may include sexual intercourse, caressing, masturbation, oral or anal intercourse or exposure of children to pornographic videos, books, magazines and other material (more in: Roje–Đapić, Buljan-Flander, Galić, 2021: 19-45).

When it comes to the Republika Srpska, for the subject of this article, it can be pointed out that the legal penal policy for the suppression of sexual violence against children and minors was extremely tightened with the adoption of the latest Criminal Code of the Republika Srpska from July 2017. Thus, in the Criminal Code of Republika Srpska, in its special chapter XV separated from criminal offenses against sexual integrity, under the title: "Criminal offenses of sexual abuse and exploitation of a child" (similar to what occurred in the Republic of Serbia),[2] all offenses against sexual integrity according to the child as a victim are listed (Đorđević, Simeunović-Patić, 2015: 236). In terms of content, in the mentioned chapter of the special part of the Criminal Code of Republika Srpska,[3] from Article 172 to Article 180, nine criminal offenses are foreseen (Ikanović, Vasić, 2020: 167-182), namely:

1. Engagement with a child under 15 years of age (Article 172),
2. Sexual abuse of a child over the age of 15 (Article 173),
3. Inducing a child to participate in sexual acts (Article 174),
4. Exploitation of children for pornography (Article 175),
5. Exploitation of children for pornographic performances (Article 176),
6. Introducing children to pornography (Article 177),
7. Using a computer network or communication by other technical means to commit criminal acts of sexual abuse or exploitation of a child (Article 178),
8. Satisfying sexual passions in front of the child (Article 179),
9. Enticing a child into prostitution (Article 180).

The object of protection of these criminal acts is the child from all forms of sexual abuse and exploitation by adults, i.e. the sexual freedom of the child or the freedom of decision-making

[2] The separation of these criminal acts into an independent chapter is motivated by the legislator's desire to treat the perpetrators of these criminal acts in a way that would prevent them from repeating the act later, after the punishment has been served, and in this way to ensure enhanced protection of minors from this type of crime. A similar situation occurred in the Republic of Serbia with the adoption of a special law that specifically regulates the treatment of perpetrators of crimes in this area, i.e. the Law on Special Measures for the Prevention of Criminal Offenses Against Sexual Freedom against Minors, which was passed in 2013.

[3] The criminal legislation of Bosnia and Herzegovina today, according to its constitutional structure and distribution of jurisdiction, consists of four separate criminal legal systems, namely: Bosnia and Herzegovina, Republika Srpska, Federation of Bosnia and Herzegovina and Brčko District of Bosnia and Herzegovina. This certainly implies the unhindered existence of four criminal laws (similar to this one, we also have four laws on criminal procedure or four misdemeanor laws), namely: Criminal Code of Republika Srpska, Official Gazette of Republika Srpska, No. 64/2017; 104/2018 - decision of the Constitutional Court of Republika Srpska; 15/2021; 89/2021; 73/2023 and Official Gazette of Bosnia and Herzegovina, No. 9/2024 – Decision of the Constitutional Court of Bosnia and Herzegovina, which entered into force in July 2017; of the Criminal Code of the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of Bosnia and Herzegovina, No. 36/2003; 21/2004; 69/2004; 18/2005; 42/2010; 42/2011; 59/2014; 76/2014; 46/2016; 75/2017 and 31/2023, which entered into force on August 1, 2003; of the Criminal Code of the Brčko District of Bosnia and Herzegovina, Official Gazette of the Brčko District of Bosnia and Herzegovina, No. 19/2020 - Refined text that entered into force on July 1, 2003, and of the Criminal Code of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, No. 3/2003; 32/2003 – corrected; 37/2003; 54/2004; 61/2004; 30/2005; 53/2006; 55/2006; 8/2010; 47/2014; 22/2015; 40/2015; 35/2018; 46/2021; 31/2023 and 47/2023 which entered into force on March 1, 2003.

in the sphere of sexual relations, regarding entering into sexual relations or otherwise satisfying the sexual urge (Rakočević, 2005: 177 -202). By compromising the sexual freedom of the child through the performance of these criminal acts, the sexual morality (especially through pornographic crimes) and the sexual honor of the child, which is an essential component of human dignity, are jeopardized or endangered (Jovašević, Mitrović, Ikanović, 2017: 81-89). Sexual freedom implies the child's freedom of decision regarding whether, when, where, how, in what way and with whom they will enter into sexual relations (Bokonjić, 1981: 162-169).

The largest number of these criminal acts are aimed at committing rape or sexual acts equivalent to it against a child by using their immaturity (Jovašević, Mitrović, Ikanović, 2017: 81-89). These criminal acts belong to sexual criminality as the totality of different forms of contact with the sexual organs, mouth, tongue, fingers or hands with the victim's sexual organ, penis or mouth in order to satisfy the sexual urge of the initiator of this contact (Jovašević, Mitrović, Ikanović, 2017: 81-89). Another characteristic of these criminal acts is that these contacts are made without the consent of the child – victim, either with or without their active opposition and resistance (Jovašević, Mitrović, Ikanović, 2017: 81-89). However, in practice, cases of sexual offenses that are facilitated by the use of drugs and other substances with the aim of breaking the resistance of the child – victim (date rape cases) (Alempijević et al., 2006: 19-26) are becoming more frequent.

The goal of establishing these criminal acts is twofold, namely: 1) to ensure the child's freedom of choice regarding entering into sexual relations, when choosing a partner and other conditions in accordance with their feelings and 2) to preserve natural and healthy sexual relations between persons of different half in accordance with the understandings and feelings that make up public morality (Jovašević, Mitrović, Ikanović, 2017: 81-89).

The protection of the child's sexual freedom from all forms of sexual abuse and exploitation (Pavlović, 1998: 38-43) is justified, but it is debatable whether the criminal law should also intervene in cases where the satisfaction of the sexual urge is achieved voluntarily with the mutual consent of the partners only because thereby offending sexual morality, which is otherwise ambivalent, changeable and relative. That is why there are significant differences in the legal solutions of individual countries regarding the number and types of incriminations that protect sexual morality, and there is even a tendency towards reducing the number and types of criminal offenses of this type (Jovašević, Mitrović, Ikanović, 2017: 81-89).

In the majority of modern criminal legislations, including in our country, children are especially protected in terms of sexual freedom, as well as in terms of sexual exploitation by adults (Jovašević, Mitrović, Ikanović, 2017: 81-89). Thus, any sexual act (including voluntary) sexual intercourse with a child, i.e. a person under the age of fifteen, is punishable (Jovašević, Mitrović, Ikanović, 2017: 81-89). On the other hand, some criminal acts acquire a qualified form if they are committed against children (Vešović, 1978: 139-146).

The Criminal Code of Republika Srpska prescribes a special basis for the exclusion of a criminal offense of this type, in those situations when there is no "significant" difference between the perpetrator and the child (passive subject) in their mental and physical maturity (Jovašević, Mitrović, Ikanović, 2017: 81-89).

Criminal acts of sexual abuse and child exploitation can only be committed with intent.

Sexual intercourse with a child under the age of fifteen – The criminal act called sexual intercourse with a child under the age of fifteen consists of committing intercourse or other sexual acts equivalent to it with a male or female child who under the age of fifteen (Nešović,

2005: 53-64). The object of protection in this incrimination is the sexual freedom of a child under the age of fifteen.

The act of execution implies the undertaking of sexual intercourse or other sexual acts equated to it, with which the perpetrator satisfies his sexual urge, with the fact that these actions are directed towards the body of another person – a child who is younger than fifteen years old (Nešović, 2005: 53-64; Mitrović, 2007: 363-375). For the existence of a crime, it is important that this action is taken against a child who is younger than fifteen years old, which must certainly be known to the perpetrator of the crime at the time of taking the action of execution (Marković, 2010: 29-43). In this case, it is about a passive subject who, due to insufficient mental development, does not have complete freedom of judgment and decision-making regarding the satisfaction of the sexual drive, which is precisely the state that the perpetrator takes advantage of (Vešović, 1978: 139-146). However, according to the provisions of Article 18 paragraph 3 of the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse, this criminal offense is not applicable if there is no significant difference in mental and physical maturity between the perpetrator and the passive subject (the child) (so-called voluntary sexual activities between minors). When this difference is evident and when it is "more significant", on a larger scale and of greater significance, it is a factual question that the court resolves in each specific case through experts of the appropriate profession (Jovašević, Mitrović, Ikanović, 2017: 81-89).

The perpetrator of the crime can be any person, male or female, and in terms of guilt, intent is required. A prison sentence of two to ten years is prescribed for this crime.

This criminal offense has two lighter, i.e. privileged, forms, and the first of them, for which a prison sentence of one to five years is prescribed, is applicable when the perpetrator was in a rectifiable real delusion regarding the fact related to the age of the child. These are the situations when, under the existing circumstances, the perpetrator had a wrong or incomplete idea, awareness of the child's age (Jovašević, Mitrović, Ikanović, 2017: 81-89). On the other hand, another privileged form of this crime for which a lighter punishment is prescribed (depending on the form of the crime) is applicable if: a) the perpetrator is a specific person – blood relative in the direct line up to any degree, i.e. in the collateral line up to the fourth degree, stepfather, stepmother, adoptive parent, guardian, teacher, educator, doctor, religious official or other person to whom the child is entrusted for the purpose of learning, upbringing, custody or care, b) passive subject – a child up to the age of 15 who is entrusted to the perpetrator for the purpose of learning, education, custody or care, and c) an act of execution undertaken in the form of some other sexual act, not rape or related sexual act (Jovašević, Mitrović, Ikanović, 2017: 81-89).

This criminal offense also has three more severe, or qualified forms (Ramljak, Dautbegović, 2006: 323-333; Matijević, 2009: 313-327). Thus, the first serious form of crime for which a prison sentence of five to fifteen years is prescribed is applicable in the following situations: a) if the act of execution consists of sexual intercourse (natural sexual intercourse) or a sexual act equated with it, b) if the perpetrator is a person who has a certain characteristic – a relative by blood in the direct line up to any degree, i.e. in the collateral line up to the fourth degree, stepfather, stepmother, adoptive father, guardian, teacher, educator, doctor, religious official or other person to whom the child is entrusted for learning, upbringing , custody or care, and c) if the passive subject is a child under the age of fifteen who was entrusted to the perpetrator of the criminal offense for the purpose of learning, education, custody or care (Jovašević, Mitrović, Ikanović, 2017: 81-89). The second more severe form of this crime, for which a prison sentence of at least eight years (and a maximum of 30 according to the provisions of Article 46,

paragraph 1 of the Code), is applicable if it is rape or a sexual act equated with it, with a child under the age of fifteen: a) committed with the use of force (absolute or compulsive) or threats of inflicting any harm, b) carried out by taking advantage of a mental disorder or powerless condition, which must be known to the perpetrator at the time of the act, c) carried out in a particularly cruel manner (with the infliction of physical or psychological pain, suffering, discomfort) or in a particularly humiliating manner, d) committed by two or more persons, e) committed by a person where in relation to the child-victim there is a large disparity in maturity and age, f) resulted in the occurrence of serious physical injury, severe impairment of health or pregnancy of a female child (Jovašević, Mitrović, Ikanović, 2017: 81-89).

The most severe form of this criminal offense for which a prison sentence of at least ten years or the most severe punishment from the system of punishments prescribed by the criminal legislation of Republika Srpska – life imprisonment is applicable in those situations where the death of a child occurred as a result of the act of execution (or as a consequence thereof) (Mitrović, Grbić-Pavlović, 2017: 203-225). In relation to a more serious consequence, the perpetrator acts with negligence, while the child's death should be in a cause-and-effect relationship with the act of committing the crime.

Sexual abuse of a child over the age of fifteen – The Criminal Code of Republika Srpska from 2017 dedicated special attention to the sexual abuse of a child over the age of fifteen by persons responsible for their care, upbringing and education, as well as by other persons (Mitrović, Grbić-Pavlović, 2017: 203-225). Namely, in the provisions of Article 173 of the Criminal Code of Republika Srpska, it is prescribed that a relative by blood in the direct line up to any degree, and in the collateral line up to the fourth degree, stepfather, stepmother, adoptive father, guardian, teacher, educator, doctor, religious official or another person who commits adultery or a sexual act equivalent to it with a child over the age of fifteen who is entrusted to them for the purpose of education, upbringing, custody or care, shall be punished with a prison sentence of two to eight years. A prison sentence of the same duration is also provided for a person who commits rape or a sexual act equivalent to it with a child over the age of fifteen, taking advantage of their psychological immaturity or recklessness, or if there is a large disparity in maturity or age between them (paragraph 2) (Mitrović, Grbić-Pavlović, 2017: 203-225).

The act of committing this criminal offense is determined alternatively, i.e. in such a way that the perpetrator of this offense is the one who commits rape or other sexual act equated with rape on a child between fifteen and eighteen years of age. In the case of this criminal offense, coercion or threat is also not required for the offense to be punishable, namely, it is sufficient for the perpetrator to take advantage of the special situation in which a child of the specified age finds himself, i.e. the perpetrator's position of authority over the child, either as a teacher, doctor or educator, stating to consent to sexual activity without resistance (Mitrović, Grbić-Pavlović, 2017: 203-225). In the case of the perpetrator, there is a direct intention aimed at satisfying their unnatural sexual needs, and the special description of the act is the age of the child, of which the perpetrator is aware.

A prison sentence of two to ten years is prescribed for the qualified, or more serious, form of this criminal offense. Otherwise, the more severe form of this offense will apply in those situations where the sexual abuse of a person older than fifteen years is committed by abuse of position towards a child who is in a relationship of subordination or dependence to the perpetrator, or by taking advantage of the child's mental disorder or infirmity (paragraph 3). And finally, if the perpetrator commits some other sexual act on the child that equates to rape (using finger, tongue, etc.), a prison sentence of six months to five years is prescribed.

Encouraging a child to participate in sexual activities – is a criminal offense punishable by a prison sentence of six months to five years for the person who induces a child to participate in rape, molestation or a sexual act equivalent to it.

The basis of this criminal offense is the provision of Article 22 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, which foresees the sanctioning of intentionally enabling a child who has not yet passed the age limit for legally valid consent to sexual abuse, to witness an act of sexual abuse or sexual activities (Marković, 2018: 27-43).

The issue is the protection of the sexual morals of the child, and the editors of the legal text considered that the aforementioned actions affect not only the sexual morals of children under the age of fifteen, but children in general, and the circumstance that a child under the age of fifteen appears as a passive subject is foreseen as a qualifying factor (Marković, 2018: 27-43). The same criminal-political basis is also the criminal offense of satisfying sexual passions in front of a child, because this criminal offense actually incriminates the performance of actions intended to satisfy sexual passions in front of a child, i.e. inducing a child to perform such actions in front of another person (Marković, 2018: 27- 43).

The object of protection is the child's sexual integrity. The act of execution is leading. It is incitement (which here does not have the character of complicity) in the sense of creating or encouraging the child's decision to participate in an act of rape or other sexual act equated with it, in which the child does not actually participate, but is present against their freely expressed will (Jovašević, Mitrović, Ikanović, 2017: 81-89).

The crime is completed by taking the action of leading as a psychological influence on the will of the child, regardless of whether the child made the decision in general, that is, witnessed the satisfaction of the sexual urge of other persons. The perpetrator of this criminal act can be any person, and in terms of guilt, intent is required.

A prison sentence of six months to five years is prescribed for this crime.

The more severe form of this criminal offense, for which a prison sentence of one to eight years is prescribed, is applicable if the action of inciting (inciting) the child is undertaken: a) in a special, dangerous way – by using force (absolute or compulsive) or threat (by the announcement of doing something bad) and b) towards a specific person – a child under the age of fifteen (Jovašević, Mitrović, Ikanović, 2021: 392-409).

Exploitation of children for pornography – One of the incriminations aimed at ensuring enhanced protection of children's sexual integrity is certainly a criminal offense prescribed by Article 175 of the Criminal Code of Republika Srpska. The essence and meaning of this incrimination is the protection of children from exploitation for pornography. This act belongs to delicta communia considering that it can be committed by any person who abuses a child for pornographic purposes (Group of authors, 2005: 1591-1593).

This criminal offense consists in inducing a child to participate in the recording of child pornography, that is, in organizing or facilitating the recording of child pornography (Jovašević, 2003: 204-205). The object of protection are children, from the harmful effects of pornography and sexual morality.

The object of the assault is child pornography. These are materials that visually or otherwise: a) depict a child or a realistically depicted non-existent child or a person who looks like a child in real or simulated (explicit) evident sexual behavior, or b) depict sexual organs of children for sexual purposes. On the other hand, materials that have artistic, medical or scien-

tific significance are not considered pornography under any circumstances, and these can be pictures, audio-visual materials or other items with pornographic content.

The act of execution is determined in multiple alternative ways, namely: a) leading (inciting) the child in the sense of creating or solidifying the decision to participate in the recording of child pornography, b) organizing – arranging, planning and coordinating activities related to the recording of child pornography and c) enabling (helping) in the form of creating conditions and opportunities, that is, facilitating the recording of child pornography.

The perpetrator of this criminal offense can be any person, male or female, and in terms of guilt, premeditation is required, which again means that the perpetrator must be aware that the passive subject is a child or a minor, and that they are being used for the production of pornographic material or maintaining a pornographic environment. A passive subject is a child (a person under the age of eighteen at the time of the act of execution), which must be known to the perpetrator. Our code also expressly provided that a child will not be punished for the production and possession of pornographic material under the following conditions: a) if the material shows them personally or them and another child, b) if they alone produced and own the material, c) if there is consent from each of them to produce the material, and d) if the material is used exclusively for their personal use.

For this criminal offense, a prison sentence of six months to five years is prescribed, whereupon the court must impose a security measure of confiscation of the object, that is, the resulting child pornography, with the mandatory destruction of the pornographic material.

The act has two more difficult forms of manifestation. The first serious form of the offense for which a prison sentence of one to eight years is prescribed is applicableif the perpetrator undertakes the following acts of execution, namely: a) unauthorized recording, production, offering, making available, distribution, dissemination, import, export, obtaining for themselves or for another, selling, giving, displaying or possessing child pornography, and b) knowingly accessing child pornography in a specific way – via a computer network (Jovašević, Mitrović, Ikanović, 2017: 81-89).

The most severe form of crime, for which a prison sentence of two to ten years is prescribed, is committed by a person who: a) forces, and b) induces (incites) a child to film child pornography in a special, specific or dangerous way, i.e. by using force, threats, deception, fraud, abuse of the child's position or difficult circumstances or dependent relationships (Jovašević, Mitrović, Ikanović, 2017: 81-89).

Similar legal qualification and sanctioning is provided for two other criminal acts, namely: 1. Exploitation of children for pornographic performances, prescribed by the provisions of Article 176 of the Code and 2. Introducing children to pornography, prescribed by the provisions of Article 177 of the Criminal Code of Republika Srpska. Both of these criminal acts represent life situations of careful selection of a child, by leading and forcing the child to participate in such actions, thereby injuring the child's sexual integrity (Ikanović, Vasić, 2020: 167-182).

Exploitation of children for pornographic performances – The offense consists in intentionally inducing a child to participate in pornographic performances (paragraph 1) or in watching a pornographic performance live or through communication means by a person who knows or should have or could have known that a child is participating in it (paragraph 3) (Turković, 2013: 223-224).

The object of protection is the child, from the harmful effects of pornographic performances. The object of the assault is a pornographic performance.

The act of execution is determined in two alternative ways, namely: a) inducing (incitement, which in this case does not have the character of complicity, but a form of the act of execution) of the child to participate in pornographic performances. The act is completed at the moment of leading, i.e. inciting the child, regardless of whether the child actually participated in the pornographic performance under such influence or not, and b) watching (observing) the pornographic performance live or through means of communication, in which circumstances there are activities undertaken by a person who knows or should have or could have known that a child is participating in such a pornographic performance.

The perpetrator of the act can be any person, male or female, and in terms of culpability, intent is required. A passive subject is a child (a person under the age of eighteen at the time of the act of execution, which must certainly be known to the perpetrator of this criminal act).

A prison sentence of six months to five years is prescribed for this crime. In addition to the prison sentence, the security measure of confiscation of the objects, that is, those objects that were used to commit this criminal offense, must be imposed, with the requirement that the pornographic material that was created by the execution of this criminal offense must be destroyed.

The more severe form of this criminal offense, for which a prison sentence of two to ten years is prescribed, applies in those cases when the perpetrator of the crime undertakes the act of execution in the following ways, namely: a) forcing (coercing) the child, and b) inducing (inciting) the child to participate in pornographic performance in a specific or dangerous way, i.e. using force, threat, deception, fraud, abuse of position or difficult circumstances of the child or dependency relationship (Jovašević, Mitrović, Ikanović, 2017: 81-89).

The use of a computer network or communication by other technical means to commit criminal acts of sexual abuse or exploitation of a child – is prescribed as a criminal offense in the provisions of Article 178 of the Code in such a way that whoever, using a computer network or communication by other technical means, agrees with a child over the age of fifteen a meeting for the purpose of sexual exploitation or a sexual act equated with it, or for the production of pornographic material, or for other forms of sexual exploitation, and appears at the agreed place for the purpose of the meeting, shall be punished by a prison sentence of one to five years (Ikanović, Vasić, 2020: 167- 182). In this way, the legislator, intending to make the communication of sexual connotations of an adult with a child of this age punishable, determines that the arrival of an adult at the agreed meeting place is also punishable. Consequently, in this case, there was no physical contact between the perpetrator, that is, an adult, with the victim, that is, a child (Ikanović, Vasić, 2020: 167-182). Nowadays, when the social networks Facebook and Instagram are especially widespread to such an extent that even children in the third grade of primary school use them, and often post their photos without their parents supervision, there are great chances that an online encounter with a potential sexual predator will occur (Ikanović, Vasić, 2020: 167-182). In those cases, when online communication involving sexual topics, in the sense of appearing at an agreed place for a meeting, takes place between an adult and a child under the age of fifteen, according to the Criminal Code of Republika Srpska, this action qualifies as a more severe form of this criminal offense for which a prison sentence from two to eight years is prescribed (Ikanović, Vasić, 2020: 167-182).

The criminal-political goal that this incrimination aims to achieve is the protection of children from sexual exploitation by adults whom they have met through social networks or various games, and who often falsely present themselves as their peers with the aim of luring them to a certain place for the purpose of acquaintance and sexual exploitation. (Marković, 2018: 27-43).

Satisfying sexual passions in front of a child – This criminal offense was prescribed in the Criminal Code of Republika Srpska from 2003 as a more severe form of criminal offense under the name: Satisfying sexual passions in front of another (from Article 197). Satisfying one's sexual passions in front of a child is a new criminal offense and in the currently valid code, this criminal offense consists of performing an act intended to satisfy one's own or someone else's sexual passion in front of a child or inducing a child to perform such acts in front of the perpetrator or another person (Mitrović, Grbić-Pavlović, 2017: 203-225). The object of protection of this incrimination is of a dual nature and it refers to the child's sexual morality, but at the same time the proper development of the child's sexual integrity, in connection with the sexual exploitation of the child by other persons.

The act of execution is determined in two ways, alternatively, and the first form of the act would occur when an act intended to satisfy one's own or someone else's sexual passion is performed in front of the child, while the second form of the act incriminates inducing the child to perform such acts in front of the perpetrator or another person (Group of authors, 2005: 1587-1588). In the first case, the child appears as a passive observer of sexual acts undertaken by the perpetrator and does not participate in their execution. For the establishment of this form of crime, it is important that the perpetrator of the crime knows that they are performing such acts in front of a minor, i.e. a child, and in any case, this criminal offense will not be established if the child secretly, or without the knowledge of that person, observes the performance of sexual acts (Group of authors, 2005: 1587-1588). Likewise, this offense will not be applicable if sexual acts are performed in front of a child who, due to their age or some other circumstances, cannot understand the meaning of those acts (e.g., a newborn, a child who is in a deep sleep, etc.) (Group of authors, 2005: 1587-1588). The second form of this act will occur in all those situations when the child is induced to perform actions intended to satisfy the sexual passion of the perpetrator or another person in front of the perpetrator or another person. Acts of masturbation or nudity of a child can be considered as such if it causes satisfaction of sexual passion in the perpetrator or another person (Group of authors, 2005: 1587-1588). Induction should be understood as all those actions by which the child creates or strengthens the decision to perform such actions in front of the perpetrator or another person. This criminal offense involves a prison sentence of up to three years.

The perpetrator of this criminal act can be any person, male or female. The subjective side of the act consists of intent, which means that the perpetrator of the act must be aware of the fact that the passive subject is a child or a minor.

Enticing a child into prostitution – This criminal offense consists of intentionally inducing, encouraging or enticing a child to provide sexual services or enabling the handover of a child to another person in some other way for the purpose of providing sexual services, i.e. participating in organizing or conducting the provision of sexual services on any way, for profit or other benefit (Group of authors, 2005: 1587-1588). The perpetrator of this act can be any person, male or female, with the condition that that person knew or should have known that it was a child. For this form of criminal offense, a prison sentence of one to eight years and a fine is prescribed.

Anyone who uses the sexual services of a child who has reached the age of fifteen with the provision of any compensation or counter-service, and who knew or was obliged and could have known that it was a child (paragraph 2 of Article 180 of the Code) shall be punished with imprisonment from six months to five years).

The more severe form of this criminal offense will occur in all those situations where this offense was committed against several persons. Accordingly, the perpetrator of this crime will be punished with a prison sentence of two to ten years for this, more severe form of criminal offense. Furthermore, in the provision of Article 180, paragraph 4, the legislator prescribed that the fact that the person who is deliberately induced, encouraged or enticed has already engaged in prostitution before is not important for the establishment of this criminal offense.

When it comes to criminal acts committed to the detriment of the sexual integrity of a child, i.e. criminal acts of sexual abuse and exploitation of a child, it is important to note that in the provision of Article 89 of the Criminal Code of Republika Srpska, it is stipulated that a sentence of life imprisonment and a conviction for a criminal act committed to the detriment sexual integrity of a child (a person under the age of eighteen) is not deleted from the criminal record.

Moreover, one of the important novelties provided for in the Criminal Code of Republika Srpska is the establishment of a special register of persons who have been legally convicted of criminal offenses committed to the detriment of the sexual integrity of a child, and within the criminal records, the content and scope of the data, their storage, as well as the terms for providing information from this special register regulated by a specific regulation[4] (Article 92) (Mitrović, Grbić-Pavlović, 2017: 203-225).

REFERENCES:

Alempijević, Đ. & Savić, S. & Pavlekić, S. & Ječmenica, D. (2006) Povrede polnih organa kod žrtvi seksualnog nasilja, Bilten Okružnog suda u Beogradu, Belgrade, number 70/2006.

Bokonjić, R. (1981) Seksualne nastranosti i njihov pravnomedicinski značaj, Godišnjak Pravnog fakulteta u Sarajevu, Sarajevo.

Đorđević, Đ. & Simeunović Patić, B. (2015) Maloletna lica kao žrtve krivičnih dela protiv polne slobode, Proceedings: Maloletnici kao učinioci i žrtve krivičnih dela i prekršaja, Institute for Criminological and Sociological Research, Belgrade.

Đuderija, S. & Milosavljević, M. & Malešić, S. & Jerković, A. & Smajić, Z. (2006) Inicijalni izvještaj o nasilju nad djecom u Bosni i Hercegovini, Council for Children of Bosnia and Herzegovina, Sarajevo.

Grbić Pavlović, N. (2016) Specifičnosti saslušanja djece i maloljetnika oštećenih krivičnim djelom, Proceedings: Unaprjeđivanje sigurnosne uloge policije primjenom novih tehnologija i metoda, Ministry of Internal Affairs of the Republic of Croatia, Police Academy, Zagreb.

Ikanović, V. & Vasić, M. (2020) Seksualno zlostavljanje i iskorišćavanje djeteta kao krivično djelo u domaćem zakonodavstvu, Godišnjak Fakulteta pravnih nauka Panevropskog univerziteta Apeiron, year 10, number 10, Banja Luka.

Jovašević, D. & Ikanović, V. (2012) Krivično pravo Republike Srpske, Posebni deo, Banja Luka.

Jovašević, D. (2003) Komentar Krivičnog zakona Republike Srbije sa sudskom praksom, Nomos, Belgrade.

[4] Law on a special register of persons legally convicted of criminal acts of sexual abuse and exploitation of children, Official Gazette of Republika Srpska, number 28/2023. This law regulates the management of the Special Register of persons legally convicted of criminal acts of sexual abuse and exploitation of children, determines the personal data entered in the Register and the manner in which they are stored and made available for use, the degree of their confidentiality, as well as the special measures that are implemented against persons legally convicted of crimes of sexual abuse and exploitation of children.

Jovašević, D. & Mitrović, Lj. & Ikanović, V. (2021) Komentar Krivičnog zakonika Republike Srpske, drugo izmijenjeno i dopunjeno izdanje; JU Službeni glasnik Banja Luka, Banja Luka.
Jovašević, D. & Mitrović, Lj. & Ikanović, V. (2017) Krivično pravo Republike Srpske – Posebni deo, Pan-European University APEIRON Banja Luka, Banja Luka.
Marković, I. (2018) Seksualno zlostavljanje i iskorištavanje djece (novine u Krivičnom zakoniku Republike Srpske), Godišnjak Pravnog fakulteta Univerziteta u Banjoj Luci, year 40, number 40.
Marković, I. (2010) Krivičnopravna zaštita polnog integriteta djece i maloljetnika, Pravna riječ, Časopis za pravnu teoriju i praksu, number 23/2010, Association of Lawyers of Republika Srpska, Banja Luka.
Matijević, M. (2009) Nasilnički kriminalitet, Pravna riječ, Banja Luka, number 19/2009.
Mitrović, Lj. & Jovašević, D. & Ikanović, V. (2017) Krivično pravo Republike Srpske – Posebni deo, Pan-European University APEIRON Banja Luka, Banja Luka.
Mitrović, Lj. & Grbić-Pavlović, N. (2017) Djeca i maloljetnici kao žrtve seksualnog zlostavljanja i iskorištavanja, Pravna riječ, Časopis za pravnu teoriju i praksu, number 52/2017, Association of Lawyers of Republika Srpska, Banja Luka.
Mitrović, Lj. (2007) Nasilje nad djecom, Pravna riječ, Banja Luka, number 12/2007.
Nešović, A. (2005) Krivično delo obljube ili protivprirodnog bluda sa licem koje nije navršilo 14 godina, Bilten Okružnog suda u Belgradeu, Belgrade, number 66/2005.
Pavlović, Z. (1998) Bludne radnje, Pravo teorija i praksa, Novi Sad, number 10/1998.
Rakočević, V. (2005) Krivična dela protiv polne slobode, Proceedings Nove tendencije u savremenoj nauci krivičnog prava i naše krivično zakonodavstvo, Zlatibor.
Ramljak, A. & Dautbegović, A. (2006) Nasilništvo u krvnim i seksualnim deliktima, Pravna riječ, Banja Luka, number 7/2006.
Roje – Đapić, M. & Buljan-Flander, G. & Galić, R. (2021) Seksualno zlostavljanje djece: Teorijsko-empirijski pregled i sustavna prevencija u Hrvatskoj, Socijalne teme.
Simović, N. M. & Jovašević, D. & Mitrović, Lj. & Simović, M. M. (2015) Maloljetničko krivično pravo, drugo izdanje (amended), Banja Luka.
Turković et al., (2013) Komentar Kaznenog zakona : i drugi izvori novoga hrvatskog kaznenog zakonodaavstva, Narodne novine, Zagreb.
Vešović, M. (1978) Maloletnik kao objekt krivičnopravne zaštite, Pravna misao, Sarajevo, number 7-8/1978.
Group of authors, Komentari krivičnih/kaznenih zakona u Bosni i Hercegovini, Knjiga I, Sarajevo, 2005, The Council of Europe and the European Commission, pp. 1587-1588.
Criminal Code of Republika Srpska, Official Gazette of Republika Srpska, No. 64/2017; 104/2018 – Decision of the Constitutional Court of Republika Srpska; 15/2021; 89/2021; 73/2023 and Official Gazette of Bosnia and Herzegovina, number 9/2024 – Decision of the Constitutional Court of Bosnia and Herzegovina.
Law on Special Register of Persons Legally Convicted of Criminal Acts of Sexual Abuse and Exploitation of Children, Official Gazette of Republika Srpska, No. 28/2023.

Svetlana PAVLOVIĆ*
Violeta TADIĆ**

Review Paper
DOI: 10.47152/Palic2024.14

SUPPORT FOR CHILD VICTIMS IN CRISIS SITUATIONS***

Abstract: In this paper, we are going to deal with the concept of crisis in educational institutions, theoretically and practically, and analyze different forms of these crisis situations, with a focus on school shootings. Researchers have shown that the negative consequences of school shootings include diverse and long-term trauma symptoms (e.g. PTSD, depression) for students, school staff and families. The issue is particularly discussed in the paper is psychosocial support for children in crisis. On the example of the school shooting in Belgrade, we are going to present and analyze interventions and activities that have been suitabled after the massacre for children in this school and also for children all over the country. Previous models suggest that appropriate crisis interventions can minimize the duration and intensity of childrens' reactions. Most important to strengthen the network of support in the immediate environment of victims and survivors, and provide professional psychosocial support.

Key words: crisis, child, school shooting, psychosocial support, social support

1. INTRODUCTION

Mass school shootings or mass murders are the most notorious form of violence and a more ubiquitous form of crisis events in schools. Although the US leads in terms of the number and frequency of such events, other countries are not exempt from them. The example of the Republic of Serbia shows that other, much smaller countries, territorially and demographically, are not spared from such events. Namely, on May 3rd, 2023, a 13-year-old student shot and killed ten students and a school guard at the Belgrade elementary school "Vladislav Ribnikar". The amount and consequences of these mass murder, both in terms of the number of victims and the age of the perpetrator, equal and/or exceed the scale of numerous similar events in the world (Pejuskovic, Lecic-Tosevski, 2023). So these two mass shootings shocked not only those directly affected by the event, but also the wider (regional) community.

The negative consequences related to school shootings include trauma symptoms such as Posttraumatic Stress Disorder (PTSD) or Posttraumatic Stress Symptoms (PTSS), major depression, anxiety, panic, social phobia, sleep problems, emotion dysregulation, poorer academic performance and classroom behaviors, increased school absences, relationship difficulties, decreased work satisfaction, and substance abuse (Alexander, 2021; Kronenberg et al., 2010; Thompson, Massat, 2005). Thus, the negative consequences for the psychosocial well-being of children, school staff and families can be varied and long-lasting. Therefore, when an entire school or community is affected by violence or disaster, teachers and school

* MA, Research Assistant, Institute of Criminological and Sociological Research in Belgrade, https://orcid.org/0000-0001-7790-2692. E-mail: pavlovic.sc@gmail.com

** PhD, Research Fellow, Institute of Criminological and Sociological Research in Belgrade, https://orcid.org/0009-0000-6060-8243. E-mail: tadicv33@gmail.com.

***The current paper is part of a research endeavor funded by the Ministry of Science, T echnological Development and Innovation of the Republic of Serbia, conducted by the Institute of Criminological and Sociological Research, 2024, number 451-03-66/2024-03/200039.

administrators play an important role in the immediate recovery by providing specific structured and semi-structured activities (Love, Cobb, 2012). Also, social support can be important in the recovery process. Social solidarity may strengthen victims' existing social networks and possibly expand those networks, thereby providing additional support that promotes wellbeing (Hawdon et al., 2012:4). According to the findings of studies conducted among victims of school shootings, one of the strongest predictors of recovery is the role of intimate networks (e.g. peers, parents). Thus, according to some authors (Turunen et al., 2014), it is important to first strengthen the support network in the immediate environment of the child, and then, if necessary, involve professional help later. When the intervention is based on the provision of professional psychosocial assistance, psychotherapy is one of the possibilities. More precisely, psychosocial interventions most common are based on cognitive-behavioral therapy, psychoeducation, reconstruction of traumatic experiences and stress management skills (Fu, Underwood, 2015). In addition to this, it is necessary to keep in mind the importance of providing immediate acute help to students, teachers/staff, and families in the aftermath of the tragedy.

The purpose of this paper is to illustrate the context in which various crises affecting children occur. Next, we aim to describe the repertoire of different psychosocial interventions offered to children in crisis situations. Finally, using the example of a school shooting that occurred in Serbia last year, we aim to highlight interventions and activities that may be more or less suitable for children in a crisis and their recovery and their further development.

2. CRISIS IN EDUCATIONAL INSTITUTIONS

The function of the school as an educational institution is to create a climate that contributes to all students of the educational process in the school environment feeling socially, emotionally and physically safe, thus promoting the proper individual development and achievements of youth (National School Climate Council, 2007, see: Tadić, 2022). However, in the last few decades, schools around the world have been faced with the need to respond to an increasing number of sudden crisis events that threaten or may seriously threaten the safety of students and impair their physical and psychosocial well-being, as well as learning outcomes (Finelli, Zeanah, 2019; Schwarz, Kowalski, 1991). There are numerous definitions of crisis, starting from general ones and ending with crisis situations in schools. In most cases, a crisis event is an unpredictable event with potentially negative consequences that can cause significant damage to people who are directly or indirectly exposed to the crisis event (Pravilnik o Protokolu postupanja u ustanovi u odgovoru na nasilje, zlostavljanje i zanemarivanje, 2024). A crisis event is characterized by the number of victims (number of injured or murdered), material damage and psychological reactions of individuals and/or the community as a whole, as well as solidarity for the purpose of eliminating the consequences (Pravilnik o Protokolu postupanja u ustanovi u odgovoru na nasilje, zlostavljanje i zanemarivanje, 2024). From a psychological point of view, some basic characteristics of crises according to Raphael (1986) are rapid time sequences, an overwhelming of the usual coping responses of individuals and communities, severe disruption in the functioning of an individual or community, a feeling of helplessness and seeking help from others (MacNeil, Topping, 2007). Brock, Sandoval and Lewis (1996, see: MacNeil, Topping, 2007), offer a definition of school-based crisis, according to which a crisis is a sudden, unexpected event that has an „emergency quality" and the potential to affect the entire school community. These crises can take different forms. Sokol et al. (2021) mention some forms of crisis such as natural disaster, student death, or mass violence event. MacNeil and Topping (2007) state that critical incidents, as they call crisis situations in and out of school, include shootings, stabbings, other orms of homicide, terrorist activity,

suicide, road traffic accidents, major fires and natural disasters. Certain acts also recognize different forms of crisis, such as: natural death of a child/student; attempted murder and murder of a child/student (in or outside the institution); student suicide attempt and suicide (in or outside the institution); natural death, suicide or murder of an employee in the institution; a traffic accident in which a child, that is, a student and/or an employee of the institution, was injured or killed; disappearance of a child/student; mass poisoning in the premises of the institution; a report about an explosive device planted in an institution or a terrorist attack and the like; hostage crisis; large-scale violence (mass fights, multiple murders, terrorist attacks); technical-technological hazards (explosion, spillage, evaporation of toxic substances and fire); natural disasters (floods, earthquakes, fires...); an epidemic that covered the territory/municipality where the institution is located (Pravilnik o Protokolu postupanja u ustanovi u odgovoru na nasilje, zlostavljanje i zanemarivanje, 2024).

The frequency and severity of some types of school-based crises have increased. Many schools are no longer havens of safety and security (King, 2020). In a representative sample of more than 2000 US children 2 through 17 years of age, nearly 14% were reported to have been exposed to a disaster in their lifetime, with more than 4% of disasters occurring in the past year (Schonfeld et al., 2015). Sokol and colleagues (2021: 241) state that, according to the report of the National Center for Education Statistics from 2019, in the USA eight percent of schools report that they experienced disruptions in the past years due to death threats, bomb threats, or chemical, biological, or radiological threats. Also, this authors state that in 2017, according to the report of the Centers for Disease Control and Prevention from 2018, suicide was the leading cause of death among middleschool aged children, accounting for over 47,000 student deaths (Sokol et al., 2021). Disasters, thereby, affect the lives of millions of children every year, whether through natural disasters, such as earthquakes, hurricanes, tornadoes, fires, or floods; human-made disasters, such as industrial accidents, war, or terrorism; or as a result of pandemics or other naturally occurring disease outbreaks (Schonfeld et al., 2015). In addition to the above, school violence is a problem that is becoming more and more topical. It appears that schools have become embedded in and perpetuate a culture of violence (King, 2020), and that different school contexts are associated with different patterns of student problem behavior (Zubrick et al., 1997). This complex phenomenon of school-associated violence is defined in different ways (Garry, 2016), so it means "... aggressive behavior that intentionally hurts another person" (Atkinson & Hornby, 2002: 187), and "...systematic abuse of power in interpersonal relationships" (Rigby, 2008: 22), and includes various forms of violence and victimization. According to Olweus (1993), violence can be direct - open (hitting, pushing, kicking) or indirect - covert (ignoring, excluding, spreading rumors). Indirect violence is related to relational aggression (Dulmus, Theriot, Sowers, 2006). In addition to the mentioned forms of violence, there are also physical, psychological or emotional, social and digital violence (Garry, 2016; Pravilnik o Protokolu postupanja u ustanovi u odgovoru na nasilje, zlostavljanje i zanemarivanje, 2024). The frequency of violent behavior increases during elementary school, and decreases during secondary education (Alsaker & Gutzwiller-Helfenfinger, 2010; Goodstein, 2013; Hymel, Swearer, 2015). The most prevalent form of violent behavior among peers is teasing, followed by physical attacks, while school shootings are the most notorious form of violence (King, 2020). Mass school shootings or mass murders represent a traditional form of violent crime (Ilić, Starčević, 2023) and a more ubiquitous form of crisis events in schools. A universally accepted definition of school shooting does not exist and it's mostly adapted to research goals. For example, according to one of the definitions, school shooting means the following: "a gun is brandished, is fired, or a bullet hits school property for any reason, regardless of the number of victims

(including zero), time, day of the week, or reason" (Alexander, 2021). King (2020) states that mass school shootings were rare until the 1990s, and that since then their number has been rapidly increasing. School-associated violent deaths reached their peak during the 1992–1994 school years with 105 victims (King, 2020). Researchers have found that there were 84 episodes of mass shootings in the United States from 2000 to 2010, and that only three events accounted for more than half of the deaths in 215 incidents from 1990 to 2012 (Lowe, Gaela, 2017). School shootings in the US have prompted the passage of anti-violence laws mandating zero-tolerance policies in schools (Stein, 2003). School suspensions, however, have not provided an effective deterrent and reduction in the rate of shootings (Skiba et al., 2006).

In relation to the issue of the prevalence of bullying in schools, a study conducted in the USA by observing children from the third to sixth grades in the school playground revealed that 77 percent of the children bullied or encouraged the bullying of classmates who were disadvantaged because of age, size or peer support (Frey, Edstrom, Hirschstein, 2010). Espelage, Bosworth and Simon, (2000, see: Frey, Edstrom, Hirschstein, 2010) found that 80 percent of high school students admitted to bullying someone in the previous month. On the other hand, research conducted on a sample of primary and secondary school students in the territory of Serbia (Nešić, Jović, 2011) showed that only 6 percent of primary school students and 23 percent of secondary school students had never encountered some form of violent behavior. The problem in relation to different forms of bullying arises because employees often view ostracism, humiliating behavior and physical attacks among peers as normal or "growth experiences" for the victims (Frey, Edstrom, Hirschstein, 2010). Nevertheless, numerous studies have shown that bullying, in addition to negatively affecting academic achievements, has an impact on the development of maladaptive ways of dealing with emotional trauma and long-term mental health problems, as well as the frequency of student suicides and school shootings (Casebeer, 2012; Graham, Juvonen, 1998; Hymel, Swearer, 2015; Rigby, 2012). In the OECD report on student well-being for 2017 (OECD, 2017), bullying was highlighted as one of the four key factors for improving student well-being, while according to PISA 2018 reporting, bullying was marked as a global problem with serious consequences for student' lives (Rappleye, Komatsu, 2020). Also, according to the 2018 UNESCO report on school violence and bullying (UNESCO, 2018), it is stated that educational achievement is lower for children who are bullied worldwide (Rappleye, Komatsu, 2020).

All of the above implies that in relation to the issue of school violence and safety, it is very important to focus on the school context. First of all, the school context is the milieu in which the complex social dynamics of violence and victimization at school take place, and secondly, schools, thanks to their position in society based on responsibility for education, but also for the upbringing and socialization of young people, have the power to shape the way which students experience safety at school, but also the impact on ensuring safety (Tadić, 2022). In other words, just as bullying affects all actors within the school community, the behaviors of given actors create conditions that encourage or deter bullying (Frey, Erdstrom, Hirschstein, 2010). Positive changes in individuals are fostered by supportive changes in relationships with others, and the power of teachers, peer groups, and parents needs to be harnessed in order to take the necessary interventions and thereby encourage constructive change or systemic anti-bullying programs that benefit everyone (Frey, Erdstrom, Hirschstein, 2010).

Crisis events, and especially those that can be labeled as violent deaths in and outside of school (for example, attempted murder, murder, suicide, etc.), significantly affect both school and wider communities and disrupt their functioning. Namely, when it comes to intense and unexpected crisis events, such an event does not affect only the immediate victims, i.e. the educational institution where the event took place (J. Vlajković, M. Vlajković, 2014). For ex-

ample, it can be assumed that mass shootings have a huge psychological impact on victims and members of the communities in which they occurred, and that the consequences of their media coverage extend beyond the affected (school) community, from the national to the global level (Lowe, Galea, 2017). Specifically, in the educational institution where the incident took place, the primary victims of the incident are classmates, best friends, class teachers and teachers who taught the victims, family members, as well as witnesses (J. Vlajković, M. Vlajković, 2014). Secondary victims are relatives, other school employees, rescue services, but also the wider community. It is undeniable that crises go beyond the scope of normal experience and that they affect children the most as the most vulnerable category. Unlike adults, children have less previous experience and limited resources to deal with a crisis event. The intensity of their reactions and response to the crisis is enhanced, and the sense of control and self-efficacy is reduced (MacNeil, Topping, 2007). Thus, the negative consequences for children's well-being can be varied and long-lasting. Mass shootings are associated with a number of negative psychological consequences for survivors and members of affected communities, such as PTSD or PTSS, major depression, anxiety, drug use, panic, social phobia and others (Lowe, Galea, 2017). Similar psychological outcomes have been reported following natural disasters (Makwana, 2019). Also, research has shown that the psychological effects of trauma can negatively affect academic performance (Schwartz, Gorman, 2003; Sitler, 2009; Sokol et al., 2021). Dyregov and others (1999, see: MacNeil, Topping, 2007) found 20 percent of students experiencing a classmate's accidental death remained highly distressed nine months later, with marked evidence of gender differences.

Best practice models suggest that appropriate crisis intervention can minimize the duration and intensity of observed reactions. Crisis interventions in schools aim to provide immediate support to reduce initial trauma damage, promote positive coping strategies to prevent long-term damage, and include different measures in relation to the form of the crisis event (Richards, 2001; Sokol et al., 2021). For instance, key components of a crisis intervention response following a school shooting include (Crepeau-Hobson et al., 2012): reuniting students with loved ones and ensuring a sense of control and safety; providing opportunities for students and staff to tell their stories while normalizing their reactions and feelings (ventilation and validation); predicting future problems and reactions and helping individuals prepare (Sokol et al., 2021). Research has shown that primary and secondary intervention efforts, and according to Caplan's classification of crisis intervention levels (Caplan, 1964), made significant progress in preparing for school disruptions such as natural disasters and preventing school violence (Sokol et al., 2021), and that they have shown effectiveness in preventing suicide, depression, etc. (MacNeil, Topping, 2007) However, Sokol et al. (2021) state that there is a lack of efforts on tertiary prevention in order to eliminate the consequences of crisis events and promote support and optimal development of students after the crisis. Also, these authors point out that innovations in crisis interventions in schools have slowed down in the last decade, and that only 23% of crisis intervention studies published between 1989–2019 occurred between 2009–2019 (Sokol et al., 2021). Reasons can be found in various difficulties when it comes to researching crises, such as the unpredictable nature of crisis events, ethical constraints, difficulties in measuring socio-emotional recovery in the short and long term, and pointing out the need for research to those actively dealing with crises (MacNeil, Topping, 2007).

3. PSYCHOSOCIAL SUPPORT FOR CHILDREN/INTERVENTIONS IN DURING CRISIS

Disasters can impact children's psychological well-being, emotional adjustment, health, and developmental path both in the short and long term (Schonfeld et al., 2015). Due to their limited experience, skills, and resources, children are especially susceptible to the impacts of disasters and other traumatic events, as they may struggle to independently address their developmental, socio-emotional, mental, and behavioral health requirements (Chrisman, Dougherty, 2014). Crises disturb the normal routines and activities that constitute a child's daily life, hindering their ability to explore and express themselves in a safe and comfortable environment. In crisis situations, both formal and informal learning structures may be damaged or disrupted, significantly impeding children's access to cognitive stimulation and the development of critical thinking skills (Ager, Akesson, Boothby, 2010). Encountering traumatic events such as natural disasters, accidents, or violence can lead to the development of acute stress disorder and post-traumatic stress disorder (PTSD) (Murtonen et al., 2011). Each child experiences suffering and grief in different ways, even children from the same family facing the same crisis may react differently. The timing and extent of such exposure should be decided based on the child's preferences and needs.

Psychosocial support (PSS) encompasses a wide range of interventions aimed at preventing, treating, or enhancing well-being, as highlighted in the Global Education Monitoring Report (2019) (Bridges, Walls, 2018). Most common interventions based on cognitive and behavioral therapies, psychoeducation, reconstruction of trauma experiences, and stress management skills (Fu, Underwood, 2015). In the literature, strict universal protocols used in every crisis situation were not found; instead, various authors and organizations have developed their own versions. However, most of them are based on some general theoretical principles and models that we mention here. Hobfoll et colleagues (2007) propose five empirically validated components for crisis management. Their recommended approach to crisis management following mass traumatization involves fostering a sense of safety, calmness, self- and community efficacy, connectedness, and hope. Strategies to promote a psychological sense of safety encompass interventions at individual, organizational, and community levels, with interventions adopting a social system perspective. Techniques for promoting calmness range from cognitive-behavioral therapy (CBT) and targeted treatments like therapeutic grounding, breathing exercises, and deep muscle relaxation, to indirect approaches such as community-level psychoeducation (Hobfoll et al., 2007).

Ultimately, a combination of psychological and non-psychological interventions, addressing aspects such as care, shelter, family bonds, justice, and reconciliation, may prove most beneficial for the child in the long term (Jones, 2008). For children to receive adequate support, it is necessary for a broader system to be involved in their care, including parents, peers, schools, pediatricians, and the wider local community (Lee et al., 2019). Therefore, it is important that the psychosocial support children receive is specifically tailored to their developmental stage and capacities to cope with difficulties. It has highlighted the importance of beginning with the child's perspective and has advocated for thorough consideration of culture, context, and the unique interpretations of events as the foundation for both assessing the issue and formulating a response (Jones, 2008). A prevailing stereotype in the media suggests that the majority of children exposed to frightening events will inevitably be "traumatized" and that this trauma will result in long-term debilitating consequences. This stereotype is often accompanied by a treatment model advocating early "clinical intervention" typically in the form of trauma

counseling, which includes expressive therapies and debriefing, with the aim of preventing long-term psychological issues (Pynoos, Nader, 1993).

When children are provided with the chance to openly express their primary concerns, they frequently focus more on present issues rather than past traumatic experiences (Jones, 2008). Therefore, it is necessary to ensure a sense of security in the present moment. When feasible, it's advisable to engage the families of traumatized children and adolescents in the treatment of trauma-related symptoms. Although teachers in schools are often not informed on how to provide PSS, they are receptive to learning these skills, and basic PSS training builds sensitivity and deeper understanding of their students' emotions (Schenzle, Schulz, 2024). Brief school-based trauma and grief-focused psychotherapy is effective in reducing PTSD symptoms (Goenjian et al., 2005).

When it comes to school shootings, researchers suggest a special package of measures and interventions. During the initial to intermediate phases of mass trauma recovery, the objective is to identify the most vulnerable individuals and offer information and psychoeducation to enhance survivors' feelings of safety, reduce hyperarousal, and foster a sense of belonging and community effectiveness (Hobfoll et al., 2007). In the later stages of recovery, the guidelines recommend that care shifts towards incorporating more therapeutic elements, specifically tailored to meet the unique needs of surviving children and their families. When psychotherapy is employed, Trauma-Focused Cognitive Behavioral Therapy and Eye Movement Desensitization and Reprocessing (EMDR) are given priority (Diehle et al., 2015). According to most authors (e.g. Turunen et al., 2014), it's important to strengthen the support network within the child's immediate environment first, and then, as needed, involve professional assistance later on. One of the strongest predictors of recovery is the role of intimate networks show findings from studies conducted among survivors of school shootings (Grills-Taquechel, Littleton, Axsom, 2011). This aligns with attachment theory, which suggests that the attachment system formed early in life becomes activated during times of threat and distress. Traumatized individuals seek comfort and safety from their close social relationships (Mikulincer, Shaver, 2010). On the other hand, the role of professionals lies in strengthening these "natural" support networks, providing psychoeducation, and working to identify and prevent more severe trauma-related disorders in children at increased risk (Hobfoll et al., 2007).

Immediate support is essential to be provided to the families of the victims, teachers, and students in the aftermath of the tragedy. The acute help for the trauma-affected students and staff consisted of various psychoeducational group discussions and collective sessions (Turunen et al., 2014). Building a coherent and shared narrative about trauma is important, as it is suggested to facilitate recovery from trauma in ongoing phases (Crossley, 2000; Freer, Whitt-Woosley, Sprang, 2010). The study that monitored the effectiveness of interventions following a shooting at a school in Finland (Seguin et al., 2013) showed that while post immediate and short-term interventions seemed sufficient, there was a lack of long-term collective vision regarding community support and the availability of mental health services. Long-term community responses are frequently disregarded. On the other hand, solidarity provided by the community consistently promotes wellbeing and this relationship between solidarity and wellbeing is not context specific (Hawdon et al., 2012).

4. SCHOOL SHOOTING IN ELEMENTARY SCHOOL IN SERBIA

On May 3rd, 2023, a mass school shooting occurred at an elementary school "Vladislav Ribnikar" in Belgrade, where a thirteen-year-old student shot and killed 9 children and a school guard, and badly injured six students. This marked the first instance of such a school

crisis in Serbia, catching society and institutions unprepared for response to such an event. It is important to note that the following day, another mass murder occurred in two villages near Belgrade (vicinity of the Mladenovac), where a young man killed 9 other young individuals. However, for the purposes of this study, we will only consider the psychosocial interventions received by those affected following the initial massacre. Exactly 7 days later, on May 10th, students were returned to school. In the meantime, volunteers from helping professions began to visit the school, offering initial psychological assistance to anyone who sought it: students, parents, and school staff, and they were making triage of psychological problems. Some measures were taken in the schools themselves, such as metal detectors and armed guards. Two weeks later, a team was established at the school and its surroundings (e.g. including a children's theater nearby) to professionally provide counseling support to students who returned to school, operating until the end of the school year. In the initial days, various techniques were used with clients, such as: active listening, normalization and validation of feelings, empathizing, breathing exercises, giving information, etc. In the first days following the tragedy, various guidelines on how to talk to children about the shooting emerged on social media, in the media, and on the websites of official institutions and professional societies, intended for children in general.1 In brochures of this type, parents were provided with instructions on how to initiate conversations with their child, how to respond to their various emotions, and how to monitor their child's reactions in the following period. Additionally, they had access to various helpline numbers for counseling, and often specific activities were offered that could be practiced with the child, such as cartoons, books, and so on.In such events, it is stated that increasing the level of awareness, understanding the situation, and solidarity are crucial (Pejuskovic, Lecic-Tosevski, 2023).

For children, the message conveyed through various social activities and the narrative presented is exceptionally important. During the initial period, a large number of people gathered outside the school, bringing flowers and sending messages of support. School shootings became the main topic in public spaces and numerous professionals offered their services. Many researchers observe an increase in social solidarity following tragic critical incidents, such as heinous crimes, natural disasters, or other mass tragedies (for review: Hawdon et al., 2012). However, despite the authors suggesting the necessity of maintaining a coherent narrative to prevent long-term consequences of trauma (Schav, 2000), in Serbia, there have been several instances of a bipolar division within society on important issues: is the chosen date for children's return to school appropriate; have students been provided with adequate support; should the school building be demolished; how should the memorial center look, etc (BBC, 2023). Some researchers contend that the initial surge of social support commonly seen after critical incidents diminishes over time, often due to many potential support providers also being victims of the community-wide trauma. Consequently, survivors of traumatic critical incidents often feel let down by the lack of expected support (e.g., Kaniasty, Norms, Murrell, 1990). Based on all this, we can assume that such divisions and sending conflicting messages to students, both from this school and in general, only hinder the recovery from trauma for children who require a sense of safety, nurturing and stability from adults in order to develop adequately and overcome crises (Brussoni et al., 2012). Following the Jokela school shootings in Finland, some residents expressed feelings of partial responsibility for the tragedy, and the increased levels of solidarity observed immediately after the event could have fueled this col-

[1] https://drive.google.com/file/d/144pE-fiWWv2ZHMsBQKz733NdZvTSiFtW/view?usp=sharing
https://drive.google.com/file/d/12vgSRiqgX7NXKaibQf1OO8FdQkJPnxxX/view?usp=drive_link

lective sense of guilt (Hawdon et al., 2012). For children, especially, responsibility is a crucial part of their moral worlds, and it develops in the social environment over the years (Walker, 2004), so it is important for children to learn how to take it on. Despite the importance of taking responsibility emphasized by the authors, no one has officially done so after this event in Serbia. The only action taken in this regard was the resignation of the then - Minister of Science, Technological Development and Innovation of the Republic of Serbia (Politika, 2023).

5. CONCLUSION

From an early age until the adolescent age, children rely on school and adults as a transitional object in solving the socio-emotional, cognitive and behavioral, and other developmental demands, which are necessary for later adequate social and emotional functioning in life. In order to fulfill these developmental tasks and promote psychosocial adjustment, development and achievement, the primary function of the school is to provide children with an environment in which they will feel socially, emotionally and physically safe. Any sudden event, even a crisis, can threaten this function of the school - disrupting formal and informal learning structures and hindering children's ability to explore and express themselves in a safe and enjoyable environment. In this case, trauma-based crisis interventions are activated, which can vary depending on the form of the crisis event and are aimed at providing immediate support in order to reduce initial trauma damage, promote positive coping strategies to prevent long-term damage, etc.

On the example of this crisis like the school shooting we can see how detrimental impact has on victims' mental well-being by encouraging maladaptive coping mechanisms or triggering distressing reactions. Social support can alleviate feelings of insecurity, helplessness, and meaninglessness commonly experienced by those affected by trauma. Increased solidarity, temporary resolution of community conflicts, and a sense of altruism have been identified as "therapeutic elements" that expedite recovery. A supportive social environment reduces the likelihood of various mental health issues following traumatic events. As we can see, some aspects that would help children understand and recover are being addressed, such as interventions implemented in the school, as well as instructions for working with children in the whole country. On the other hand, any of the social activities that would facilitate children's recovery were often inadequate from adults, primarily hostile discussions and social divisions, as well as the absence of a more systematic long-term support plan.

In addition to above, we should keep in mind that schools have a primary role in prevention and interventions in case of such or similar traumatic events. Although school shootings are events that can hardly be predicted, the school and society generally through various activities can prevent or strengthen the response to potential traumatic events (e.g. building a culture of safety and a sense of security through certain school activities, creating a network of trust, developing social skills and strengthening peer relationships and prosocial behavior, etc.). Also, apart from directing attention to preventive activities, when a critical event does occur, the action of the school and/or other responsible systems in the direction of ascertaining and assuming responsibility is necessary. Overall, there is room for intensification and development of research in the field of crises in which children are affected- both for the improvement of prevention and trauma-based interventions, and for their subsequent evaluation. We should not forget that in order for children to receive sufficient support, it is essential to involve a wider network in their care, which includes parents, peers, schools, and the broader local community.

REFERENCES

Ager, A., Stark, L., Akesson, B., & Boothby, N. (2010) Defining best practice in care and protection of children in crisis-affected settings: A Delphi study. *Child development, 81*(4), pp. 1271-1286. https://doi.org/10.1111/j.1467-8624.2010.01467.x

Alsaker, F. D., & Gutzwiller-Helfenfinger, E. (2010) Social behavior and peer relationships of victims, bully-victims, and bullies in kindergarten. In Jimerson, S. R., Swearer, S. M., & Espelage, D. L. (Eds.) (2010). *Handbook of bullying in schools: An international perspective.* New York: Routledge, pp. 87-99.

Alexander, B. (2021) Public School Trauma Intervention for School Shootings: A National Survey of School Leaders. *Int. J. Environ. Res. Public Health*, *18*(15), pp. 7727-7741. https://doi.org/10.3390/ijerph18157727

Atkinson, M., & Hornby, G. (2002) *Mental health handbook for schools.* London: Routledge.

Bridges, B., & Walls, N. (2018) Migration, displacement and education. *United Nation: UNESCO Publishing*.

Brussoni, M., Olsen, L. L., Pike, I., & Sleet, D. A. (2012) Risky play and children's safety: Balancing priorities for optimal child development. *International Journal of Environmental Research and Public Health, 9*(9), 3134-3148. http://doi.org/10.3390/ijerph9093134

Caplan, G. (1964) *Principles of Preventive Psychiatry*. New York: Basic books.

Casebeer, C. M. (2012) School Bullying: Why quick fixes do not prevent school failure. *Alternative Education for Children and Youth*, *56*(3), pp. 65-171.

https://doi.org/10.1080/1045988X.2011.633283

Child Protection Working Group. (2012) Minimum standards for child protection in humanitarian action. Geneva, Switzerland: Author.

Chrisman, A. K., & Dougherty, J. G. (2014) Mass trauma: Disasters, terrorism, and war. *Child and Adolescent Psychiatric Clinics, 23*(2), 257-279. https://doi.org/10.1016/j.chc.2013.12.004.

Crepeau-Hobson, F., Sievering, K. S., Armstrong, C., & Stonis, J. (2012) A coordinated mental health crisis response: Lessons learned from three Colorado school shootings. *Journal of School Violence*, *11*(3), pp. 207-225. https://doi.org/10.1080/15388220.2012.682002

Crossley, M. L. (2000) Narrative psychology, trauma and the study of self/identity. *Theory & Psychology, 10*(4), pp. 527-546. https://doi.org/10.1177/0959354300104005

Diehle, J., Opmeer, B. C., Boer, F., Mannarino, A. P., & Lindauer, R. J. (2015) Trauma-focused cognitive behavioral therapy or eye movement desensitization and reprocessing: What works in children with posttraumatic stress symptoms? A randomized controlled trial. *European Child & Adolescent Psychiatry, 24*, pp. 227-236. https://doi.org/10.1007/s00787-014-0572-5

Dulmus, C. N., Sowers, K. M., & Matthew, T. T. (2006) Prevalence and Bullying Experiences of Victims and Victims Who Become Bullies (Bully-Victims) at Rural Schools. *Victims & Offenders*, *1*(1), pp. 15-31. https://doi.org/10.1080/15564880500498945.

Finelli, J., & Zeanah, C. (2019) Psychopathology in children and their caregivers following America's Hurricane Katrina. In Hoven, C. W., Amsel, L. V., & Tyano, S. (Eds.) *An international perspective on disasters and children's mental health*. Switzerland: Springer International Publishing, pp. 233-252. https://doi.org/10.1007/978-3-030-15872-9_12

Frey, K. S., Edstrom, L.V., & Hirschstein, M. K. (2010) School Bullying: A Crisis or an Opportunity? In Jimerson, S. R., Swearer, S. M., & Espelage, D. L. (Eds.) Handbook of Bullying in Schools: An International Perspective. New York: Routledge, pp. 403-417.

Freer, B. D., Whitt-Woosley, A., & Sprang, G. (2010) Narrative coherence and the trauma experience: An exploratory mixed-method analysis. *Violence and Victims, 25*(6), pp. 742-754. http://doi.org/10.1891/0886-6708.25.6.742

Fu, C., & Underwood, C. (2015) A meta-review of school-based disaster interventions for child and adolescent survivors. *Journal of Child & Adolescent Mental Health, 27*(3), pp. 161-171. https://doi.org/10.2989/17280583.2015.1117978

Garry, H. (2016) Bullying: An Ecological Approach to Intervention in Schools, Preventing School Failure. *Alternative Education for Children and Youth*, *60*(3), pp. 222-230. https://doi.org/10.1080/1045988X.2015.1086969

Goenjian, A. K., Walling, D., Steinberg, A. M., Karayan, I., Najarian, L. M., & Pynoos, R. (2005) A prospective study of posttraumatic stress and depressive reactions among treated and untreated adolescents 5 years after a catastrophic disaster. *American Journal of Psychiatry, 16*2(12), pp. 2302-2308. https://doi.org/10.1176/appi.ajp.162.12.2302

Goodstein, P. K. (2013) *How to stop bullying in classrooms and schools: use social architecture to prevent, lessen and end bullying.* New York: Routledge.

Graham, S., & Juvonen, J. (1998) Self-blame and peer victimization in middle school: an attributional analysis. *Dev Psychol.*, *34*(3), pp. 587-99.

Jones, L. (2008) Responding to the needs of children in crisis. *International Review of Psychiatry, 20*(3), pp. 291-303. https://doi.org/10.1080/09540260801996081

Hawdon, J., Räsänen, P., Oksanan, A., & Ryan, J. (2012) Social solidarity and wellbeing after critical incidents: three cases of mass schootings. *Journal of Critical Incident Analysis, 3*(1), pp. 2-25.

Hobfoll, S. E., Watson, P., Bell, C. C., Bryant, R. A., Brymer, M. J., Friedman, M. J., et al. (2007) Five essential elements of immediate and mid-term mass trauma intervention: Empirical evidence. *Psychiatry, 70*, pp. 283–315. https://doi.org/10.1521/psyc.2007.70.4.283

Hymel, S., Swearer, S. M. (2015) Four decades of research on school bullying: An introduction. *American Psychologist, 70*(4), pp. 293-299.

Ilić, A., & Starčević, A. (2024) The influence of biological factors in genesis of mass murders. *Journal of Criminology and Criminal Law*, *61*(3), pp. 7-27.

Kaniasty, K. Z., Norms, F. H., & Murrell, S. A. (1990) Received and perceived social support following natural disaster. *Journal of Applied Social Psychology, 20*(2), pp. 85-114. https://doi.org/10.1111/j.1559-1816.1990.tb00401.x

King, M. (2020) *The crisis of school violence: a new perspective*. Michigan: Michigan State University Press.

Kronenberg, M.E., Hansel, T.C., Brennan, A.M., Osofsky, H.J., Osofsky, J. D., & Lawrason, B. (2010) Children of Katrina: Lessons learned about postdiaster symptoms and recover patterns. *Child. Dev., 81*, pp. 1241-1259.

Lee, A., Deevska, M., Stillwell, K., Black, T., Meckler, G., Park, D., Eslami, A., & Doan, Q. (2019) A psychosocial assessment and management tool for children and youth in crisis. *CJEM, 21*(1), pp. 87–96. https://doi.org/10.1017/cem.2018.1

Love, R.A., & Cobb, N. (2012) Developing schools' capacities to respond to community crisis: The Tennessee initiative. *J. Child. Adolesc. Psychiatr. Nurs. 25*, pp. 158-163.

Lowe, S. R., Galea, S. (2017) The Mental Health Consequences of Mass Shootings. *Trauma Violence Abuse*, *8*(1), pp. 62-82. https://doi.org/10.1177/1524838015591572

Grills–Taquechel, A., Littleton, H., & Axsom, D. (2011) Social support, world assumptions and exposure as predictors of anxiety and quality of life following a mass trauma. *Journal of Anxiety Disorders, 25*, pp. 498–506. https://doi.org/10.1016/j.janxdis.2010.12.003

MacNeil, W., & Topping, K. (2007) Crisis Management in Schools: Evidence-based Postvention. *Journal of Educational Enquiry, 7*(1), pp. 64-94.

Makwana, N. (2019) Disaster and its impact on mental health: A narrative review. *Journal of Family Medicine and Primary Care*, *8*(10), pp. 3090–3095.

https://doi.org/10.4103%2Fjfmpc.jfmpc_893_19

Maričić, S. (2023, 23. avgust) Tragedija u Beogradu: Kako će izgledati povratak u školu „Vladislav Ribnikar", BBC. https://www.bbc.com/serbian/lat/srbija-66653262

Mikulincer, M., & Shaver, P. R. (2010) *Attachment in adulthood: Structure, dynamics, and change*. New York, NY: Guilford Press.

Murtonen, K., Suomalainen, L., Haravuori, H., & Marttunen, M. (2012) Adolescents' experiences of psychosocial support after traumatisation in a school shooting. *Child and Adolescent Mental Health, 17*(1), pp. 23-30. https://doi.org/10.1111/j.1475-3588.2011.00612.x

Nešić, S., & Jović, N. (2011) Zaštita dece od nasilja u školama - Izveštaj Zaštitnika građana Panela mladih savetnika. Retrived from:

https://www.ombudsman.rs/attachments/article/5559/Redovan%20godisnji%20izvestaj%20Zastitnika%20gradjana%20za%202011%20godinu.pdf

OECD. (2017) *PISA 2015 results (volume III): Students' well-being*. Paris: OECD Publishing.

Olweus, D. (1993) *Bullying at school: What we know and what we can do.* Oxford, England: Blackwell.

O, M. (2023, 7. maj) Ministar prosvete Branko Ružić podneo ostavku, Politika. https://www.politika.rs/sr/clanak/551266/Ministar-prosvete-Branko-Ruzic-podneo-ostavku

Pejuskovic, B., & Lecic-Tosevski, D. (2023) School Shooting in Serbia–A Huge Collective Trauma and Challenge for Public Mental Health. *World Social Psychiatry, 5*(2), pp. 179-182. http://doi.org/10.4103/wsp.wsp_46_23

Pynoos, R. S., & Nader, K. (1993) Issues in the treatment of posttraumatic stress in children and adolescents. In: J. P. Wilson & B. Raphael (Eds.) *International handbook of traumatic stress syndromes*. New York: Plenum Press, pp. 535–549. https://doi.org/10.1007/978-1-4615-2820-3_46

Pravilnik o Protokolu postupanja u ustanovi u odgovoru na nasilje, zlostavljanje i zanemarivanje, Službeni glasnik Republike Srbije, broj 11/2024.

Rappleye, J., & Komatsu, H. (2020) Is bullying and suicide a problem for East Asia's schools? Evidence from TIMSS and PISA. *Discourse: Studies in the Cultural Politics of Education*, *41*(2), pp. 310-331. https://doi.org/10.1080/01596306.2020.1711515

Raphael, B. (1986) *When disaster strikes*. New York: Basic Books.

Richards D. (2001) A field study of critical incident stress debriefing versus critical incident stress management. *Journal of Mental Health*, *10*(3), pp. 351-362.

Rigby, K. (2008) *Children and bullying: How parents and educators can reduce bullying at school.* Malden, MA: Blackwell.

Schenzle, S., & Schultz, J. H. (2024) "Students are bringing the revolution into the classroom!" teachers' and counselors' perceptions of the need for psychosocial support in crisis-affected classrooms in Lebanon. *Teaching and Teacher Education, 139*, pp. 104416. https://doi.org/10.1016/j.tate.2023.104416

Schonfeld, D. J., & Demaria, T., Disaster Preparedness Advisory Council and Committee on Psychosocial Aspects of Child and Family Health, Krug, S. E., Chung, S., Fagbuyi, D. B., ... & Wissow, L. S. (2015) Providing psychosocial support to children and families in the aftermath of disasters and crises. *Pediatrics, 136*(4), pp. e1120-e1130. https://doi.org/10.1542/peds.2015-2861.

Schwartz, D., & Gorman, A. H. (2003) Community violence exposure and children's academic functioning. *Journal of Educational Psychology, 95*(1), pp. 163-173.
https://doi.org/10.1037/0022-0663.95.1.163

Schwarz, E. D., & Kowalski, J. M. (1991) Malignant memories: PTSD in children and adults after a school shooting. *Journal of the American Academy of Child & Adolescent Psychiatry*, *30*(6), pp. 936-944. https://doi.org/10.1097/00004583-199111000-00011

Séguin, M., Chawky, N., Lesage, A., Boyer, R., Guay, S., Bleau, P., Miquelon, P., Such, E., & Walker, R. (2004) Being responsible and responsible beings: Children's understanding of responsibility. *Children & society, 18*(3), 231-242. https://doi.org/10.1002/chi.795

Szkrumelak, N., Steiner, W., & Roy, D. (2013) Evaluation of the Dawson College Shooting Psychological Intervention: Moving Toward a Multimodal Extensive Plan. *Psychological trauma : theory, research, practice and policy, 5*(3), pp. 268–276. https://doi.org/10.1037/a0027745

Sitler, H. C. (2009) Teaching with Awareness: The Hidden Effects of Trauma on Learning. *Journal of Educational Strategies, Issues and Ideas*, *82*(3), pp. 119-123.

Skiba, R. J., & Rausch, M. K. (2006) Zero Tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness. In Evertson, C. M., Weinstein, C. S. (Eds.), *Handbook of classroom management: Research, practice, and contemporary issues*. Mahwah, NJ: Lawrence Erlbaum Associates Publishers, pp. 1063-1089.

Sokol, R. L., Heinzeb, J., Doanb, J., Normandb, M., Grodzinskib, A., Pomerantzb, N., Scottc, B. A., Gaswirthd, M., & Zimmermanb, M. (2021) Crisis Interventions in Schools: Systematic Review. *J Sch Violence*, *20*(2), pp. 241-260. https://doi.org/10.1080/15388220.2021.1879098

Stein, N. (2003) Bullying or sexual harassment? Th e missing discourse of rights in an era of zero tolerance. *Arizona Law Review, 783*(45), pp. 783-799.

Tadić, V. (2022) O pristupima definisanju i operacionalizaciji pojma bezbednosti u školi. *Nastava i vaspitanje*, *71*(2), pp. 249-266. https://doi.org/10.5937/nasvas2202249T

Thompson, T., & Massat, C.R. (2005) Experiences of Violence, Post-Traumatic Stress, Academic Achievement and Behavior Problems of Urban African-American Children. *Child Adolesc Soc Work J*, *22,* pp. 367-393. https://doi.org/10.1007/s10560-005-0018-5

Turunen, T., Haravuori, H., Punamäki, R. L., Suomalainen, L., & Marttunen, M. (2014) The role of attachment in recovery after a school-shooting trauma. *European Journal of Psychotraumatology, 5*(1), pp. 22728. https://doi.org/10.3402/ejpt.v5.22728

UNESCO. (2018). *School violence and bullying: Global status and trends, drivers and consequences*. Paris: UNESCO.

Vlajković, J., & Vlajković, M. (2014) *Psihološke krizne intervencije u obrazovno-vaspitnim ustanovama*. Beograd: Centar za primenjenu psihologiju.

Zubrick, S., R., Siburn, S. R., Gurrn, L. Teoh, H., Shepherd, C., Carlton, J., & Lawrence, D. (1997) *Western Australian child health survey: education, health and competence*. Perth: Australian Bureau of Statistics and TVW Telethon Institute for Child Health Research.

Thematic Session 5:
Victims of Hate Speech and Hate Crimes

Review Paper

Zoran PAVLOVIĆ*

DOI: 10.47152/Palic2024.15

RIGHTS OF VICTIMS OF HATE SPEECH AND CRIME — EUROPEAN STANDARDS

Abstract: The rights of victims of hate speech and hate crimes are part of the rights in the system of support for victims and witnesses of criminal acts according to domestic legislation and international and European standards. Directive 2012/29/EU foresees an obligation for member states (and candidates) to take measures to establish a protection system. Effective protection implies not only a normative framework but also real protection. The specifics of hate speech and hate crimes also conditioned the adoption of Directive CM/Rec (2022) 16, which foresees measures to combat hate speech. Some expressions of hate speech require a criminal law response, including obligations of a preventive nature on the part of public authorities. That is why encouraging individuals and groups to report hate speech and hate crimes and providing protection is part of an evolving legal culture. Victims should also be supported by the media, which in modern society often has a decisive role, through compliance with legal regulations and reporting in accordance with the rules of the profession. Social networks are an indispensable element in the policy of preventing and fighting against hate speech and hate crimes, and their role is becoming increasingly important.

Keywords: support for victims of hate speech and crimes, EU regulation, protection system, role of media and social networks.

INITIAL CONSIDERATION

Victims of criminal acts in the Republic of Serbia are still, to the greatest extent, excluded in the full sense from the proceedings conducted before the court between the authorized prosecutor and the suspect for the commission of the criminal act. The time of criminal proceedings where the victims of the crime were witnesses, and their role was out of the main focus is behind us, but the issue of the rights and protection of the victims' rights is still not adequately recognized both in the domestic and in the European criminal justice area. Criminal proceedings are mainly aimed at protecting the rights of the defendant in criminal proceedings and respecting the defendant's human rights. It is one of the indicators of the right to freedom and the result of all democratic changes that are inevitable. But what is even more important to that end is to strike a balance between the rights of the victims and the accused, without favoring anyone.

Although the development of victims' rights began about 80 years ago in our legal space, we can state that only in the last few decades have we talked about the rights of victims and the state's obligation towards victims. These rights include the right to protection, the right to participate in criminal proceedings, the right to legal aid and others. Assistance and support to victims is the obligation of the state to ensure that all these rights can be easily and efficiently realized.

* Zoran Pavlović, Ph.D., full professor of the Faculty of Law, University of the Academy of Economics, Novi Sad, https://orcid.org/0000-0002-9625-1298. E-mail: zoran.pav@hotmail.com

With Serbia's accession to European integration, certain obligations from international and European documents are accepted, including the creation of a support system for victims of all crimes. This could particularly apply to victims of hate speech crimes. In Serbia, support for victims is organized in two ways, through the institutions of the system, but also extra-institutionally, but the needs of victims, especially victims of hate speech and hate crimes, expect a protection system that would unite all of that. The consequences of hate speech can often be fatal, so a timely reaction is the only response to this crime. The role of public authorities and the non-governmental sector in protecting the rights of victims is indisputable. However, without precisely established procedures for certain forms of spreading hate speech, which concern social networks, there will be a lack of effectiveness in protecting the victims' right to protection from this form of discrimination. That is why determining the rules of all participants in the proceedings, as well as judicial protection at the end of the protection procedure, is a way to reach a fair solution for everyone.

Hate speech is a potentially dangerous social phenomenon. The usual way of expression and the general language style can also lead to changes in the behavior pattern. Some authors warn that hate speech creates an atmosphere in which violence and hatred become normal occurrences. In this way, moral dilemmas that would otherwise represent a block for violence are destroyed, and the moral sensibility of the public is reduced. But, on the other hand, it is potentially an equally dangerous (unjustified) encroachment on freedom of speech. Therefore, it is a matter of constantly searching for a balance between freedom of speech on the one hand, and individual rights with the requirement to preserve the integrity of the person to the fullest extent. We should not be mistaken that the criminalization of hate speech could lead to a significant increase in the number of criminal offenses for this offense. Criminal law is the ultima ratio societatis and there are other mechanisms that in most cases can represent an appropriate mechanism for protecting society and the rights of victims. This is precisely why the criminalization of hate speech and hate crimes does not only have a symbolic meaning, but rather points us to the values of a modern democratic society. Such values, which are in balance, must not be threatened, but must have the full support of everyone in society.

But let's start in order!

INSTRUMENTS FOR THE PROTECTION OF VICTIMS' RIGHTS IN GENERAL

In the catalog of instruments on victims' rights, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power dated November 29, 1985 stands out first.[1] This document has two parts. The first defines the issues of access to justice, restitution, compensation and assistance to the victim. The second part defines the concept of victim, as well as the rights of victims of all criminal acts of abuse of power, even if it is not incriminated as a criminal act. The declaration is abbreviated Magna Carta for Victims.

If we were to compare the first part of the Declaration with positive legislation, we could state that most of these rights already exist. We have similar documents at the UN level included in the legislation in the Republic of Serbia, starting with the UN Convention on the Rights of the Child, Conventions dedicated to anti-discriminatory measures, the fight against terrorism, and the like.

[1] https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse

In parallel with the Declaration from 1985 and other UN documents, work was also done in the European framework, adopting documents of importance for the rights of victims. The Council of Europe adopted the first general document on the rights of victims through Recommendation No. R (85) 11 on the position of the victim in criminal proceedings.[2] These Recommendations emphasize the need to protect the victim and the victim's privacy, the obligation to provide information about the course of the procedure, and more.

When it comes to compensatory expectations of the victim, the first document was Resolution (77) 27 on compensation for victims of criminal offenses from 1977.[3] The European Convention on Compensation for Victims of Violent Crimes from 1983 is a significant normative document, which establishes the state's obligations to compensate the victim.[4]

The beginning of the 21st century is marked by the activities of the European Union in the development of victims' rights, as well as the creation of standards for their protection. Adoption of Directives is the process by which EU member states and candidate countries undertake to include them in their legislation. In the field of protection of victims' rights, the first document in the EU was the Council's Framework Decision 2001/220/PUP on the position of victims in criminal proceedings.[5] A framework decision, although it was aimed at protecting victims of cross-border crimes, and then indirectly at the rights of victims within national frameworks. Although with good intentions, this Framework Decision did not have a major impact in the member countries, because its provisions are not directly applicable. This influenced the adoption of Directive 2012/29/EU in the European Union, which replaced the original Framework Decision.[6] According to its content, the Directive marks the broadest legal document in the area of protection of victims' rights and has led to certain changes, which marked a good basis for improving the rights and protection of victims in general. However, the fact is that there is still a lack of harmonization in the realization of victims' rights. Progress in the field of legislation is not precise enough to be able to talk about special progress in practical application..[7]

Based on that, a decision was made to approach the revision of the Directive from 2012, on the basis of which Recommendation Rec (2023) 2 on rights, services and support for victims of criminal acts was adopted.[8]

Such a short summary of the protection of victims' rights cannot be completed without two additional notes: the first relates to the organized provision of support to victims, and experience in the Republic of Serbia. The provision of support to victims in exercising their rights is implemented even before the adoption of this regulation on victims' rights. The start-up of victim support services had several problems at the very beginning. There were no professional and trained personnel for that. Everything happened without established standards,

---

[2] https://rm.coe.int/16804dccae

[3] Resolution (77) 27 on the compensation of victims of crime (Adopted by the Committee of Ministers on 28 September 1977 - https://rm.coe.int/16804f3e59

[4] European Convention on the Compensation of Victims of Violent Crimes, Eur. T. S. No. 116, 1983.

[5] https://rm.coe.int/cdpc-2021-1-proposal-for-an-updated-coe-recommendation-on-victim-right/1680a17d66

[6] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029

[7] https://commission.europa.eu/system/files/2022-06/swd_2022_179_evaluation_rep_en.pdf

[8] https://rm.coe.int/cm-rec-2023-2e-eng-recommendation-trafficking/1680ab4922

procedures, and there were no educational contents that would provide basic knowledge to those who work with victims of crimes.

In the meantime, special services have been created within the social protection services, courts and other bodies, which help victims in the recovery process. Also, special support societies for women victims of violence, children and others are being created and starting to work. Various models have been created, they exist at the level of civil society organizations, but also at the level of state bodies, and now it is necessary to combine their activities into a system for the protection of victims' rights.

The specificity of the procedure of providing assistance to victims has so far been reflected to the greatest extent in the work with victims of criminal acts committed by close persons. The rights of victims from crimes classified as domestic violence, or crimes against sexual freedom, have been established in most European countries. However, the development of technique and technology has led to the appearance of new criminal acts, where hate speech and hate crime appear as a cause or as a consequence. Supporting these victims requires a completely different approach compared to the already developed mechanisms. But let's start in order!

VICTIMS OF HATE SPEECH AND HATE CRIMES

We can draw a parallel between hate speech and hate crimes. Namely, hate speech implies public expression, i.e. creation of hatred towards a group or an individual due to some of its determinations for the purpose of creating intolerance, discord, discrimination and violence and/or inciting already existing hatred with the fact that it develops, strengthens and deepens through public speech. If the issue of hate speech is not addressed, it can lead to violence and conflict. In this sense, hate speech is an extreme form of intolerance that contributes to hate crime.

In this sense, we can also interpret the issue of protecting the victims' right to protection, whenever any of their rights to respect for private and family life (Article 8 ECHR), the right to freedom of expression (Article 10 ECHR), the right to non-discrimination are violated or jeopardized. with regard to the rights protected by the Convention (Article 14 ECHR).[9]

Given that hate speech is a multi-dimensional phenomenon that can spread quickly on the Internet both when the user is offline and when the user is online, any suspicion of hate speech should be reacted to immediately. The spread of hate speech, incitement to violence and the spread of fake news on social networks thanks to incomplete or uneven regulation and jurisprudence sometimes leads to the absence of social reaction to all this (Pavlović 2022:163).

Hate speech in the victim can cause fear and cause humiliation in the persons against whom it is directed, and those persons and groups need special protection, without harming the rights of other persons or groups. The right to respect for private life and the right to non-discrimination, which are essential for the protection of the human dignity of those targeted by hate speech, represent the need to protect the right to freedom of expression, which is one of the foundations of a democratic and pluralistic society, as guaranteed by Article 10. of the Convention, which protects freedom of opinion and receiving and communicating information and ideas, without anyone's interference.

The rights that are protected in this way must take into account different ways of understanding hate speech and hate crimes at the level of each country individually, at the regional and European level.

[9] https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a67955

Measures to combat hate speech have several answers, one of them is the answer of civil or administrative law, some measures are extralegal types such as education and awareness raising, and only finally can we talk about measures of criminal law protection. For all these measures and the protection of the integrity of individuals or groups, the role of the media, journalists and other controllers of that type, which influence hate speech, its criticism and condemnation, emphasizing social pluralism and the freedom to express thoughts and ideas, without infringing the rights of others, is crucial.

Things set in this way led in 2022 to the adoption of the cited Recommendation CM/Rec (2022) 16, with the idea of standardizing actions, from the obligations of the state and public authorities, to the hosts of social networks and their users.

OBLIGATIONS OF PUBLIC AUTHORITIES IN RELATION TO HATE SPEECH

The adopted Directive insists on the cooperation of all participants in the public space, with an emphasis on the communication of public institutions and private and non-governmental entities, in determining and implementing measures to prevent and fight against hate speech.

In order to be able to help those who are victims of hate speech in exercising their rights, according to the authors of the Directive, it is necessary to work on a culture of involvement of victims in the procedures for solving open issues. From the existing agreements of the Council of Europe and other instruments that set standards, and especially based on the relevant jurisprudence of the European Court of Human Rights and the findings and recommendations of the monitoring body of the Council of Europe, Recommendation Rec(97)20 of the Committee of Ministers to member states on "hate speech", Recommendations Rec(97) 21 of the Committee of Ministers to member states on the media and promoting a culture of tolerance and General Policy Recommendations no. 15 of the European Commission for Combating Racism and Intolerance on Suppressing Hate Speech, conditions are created for establishing adequate regulations at the national level.

Through familiarization with international and European standards for the protection of human rights in order to provide guidance to all who are faced with the complex tasks of preventing and fighting against hate speech, including in the Internet environment, certain measures are recommended to the governments of the member states.

Those measures imply the full inclusion of the rules of this Directive in the domestic legislation. By taking measures to support independent and regulatory bodies for human rights, the work of commissioners for the protection of equality, civil society organizations, the media and other mediators, it is possible to achieve a more correct application of all the proposed measures.

The executive power is faced with the challenge of protecting human rights and fundamental freedoms in the digital environment, including cooperation with online intermediaries in accordance with Recommendation CM/Rec(2018)2 on the roles and responsibilities of online intermediaries and other applicable standards of the Council of Europe. It is impossible to achieve the protection of human rights and freedoms in the digital environment without the actual adoption of these recommendations at the state level, within the dialogue of all participants.

The member states have the obligation to make the translation of the recommendations from the Directive available to everyone, in the national language. The Republic of Serbia, as well as other CE member countries, also have the obligation to regularly assess the state of

implementation of this recommendation in order to strengthen its impact, and to inform the Committee of Ministers about the measures taken by the member states and other actors, the progress achieved, as well as all open issues.

RECOMMENDATION CM/REC (2022) 16 AND CRIMINAL LAW

Although the definition of the phenomenon of hate speech has been doctrinally discussed for a long time, it has not yet been precisely determined what it actually represents. According to Benes, hate speech (Benesch, S., 2014) is a prohibited form of speech, which limits freedom of expression because, instead of contributing to the debate in a democratic society, this dangerous speech discriminates against certain vulnerable groups in society and incites hatred, aggression and hostility. Following Pavlović's statements, it can be said that hate speech is especially bad for minorities (Pavlović 2022:158).

The European Commission's General Recommendation against Racism and Intolerance (ECRI) more specifically defines hate speech as (ECRI, General Policy Recommendation No. 15, December 8, 2016) the use of one or more specific forms of expression - advocacy, promotion or incitement of vilification, hatred or defamation of a person or group of persons, as well as any harassment, insult, negative stereotypes, stigmatization or threats in relation to such a person or group of persons, as well as justifying all the aforementioned forms of expression - based on a non-exhaustive list of personal characteristics or statuses that include race , skin color, language, religion or belief, national or ethnic origin, as well as origin, age, disability, sex, gender, gender identity and sexual orientation.

Recommendation CM/Rec (2022) 16 also tried to define hate speech in its appendices, so that the prevention and fight against hate speech and crimes could be effectively acted upon. Thus, hate speech is defined as any type of expression that incites, promotes, spreads or justifies violence, hatred or discrimination against a person or group of persons or that disparages them because of real or attributed personal characteristics such as "race", color, language, religion , citizenship, national or ethnic origin, age, disability, gender, gender identity and sexual orientation. The authors of the Recommendations insist that hate speech includes several expressions of hatred, the gravity and damage they cause must always be specified, in accordance with the ECHR and the judicial practice of the European Court of Human Rights.

What is important to point out is that not all hate speech has to be prohibited under criminal law, but if it does not have that weight for criminal liability, the jurisdiction of administrative or civil law must always be recognized. The speech does not have to be recognized as hate speech, but it can have an offensive and harmful expression that affects the other party. This requires alternative responses, which can be promoted through social networks, media, education, awareness raising and more.

Everyone who acts in cases related to hate speech and hate crimes can recognize in the document itself guidelines that can help in their work, in relation to the principles of the ECHR and the practice of the Court. In each specific case, the content of the expression, the political and social context at the time of use of the expression should be appreciated (because the time of execution is extremely important); the intention of the person using the expression; the role and status in society of the person using the expression; the manner in which the expression is spread or multiplied; the capacity of the expression to cause harmful consequences, including the necessity of those consequences; the nature and size of the audience, and the characteristics of the target group.

The effectiveness of the protection of victims' rights is reflected in the creation of a system of protection in order to prevent and fight against hate speech in the digital world and outside it, with a constant note that criminal law should only be at the end of that protection. This system of protection implies that within the framework of existing institutions or by creating a new institution, a court battle against hate speech will also begin. All those who are the target of hate speech would thus have their representatives before the court who could initiate lawsuits (or criminal charges) for hate speech.

Following the footsteps of the Directive itself, CE member states are required to specify in their criminal legislation and precisely specify which expressions of hate speech are subject to criminal liability. These are certainly public incitement to genocide, crimes against humanity or war crimes, i.e. goods protected by international law. Hate speech should also be criminalized when it involves incitement to hatred, violence or discrimination.

Criminalization of racist, xenophobic or sexist and LGBTI insults (public insults), provided that the conditions for insults on the Internet in the Additional Protocol to the Convention on Cybercrime regarding the criminalization of acts of a racist and xenophobic nature committed via computer systems are met (ETS No. 189) . Public denial, trivialization and approval of criminal acts against humanity and other goods protected by international law can also in the appropriate context be hate speech that should be sanctioned. including ideas based on racial superiority or hatred.

The basic idea of the author of Recommendation CM/Rec (2022) 16 is that all hate speech on and off the Internet must be removed as soon as possible from the Internet form of means of communication, the rules of civil, administrative and, finally, criminal law. In order to be able to act in this way, it is necessary to determine the role and responsibilities of internet mediators, as well as all state and non-state participants engaged in solving the issue of hate speech on the Internet.

It is indisputable that at this moment there are no transparent rules for cooperation between public authorities and civil society organizations, i.e. internet mediators for solving the issue of hate speech on the internet (in the Republic of Serbia). In this way, the effectiveness of the assessment and investigation of hate speech prohibited under the rules of criminal, civil or administrative law is lost.

Although insufficiently precise, the recommendation CM/Rec (2022) 16 states that the Law on the Prevention and Prohibition of Hate Speech should also be passed (either as a separate law or within the framework of the existing ones), so that online intermediaries can be insisted on respecting human rights of all participants. Rules for processing criminal reports (misdemeanor reports) for reporting cases of hate speech must be established for state bodies. Procedures for removing the content of hate speech must be transparent, clear and predictable, with an appeal procedure as a two-step principle and the possibility of an independent judicial examination, which is not the case now.

Internet intermediaries must, according to the law to be adopted, take effective measures to fulfill their duties and obligations so that hate speech prohibited by criminal, civil or administrative law is not made available or disseminated. In order to realize this, it is necessary to have procedures for the quick processing of reports of hate speech, its immediate removal, compliance with requirements regarding privacy and data protection, securing evidence related to hate speech prohibited by criminal law (Kranjčec - Mamula 2023:546).

Reporting hate speech to the authorities and efficient collection of evidence related to criminal hate speech, based on the order issued by the competent authority, is a step without which it is difficult to get a reaction from the criminal authorities. In detecting hate speech,

the role of self-regulatory or co-regulatory institutions and bodies is indisputable. However, in disputed situations, the possibility of adopting temporary measures in complex or unclear situations should be foreseen.

Although Internet intermediaries often disclaim responsibility for comments on various posts or collaborative pages on Internet platforms, such situations must also be regulated, and in case of doubt, the dissatisfied should always be left with the possibility of verification through court proceedings.

SOCIETY'S RESPONSE TO HATE SPEECH AND HATE CRIMES

Following the solutions from the Directive, we could say that the reaction of the public authorities takes place on two levels. The first would be judicial protection of victims of hate speech and hate crimes. The second level would be the reaction of media public services that work on national frequencies, but also the work of the media and journalists, who should promote a culture of tolerance and understanding.

The promotion of dialogue and understanding between groups, and the avoidance of stereotypes and prejudices are one of the appropriate reactions of society to hate speech. Issues of public interest should be resolved within the framework of systems and institutions, and the capacities of independent institutions should also be used.

The role of civil society organizations can be beneficial for everyone, by entrusting them with coordination among all actors who implement policies to prevent and combat hate speech. Part of the trainings and workshops can be conducted through them. Effective strategies, which can be implemented in practice, have the task of eliminating misinformation, negative stereotypes and stigmatization of persons or groups.

Education about human rights, education for media and information literacy that deal with the topic of hate speech on and off the Internet should become part of plans and programs of general education.

Initiatives that have in their plan the strengthening of awareness among children and young people, parents, guardians and others, must be financed in a planned and long-term way. Training programs that mean strengthening the capacity of the police, security structures, prosecutor's offices, courts and health workers in recognizing and reacting to hate speech are an important part of prevention, and in strengthening the protection system against the consequences of hate speech. From the aspect of human rights, it is necessary to conduct trainings with members of minority communities in order to strengthen their capacity in developing and fostering dialogue.

Although it is mainly about supporting victims of hate speech and hate crimes, it is also necessary to work on strengthening the capacities of those who work with victims of these crimes. We are talking about mechanisms that serve to create appropriate independent and expert bodies. In order to help the victim of crime and hate speech, there must be systematically resolved answers to the questions of free legal aid, provided housing costs for victims of violence, because not everything can be saved by moving the abuser, especially if there are no conditions for that. All measures must be simple, taking into account that they must also be linguistically accessible.

Effective protection mechanisms and removal of obstacles for recognizing hate speech should be part of the system of protection against all negative consequences of filing a lawsuit, as well as imposing sanctions on the perpetrators of these punishable acts.

CONCLUDING REVIEW

The development of the area of protection of the rights of victims of hate speech and hate crimes is conditioned not only within the framework of criminal, civil or administrative proceedings, but also by the obligations of the state. The victim, who was a marginalized subject for a long time, in contemporary conditions comes into the focus of doctrine, but also of practice. Supported by research in the field of victimology, but also by the wider movement for human rights, contemporary legal thought of the 21st century is focused on ensuring the rights, support, protection and dignity of the victim in proceedings before public authorities, where criminal law is the ultima ratio last instrument in protection from hate speech.

A whole series of legal instruments have been adopted within the European Union to date, which in a normative sense provided the basis for the construction of a system for the protection of victims of hate speech and hate crimes, a system that will be sensitive to the needs of the victim and in which the state will assume responsibility for its protection. Directive 2012/29/EU on the minimum rights of victims and CM/Rec (2022) 16 - Recommendation of the Committee of Ministers to the Member States on the fight against hate speech are the most important current European documents in this area and provide not only systematic support for victims, but also determine the obligations of public authorities in that procedure. The Directive on the minimum rights of victims and the Recommendation are mostly implemented with their solutions in the legal system in the Republic of Serbia.

However, following what is happening in public discourse shows that there are many practical challenges in realizing the right to protect victims of hate speech and hate crimes.

Existing solutions have not been fully implemented in practice. Support and assistance to victims is carried out by various authorities, often as a result of the received projects, and not as a permanent activity of state authorities. The recommendation also includes the involvement of civil society organizations. We must note that such a dichotomy of the support system, in our opinion, is not optimal because it can make the coordination of those bodies difficult. An additional problem is the fact that those services do not have a publicly available database of statistical indicators that could serve as a guideline for policy makers, but also as a control mechanism for the effectiveness of the Recommendation's implementation.

Insufficiently well distributed number of employees of the appropriate profession in the police and prosecutor's office (there are not enough psychologists and employed social workers), a small number of employees in social protection services, shortcomings in the regulation of procedures in the detection and prevention of hate speech on social networks or the Internet, are just a few from problems where Prepourka makes suggestions, but they have not been implemented in domestic legislation.

Following the principle of equality, which here would mean equal treatment of victims in all places in the RS in the case of hate speech, we notice that there are not enough professional services and developed procedures that could implement this.

In the case of the protection of victims of hate speech, the protection mechanisms against revictimization are not sufficiently developed, which is certainly a question of procedural nature, as well as the question of who is the coordinator of all activities. To conclude, the normative activity and solutions adopted by the Directive and the Recommendation in the area of the rights of victims of hate speech are still not a sufficient guarantee that protection will be realized in full capacity in practice.

It is certain that appropriate research should be carried out in the coming period, in order to establish how the system works in all places, not only in the main centers of the country, because the legal solutions are generally good, but in implementation we have a lot of room to make things even better.

It is commendable that the victim of hate speech and hate crime has received the normative recognition it deserves, but a complete and effective support system will require the necessary improvements in practice, followed by a more precise legal text in the protection system that needs to be established.

LITERATURE

Drožđan-Kranjčec, A., Mamula, M. Support system for victims and witnesses of criminal offences in Croatia – compliance with international requirements and standards, Hrvatski ljetopis za kaznene znanosti i praksu (Zagreb), vol. 30, broj 2/2023, str. 545-568.

Pavlović, Z., Hate speech, violence and disseminating of false news on the global social networking highway, 153-167 (Novi Sad) Zbornik radova Govor mržnje, 2022.

https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse

https://rm.coe.int/16804dccae

Resolution (77) 27 on the compensation of victims of crime (Adopted by the Committee of Ministers on 28 September 1977 - https://rm.coe.int/16804f3e59

European Convention on the Compensation of Victims of Violent Crimes, Eur. T. S. No. 116, 1983.

https://rm.coe.int/cdpc-2021-1-proposal-for-an-updated-coe-recommendation-on-victim-right/1680a17d66

https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029

https://commission.europa.eu/system/files/2022-06/swd_2022_179_evaluation_rep_en.pdf

https://rm.coe.int/cm-rec-2023-2e-eng-recommendation-trafficking/1680ab4922

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a67955

Original Scientific Paper
Besa ARIFI*
DOI: 10.47152/Palic2024.16

VICTIMS OF HATE CRIMES IN THE REPUBLIC OF NORTH MACEDONIA

Abstract: The 2018 amendments to North Macedonia's Criminal Code (CCNM) signify a paradigm shift in addressing hate crimes, previously under-implemented since their 2009 inception. Led by the OSCE mission in Skopje and the Macedonian Academy for Sciences and Arts, experts revised the CCNM, offering a comprehensive hate crime definition. These amendments elevate certain general crimes to aggravated offenses when prosecuted as hate crimes, warranting harsher penalties. Simultaneously, the 2010 Criminal Procedure Code (CPC) introduces significant procedural changes, notably explicit victim rights like active participation, compensation, protection, and professional assistance. Conversely, hate crimes in the Criminal Code qualify as aggravating factors in specific offenses. This study aims to analyze hate crime victim status and rights, exploring their evolution and victimization characteristics. Utilizing desk research methods, including legislative scrutiny, the paper posits that enhancing victim rights aligns with contemporary efforts to address and mitigate widespread hate crimes.

Keywords: victims, hate crimes, criminal law, criminal procedure law

INTRODUCTION

The revisions to the Criminal Code of North Macedonia (CCNM, 1996) enacted in autumn 2018 introduce a novel framework for the identification and adjudication of hate crimes. Despite the initial criminalization of hate crimes in 2009, practical enforcement of these legal stipulations has been lacking. A collaborative effort led by the OSCE mission in Skopje and the Macedonian Academy for Sciences and Arts, comprising a working group of subject matter experts, formulated the CCNM amendments, which delineate a comprehensive and inclusive definition of hate crimes (Kambovski, 2015). Additionally, these revisions broaden the scope of offenses such that certain general crimes, when prosecuted as hate crimes, are categorized as aggravated offenses, thereby warranting more severe penalties.

Concurrently, the Criminal Procedure Code (CPC, 2010) introduces substantive modifications to criminal procedural practices within the Republic of North Macedonia. Notable among these alterations is the explicit and meticulous delineation of the categories and rights of crime victims, encompassing rights such as active involvement in criminal proceedings, entitlement to compensation, provision of protection, and access to professional support services. Conversely, within the Criminal Code of the Republic of North Macedonia, hate crimes are designated as aggravating factors in specific offenses.

This study aims to examine the status and rights of victims of hate crimes from both a comparative and domestic perspective. The author endeavors to analyze the evolution of the hate crime concept and elucidate the characteristics conducive to victimization in such offenses. Employing a desk research methodology this paper endeavors to validate the central hypothesis that efforts

* PhD, Professor of Criminal Law and Criminology at the Faculty of Law; Researcher at the Max Van der Stoel Research Institute at the South East European University, Tetovo, Republic of North Macedonia. Email: b.arifi@seeu.edu.mk.

aimed at enhancing the status and rights of victims align with contemporary trends seeking to address and mitigate the prevalence of hate crimes within society.

THE CONCEPT OF HATE CRIMES

Hate crimes entail criminal actions driven by bias motivations, setting them apart from other offenses (OSCE-ODIHR, 2014). Such motivations distinguish hate crimes, where the victim could be an individual, individuals, or property linked to a group sharing a protected characteristic. These characteristics represent fundamental traits of a group, encompassing aspects like "race," religion, ethnicity, language, or sexual orientation.

Inadequate prosecution and punishment of hate crimes pose a significant risk to a country's interpersonal, inter-ethnic, and inter-confessional relations (Arifi, 2018). When state institutions fail to prosecute these crimes effectively, it signals a tolerance for such behavior. This tolerance fosters marginalized groups and communities, who feel alienated from state institutions due to perceived lack of protection. Consequently, the erosion of trust in these institutions gives rise to numerous issues stemming from the marginalization and discrimination of these groups.

Hate crimes are a pervasive reality worldwide, with each country experiencing varying types and degrees of such offenses. However, there are notable differences among states regarding their approaches to prosecuting hate crimes. Some states demonstrate a proactive stance by explicitly addressing hate crimes in legislation and integrating their prosecution into the mandate of relevant state institutions. These states establish dedicated mechanisms for prosecuting hate crimes and engage closely with affected communities.

Conversely, other states opt to overlook the issue of hate crimes, hoping to preserve harmony between different communities. Paradoxically, this decision to ignore hate crimes undermines community relations and exacerbates the lack of trust in state institutions. Consequently, ignoring hate crimes fails to resolve underlying issues and instead engenders further complications.

REGULATION OF HATE CRIMES IN THE CRIMINAL CODE OF REPUBLIC OF NORTH MACEDONIA

The revisions to the Criminal Code of North Macedonia (hereafter CCNM), initially implemented in 1996, incorporated the concept of hate crimes into the country's criminal legislation in both 2009 and 2014. Specifically, Article 39, Paragraph 5, stipulates that during sentencing, the court must give special consideration to whether the crime was motivated by bias against the victim's sex, race, skin color, gender, belonging to a marginalized group, ethnic origin, language, citizenship, social origin, religion, religious belief, other beliefs, education, political affiliation, private or social status, mental or physical disability, age, family and marital status, property status, health condition, or any other legally provided or internationally ratified ground.

Furthermore, the CCNM includes provisions in Articles 137/1, 144/4, 319/1, 394g/1, and 417/1, which criminalize various acts such as violation of equality among citizens, endangerment of security, incitement of hatred, division or intolerance based on national, racial, religious, or other forms of discrimination, distribution of racist and xenophobic materials via computer systems, and racial and other discriminatory behaviors. As outlined by Kambovski

(2015), the purpose of these provisions is twofold: to prevent hate crimes and to convey an institutional message that such acts will not be tolerated within society.

In 2015, the OSCE Mission in Skopje, in collaboration with the Macedonian Academy for Sciences and Arts (hereinafter referred to as MASA), under the leadership of Academic Vlado Kambovski at that time, initiated the formation of a National Working Group on Hate Crimes. This group comprised representatives from various institutions, including the Faculty of Law, the Ministry of Justice, the Ministry of Interior Affairs, the Office of the Prosecution, the Judiciary, the National Contact Person for Hate Crimes by the Ministry for Foreign Affairs, the Academy for Judges and Public Prosecutors, the Civil Society Sector (Helsinki Committee), the Academic Community, the National Commission on Anti-Discrimination, MASA, and the Macedonian Society for Criminal Law and Criminology (Kambovski, 2015). The author of this paper is a member of the National Working Group on Hate Crimes (NWGHC).

The group collaborated on drafting amendments to the Criminal Code of North Macedonia, which came into effect in 2018. These amendments aimed to provide a more precise definition of hate crimes across different articles of the Code. Specifically, a distinct definition was established in Article 122, Paragraph 23, defining a hate crime as "...a criminal act against a person or legal entity or property related to it, that is committed entirely or partially because of the actual or presumed characteristic of the person that refers to race, color of skin, national and ethnic belonging, religion or religious belief, mental or physical disability, sex or gender identity, sexual orientation, political affiliation, age, or belonging to a marginalized group". This definition is closely linked to the aforementioned Article 39, Paragraph 5 of the CCNM, which outlines aggravating circumstances when a crime involves a bias element.

Furthermore, the amendment expands the previous list of distinct crimes where the presence of bias will continue to constitute an aggravating circumstance. This expansion encompasses additional offenses, which, when motivated by hate, will trigger an additional aggravating circumstance. These offenses include Murder (Article 123), Bodily Injury (Article 130), Severe Bodily Injury (Article 131), Coercion (Article 139), Unlawful Deprivation of Liberty (Article 140), Torture and Other Cruel, Inhuman, or Degrading Treatment and Punishment (Article 142), Threatening Safety (Article 144), Prevention or Disruption of Public Gathering (Article 155), Rape (Article 186), Sexual Assault of a Helpless Person (Article 187), Sexual Assault upon a Child under 14 Years of Age (Article 188), Failure to Provide Medical Assistance (Article 208), Damage to Another's Property (Article 243), Abuse of Official Position and Authority (Article 353), Acts of Violence (Article 386), and Desecration of a Grave (Article 400).

With these amendments, the Criminal Code now encompasses a comprehensive definition of hate crimes, protecting 20 distinct characteristics. Notably, there are a total of 26 separate offenses delineated as hate crimes under these provisions.

THE VICTIMOLOGICAL ASPECT OF STUDYING HATE CRIMES

It's crucial to approach hate crimes through a victimological lens. Accordingly, the OSCE-ODIHR (2016) recommends disaggregating official crime victim data by factors such as ethnicity, gender, and religion, and supplementing it with victimization surveys. These measures can shed light on why individuals might hesitate to report bias-motivated crimes and their experiences with law enforcement.

Notably, the new Criminal Procedure Code of RNM includes a specific chapter on victims' rights in criminal proceedings. However, due to inadequate institutional capacities, this chapter isn't effectively implemented. Consequently, as highlighted elsewhere (Arifi, 2018), there's

a lack of evident strategy and specialized state institutions for protecting the rights of crime victims overall, let alone those of hate crime victims.

DEVELOPMENT OF THE CONCEPT OF VICTIM'S RIGHTS

From a historical and theoretical perspective, it is evident that the rights and position of the accused were established much earlier than those of the crime victim (Doak 2009). Specifically, the focus on analyzing the perpetrator's personality and rights emerged in the late 19th century with the advent of the anthropological-positivist school (Lombroso, 1976(2006)). Throughout the 20th century, a series of national, regional, and international documents clearly and precisely delineated the position and rights of the accused (Basiouni, 2006).

Conversely, theoretical examinations of the victim's persona and potential rights within the criminal procedure emerged nearly a century later compared to the establishment of regulations regarding the rights and status of the accused (Doak, 2009). Specifically, the foundations of victimological science were laid in the 1940s, while the advocacy for victim rights gained momentum only after the Second World War (Doerner, Lab, 2020). National, regional, and international frameworks for safeguarding victim rights, originating in the 1980s, delineate four fundamental categories of victim rights: the right to compensation, the right to protection, the right to active involvement in the criminal procedure, and the right to assistance and support (Doak, 2009; Bassiouni 2006). Among the rights afforded to victims in contemporary times, it is observed that the right to compensation and, to a certain extent, the right to victim protection are more commonly integrated into the criminal procedural laws of numerous nations (Bassiouni, 2006). In contrast to other rights, such as the right to actively engage in criminal proceedings or the right to access specific services from state authorities, these initially mentioned rights are more swiftly and readily embraced in national legislations (Doak, 2009).

As part of the criminal law reforms in the Republic of North Macedonia, these victim rights were incorporated into the new Criminal Procedure Code of 2010. Additionally, the rights of specific victim categories are governed by specialized legislation, such as the Law on Witness Protection (2005), the Law on Justice for Children (2024), the Law on Protection of Children (2013), and others. Significant legislative advancements are evident in defining victim rights.

One of the fundamental innovations outlined in the Criminal Procedure Code (2010) is the explicit definition and differentiation of key terms within the criminal procedure framework. Specifically, not only does the law distinguish between the terms suspect, accused, and convicted (clarifying that, in a broader sense, the term accused encompasses all three categories), it also provides definitions for three distinct entities: the victim, the injured party, and the private plaintiff. This marks the initial instance in our country's legal system where a structural distinction is made between the victim and the injured party, as previously these terms were considered synonymous.

The definition of the victim in the Criminal Procedure Code mirrors that of the RNM's Criminal Code: "any individual who has experienced harm, encompassing physical or psychological injury, emotional distress, material loss, or any other form of injury or violation of their rights and interests due to the commission of a criminal offense." (CPC, 2010, ar. 21, p. 4) Therefore, it is a beneficial development that the Criminal Procedure Code distinguishes between the victim of the criminal offense and the injured party. The injured party is identified as an additional individual, besides the victim, whose personal or property rights have been infringed or endangered by a criminal offense (CPC 2010, ar. 21, p.5). They participate

in the criminal proceedings either by joining the criminal prosecution or for the purpose of pursuing a property-related claim. The loop is completed with the definition provided for the private plaintiff, who is described as an individual initiating a private lawsuit to prosecute criminal acts that fall under such jurisdiction (CPC, 2010, ar. 21, p.6). In this context, the subsequent provision clarifies that this law regards both the public prosecutor and the private accuser as plaintiffs (CPC, 2010, ar. 21, p. 7). Consequently, the term "parties" encompasses both the plaintiff and the defendant (CPC, 2010, ar. 21, p. 8).

CATEGORIES OF VICTIMS ACCORDING TO CRIMINAL PROCEDURE LAW

In reference to the four fundamental rights of victims, the CPC makes a distinction between the overarching rights applicable to victims of all crimes and the specific rights granted to certain victim categories. Hence, Article 53 paragraph 1 outlines the following rights for all victims of crimes:

1. The opportunity for victims to engage in criminal proceedings, either by aligning with the criminal prosecution or pursuing property-related claims for damages, is a crucial aspect of their involvement in the legal process.

2. Victims are entitled to receive specialized care and attention from the authorities and entities involved in the criminal procedure, underscoring the importance of addressing their needs and concerns.

3. Victims have the right to access effective psychological and other professional assistance, recognizing the significant impact of crime on their emotional and mental well-being.

It's observed that the entitlement to participate in proceedings as an injured party and access professional assistance and specialized support are fundamental rights that should be upheld universally. Thus, it can be considered the primary category of victims, encompassing individuals affected by all types of crimes.

Moreover, the CPC delineates two distinct rights specifically for victims of more severe crimes, defined as those carrying a minimum penalty of four years of imprisonment. These rights are:

1. The entitlement to a counselor, funded by the state budget, prior to providing a statement or filing a property claim is granted in cases where there are significant psychophysical injuries or more severe repercussions resulting from the crime.

2. Additionally, compensation for both tangible and intangible losses can be sought from a state fund under conditions specified by specific legislation, should the convicted individual be unable to provide restitution for the damages incurred (CPC, 2010, ar. 53, p. 2).

This set of rights typically encompasses the entitlements of victims affected by violent crimes with severe repercussions, with emphasis placed on the gravity of the offense rather than its specific nature. For these individuals, priority is given to the right to compensation, typically provided through a state compensation fund, as well as enhanced access to and support from judicial authorities, facilitated by the provision of a free counselor. This delineates the second category of victims, comprising those impacted by serious criminal offenses.

The CPC distinguishes and establishes special rights for vulnerable categories of victims (CPC, 2010, ar. 54, p. 3), defining that such category includes:

1) Child and Adolescent Victims: A general category of victims under the age of 18 is cited, where initially no distinction is made between children and adolescents. However, later,

in paragraph 4 of Article 54 of the Criminal Procedure Code, it is stipulated that the court must determine a special measure of procedural protection in cases where the child victim requires special care and protection (it is difficult to understand when the child would not have such a need!) and when the child is a victim of human trafficking, violence, or sexual abuse.

2) Endangered Victims: This category includes victim witnesses who, through their testimony or response to specific questions, would expose themselves or a close person to serious danger to life, health, or physical integrity.

3) Especially Vulnerable Victims: This category encompasses victims who, due to specific circumstances (the nature and consequences of the criminal act, physical or mental disability, or other significant health conditions, social and cultural background, family circumstances, religious beliefs, and ethnic affiliation of the victim, the behavior of the accused, family members, or friends of the accused towards the victim), would suffer harmful consequences to their mental or physical health, or would not be able to provide a qualitative statement.

This is the third category of victims encompassing vulnerable victim categories.

The clear and detailed delineation of these rights represents a significant achievement of the Criminal Procedure Code. Namely, it takes into account all previous criticisms regarding the lack of precisely defined categories of individuals requiring special protection. Moreover, the general provisions for witness protection are explained elsewhere in the law, while the enumerated rights here explicitly pertain to these victim categories. It is also noteworthy that such protective measures, regulated by this and other laws, are decided upon based on the victim's will rather than automatically, which adds to the objectivity and fairness of these decisions. Moreover, the decision to impose such measures is judicial, which further enhances the impartiality and fairness of those rulings.

In order to prevent secondary victimization and traumatization of the most vulnerable category, which are child victims, it is crucial that the law mandates the court to individually or jointly with other special protective measures, provide the child-victim with the option of video and audio recording of their statement and testimony to be used as evidence in the proceedings (CPC, 2010, ar. 54, p. 4). It also specifies that only in exceptional cases, due to new circumstances of the case, the court may order a repeat testimony of the child victim, through the use of technical communication means, at most one more time. This represents a significant advancement in defining the rights of this particularly sensitive category of victims, which should visibly contribute to preventing their secondary victimization. However, it should be emphasized that every child-victim of any criminal offense should enjoy such rights to prevent any form of traumatization and to ensure their smooth return to normal life, as every child deserves it.

The fourth special category of victims highlighted in the CPC includes victims of sexual offenses, specifically those falling under criminal acts against sexual freedom, sexual morality, humanity, and international law (CPC, 2010, ar. 54). Within this group, five essential rights are enumerated, pertaining to this category of victims, primarily aimed at preventing their secondary victimization and ensuring conditions for their effective participation in criminal proceedings and truth disclosure:

1. The victim's right to speak with a free counselor or legal representative before the hearing - it would be beneficial for this provision to specify a designated time for such communication, allowing the victim ample time to contact their counselor and representative and decide on their course of action. This has already been implemented in cases of human traf-

ficking through various subordinate acts and government strategies aimed at advancing this aspect. It would be advisable for such practice to be adopted for all cases listed in this category.

2. To be interrogated by a person of the same gender in both the police and the public prosecutor's office - this also represents a very important right that has a significant impact on the victim's decision to cooperate with the justice authorities and receive appropriate assistance.

3. To refuse to answer questions regarding the victim's personal life unrelated to the criminal offense.

4. To request examination with the assistance of visual and audio aids.

5. To request exclusion of the public from the main trial - it's interesting that all these rights, except the second in the sequence, are repeated in the general provisions for witness examination (the right under number 1 is reiterated when discussing the position of the victim). However, here they are particularly emphasized as special rights of a specific category of victims, explicitly clarifying their rights so that these victims can be informed about their subsequent actions.

With these provisions the CPC demonstrates a strong intention to improve the position of the victim in criminal proceedings and effectively protect them from secondary victimization. This represents a rather humane and just intention that should be implemented in reality.

REPORTING HATE CRIMES IN NORTH MACEDONIA

The 2020 Annual Report on Hate Crimes in the Republic of North Macedonia (RNM), conducted by the NGO Helsinki Committee for Human Rights (Drpljanin, 2022), provides a comprehensive overview of hate crime incidents reported to the organization during the year. According to the report, a total of 104 hate crime incidents were documented, shedding light on the prevalence and nature of such offenses within the country.

Among the various motivations behind these hate crimes, ethnicity emerged as the primary factor, accounting for the majority of reported incidents (76 cases). This indicates a concerning trend of discrimination and hostility based on ethnic backgrounds, highlighting the need for targeted interventions and awareness campaigns to address underlying prejudices and promote social cohesion.

Following ethnicity, political affiliation was identified as another significant motivation behind hate crimes, with 12 reported incidents. This suggests that political tensions and affiliations may contribute to instances of violence or discrimination, underscoring the importance of fostering a respectful and inclusive political climate.

Additionally, the report highlights hate crimes driven by factors such as migrant or refugee status (5 cases), nationality (4 cases), and religious beliefs (3 cases). These findings underscore the diverse range of identities and backgrounds targeted by hate-motivated violence or discrimination, emphasizing the need for comprehensive strategies to combat intolerance and protect vulnerable communities (Drpljanin, 2022).

Overall, the 2020 Annual Report on Hate Crimes in RNM provides valuable insights into the prevalence and patterns of hate-motivated incidents within the country, serving as a vital resource for policymakers, law enforcement agencies, and civil society organizations working to address and prevent such offenses.

An official report from the Ministry of Interior Affairs of the Republic of North Macedonia (RNM) highlights a concerning trend: hate crimes within the country have surged significantly, with a notable 2.2-fold increase observed between 2021 and 2022 (Bureau for Public Security, 2023). This rise underscores the urgency of addressing issues related to discrimination, intolerance, and violence targeting marginalized communities. However, while the report acknowledges the overall increase in hate crimes, it lacks comprehensive information regarding the specific motivations behind these incidents. Specifically, it does not offer detailed insights into the various biases or prejudices driving these crimes. Instead, the report provides a singular example: the physical assault of an LGBT activist on two separate occasions in 2022 due to his sexual orientation (Bureau for Public Security, 2023). This case serves as a stark reminder of the real-world consequences of hate-motivated violence and discrimination. It highlights the vulnerability of individuals from marginalized groups and the urgent need for targeted measures to protect their rights and ensure their safety.

In light of these findings, there is a critical imperative for policymakers, law enforcement agencies, and civil society organizations to collaborate effectively in addressing hate crimes. This includes enhancing efforts to collect comprehensive data on hate crime incidents, implementing robust legal frameworks to prosecute perpetrators, and implementing educational initiatives to promote tolerance and acceptance within society.

Overall, the Ministry's report underscores the pressing need for concerted action to combat hate crimes and uphold the principles of equality, diversity, and human rights within the Republic of North Macedonia.

SURVEYS ON HATE CRIME VICTIMIZATION IN NORTH MACEDONIA

The OSCE Mission to Skopje carried out two surveys on hate crime victimization in North Macedonia, one in 2019 (OSCE-ODIHR, 2019) and another in 2023 (OSCE-ODIHR, 2023).

The 2019 survey, based on 1510 respondents in North Macedonia, identified 165 victims of hate crimes in the year prior. This indicates a likely considerable extent of hate crimes in the country, with some victims experiencing multiple incidents. The 222 hate crimes reported by these individuals far exceed official records, suggesting a significant underestimation of hate crime prevalence. The survey shed light on the significant underreporting of both crime and hate crime. Six out of ten hate crimes and half of other crimes documented in the survey went unreported to the police. Victims cited common reasons seen in international crime victimization surveys for not reporting incidents. Among those who did report to the police, hate crime victims were less likely to perceive fair treatment and respect. Nevertheless, they expressed slightly higher satisfaction levels with police compared to victims of other crimes (OSCE-ODIHR, 2019).

On the other hand, the survey results in the 2023 report demonstrate a strong consistency between the 2018 and 2023 iterations of the North Macedonia hate crime survey. Both waves indicate a significantly higher incidence of hate crime victimization compared to official and NGO records (Drpljanin, 2022). This trend was observed in both 2018 and 2023 (OSCE-ODIHR, 2019; OSCE-ODIHR, 2023). However, when comparing the two survey waves, the rates of potential hate crime and incident victimization have remained largely unchanged. While the survey results suggest a stable trend in potential hate crimes and incidents from 2018 to 2023, there are hints of a slight decrease in overall victimization rates for crimes. This aligns with a minor downward trend in crime indicated by official statistics in recent years (OSCE-ODIHR, 2023). However, these differences are not significant enough to indicate a

clear change between 2018 and 2023 across all specific crimes queried in the survey, according to conventional statistical criteria. Reporting rates to the police have stayed consistent from 2018 to 2023. Incidents with a perceived bias motivation are more likely to be reported to the police compared to those without such motivation (OSCE-ODIHR, 2023). It's worth noting that there has been a decrease in the proportion of potential hate crimes and incidents perceived to have a political bias. Additionally, there has been a downward trend in concerns about potential crime victimization since 2018. In conclusion, the consistency between the 2018 and 2023 survey waves suggests that the survey's design is reliable and cost-effective for assessing the prevalence of potential hate crimes and incidents.

CONCLUSION

From the aforementioned analyses and research, it can be concluded that victims of hate crimes represent a distinct and highly sensitive category of victims. In terms of their characteristics, it is common that certain characteristics may be reasons for victimization in hate crimes, among which the most frequent are: ethnic origin, race, religion, sexual orientation, political affiliation, and disability.

Regarding the Republic of North Macedonia, it can be said that the criminal legislation has undergone significant reforms aimed at improving the legal status of victims of criminal offenses. However, in the context of victims of hate crimes, much more remains to be done.

It is necessary to develop a specific strategy for researching, monitoring, and addressing hate crimes in order to prevent them effectively. Developing a specific strategy for researching, monitoring, and addressing hate crimes involves several key components:

1. Research: This includes conducting in-depth studies to understand the underlying factors contributing to hate crimes, such as societal attitudes, cultural dynamics, and historical context. Research can also involve analyzing trends, patterns, and demographics of hate crime incidents to identify vulnerable populations and hotspots.

2. Monitoring: Implementing systems for monitoring hate crime incidents is crucial for early detection and intervention. This may involve establishing reporting mechanisms for victims and witnesses, collaborating with law enforcement agencies to track incidents, and utilizing technology to collect and analyze data in real-time.

3. Prevention: Prevention efforts should focus on addressing root causes of hate crimes, such as prejudice, discrimination, and social inequalities. This can be achieved through education and awareness campaigns to promote tolerance and diversity, fostering community engagement and dialogue, and implementing policies and programs that promote social inclusion and equality.

4. Response and Enforcement: It's essential to have robust mechanisms in place to respond swiftly and effectively to hate crime incidents. This includes ensuring that law enforcement agencies are adequately trained to recognize and investigate hate crimes, providing support services for victims, and holding perpetrators accountable through swift and appropriate legal action.

5. Collaboration and Partnership: Building partnerships between government agencies, civil society organizations, community groups, and other stakeholders is essential for a comprehensive and coordinated response to hate crimes. Collaboration can enhance data-sharing, resource allocation, and the implementation of multifaceted strategies to address hate crimes effectively.

By implementing a specific strategy that encompasses these elements, societies can work towards effectively preventing and addressing hate crimes, creating safer and more inclusive communities for all.

WORKS CITED

Arifi, B. (2018) Effective Prosecution of Hate Crimes as a Precondition for Their Prevention. *Ceza Hukuku ve Kriminoloji Dergisi-Journal of Penal Law and Criminology*, 6(1), pp. 1-14.

Bassiouni, M. C. (2006). International Recognition of Victims Rights. *Human Rights Law Review , 6* (2), 203-279.

Биро за јавна безбедност (Bureau for Public Security). (2023). Ministry of Interior Affairs Annual Report for 2022. Skopje: Ministry of Interior Affairs.

Criminal Code of Republic Macedonia. Official Gazette of the Republic of Macedonia nr. 37/96. Amendments of the CCRM published on the Official Gazette of Republic of Macedonia nr. 80/99, 48/01, 4/02, 16/02, 43/03, 19/04, 40/04, 81/05, 50/06, 60/06, 73/06, 87/07, 7/08, 139/08, 114/09, 51/11-3, 51/11-79, 135/11, 185/11, 142/12, 143/12, 166/12, 55/13, 82/13, 14/14, 27/14, 28/14, 41/14, 115/14, 132/14, 160/14, 199/14, 196/15, 97/17, 170/17, 248/18, and Official Gazette of the Republic of North Macedonia nr. 36/23, 188/23.

Criminal Procedure Code of Republic of North Macedonia. Official Gazette of the Republic of Macedonia nr. 150/2010.

Doak, J. (2009). Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties. Oxford and Portland: Hart Publishing.

Doerner, W.G; Lab, S.P (2020). Victimology, 9th edition, London, Routledge.

Drpljanin, V. (2021). Annual report on hate crimes in 2020. Skopje: Helsinki Committee for Human Rights.

Kambovski, V. (2015). Предлог за основање на работна група за ревидирање На законските одредби кои се однесуваат на криминал од омраза *и* подготвување на препораки за нивна примена од надлежните органи . Skopje: Unpublished internal document prepared for the National Working Group on Hate Crimes.

Law on witness protection. Official Gazette of the Republic of Macedonia nr. 38/2005.

Law on justice for children. Official Gazette of the Republic of Macedonia nr. 66/2024.

Law on protection of children. Official Gazette of the Republic of Macedonia nr. 23/2013

Lombroso, C. (orig. 1876, pub. 2006). Duke University Press Books.

OSCE-ODIHR (2009). *Hate Crime Laws A Practical Guide.* Warsaw. OSCE Office for Democratic Institutions and Human Rights (ODIHR).

OSCE ODIHR. (2014). Prosecuting Hate Crimes A Practical Guide. Warsaw: OSCE Office for Democratic Institutions and Human Rights (ODIHR).

OSCE-ODIHR. (2016). *Comments on Draft Amendments to Certain Provisions of the Criminal Code of the Former Yugoslav Republic of Macedonia Regarding Bias-Motivated Crimes based on an unofficial English translation of the draft amendments provided by the OSCE Mission to Skopje.*

OSCE-ODIHR (2019). Hate Crime Victimization Survey. Skopje. OSCE Mission to Skopje.

OSCE-ODIHR (2023). Hate Crime Victimization Survey. Skopje. OSCE Mission to Skopje.

Review Paper

Anđela ĐUKANOVIĆ*

DOI: 10.47152/Palic2024.17

INTERNATIONAL GUIDELINES AND STANDARDS CONCERNING THE SUPPORT AND PROTECTION OF HATE CRIME VICTIMS

Abstract: The adequate protection and support of hate crime victims can be linked to the issues related to the state's efforts to develop comprehensive victim support systems. Besides this general issue, hate crime victim support and protection implies certain distinct features. This article aims to highlight international standards and guidelines that are relevant for providing support and protection for victims of hate crimes, focusing on their differentiating qualities. The main problem associated with hate crimes is the inability to recognize such acts, which is an essential prerequisite for providing victims with additional protection. In addition, there is an increased susceptibility of these victims to secondary victimization and fear regarding the potential reoccurrence of hate-motivated incidents. Victim assistance service providers must possess an understanding of the distinct needs of hate crime victims. Increasing awareness regarding the rights of hate crime victims and fostering confidence in the criminal justice system are additional imperatives.

Key words: hate crimes, victim protection, secondary victimization, discrimination

INTRODUCTION

There is no widely accepted definition of hate crimes. According to the definition adopted by the *Organization for Security and Co-operation in Europe (*hereinafter: OSCE), hate crimes can be defined as criminal acts motivated by bias or prejudice *towards* particular groups of people, therefore they have two components: a criminal offense and a biased motivation.[1] Hate crime law frequently incorporates the term "hatred" or, as suggested in the definition, terms like "bias," "prejudice", or "hostility" in conjunction with or as substitutes for the term "hate" (Schweppe, 2021: 3). Hate crimes are also frequently referred to as "bias crimes". Hate crimes can be prescribed as a specific mandatory circumstance for a criminal offense committed out of hatred based on characteristics such as race, religion, national or ethnic origin, sex, sexual orientation, or gender identity of the victim.[2] Hatred as a feeling is aimed not against the victim as an individual possessing a particular characteristic, but at a certain group with which the victim shares those characteristics. The effective support of victims relies also on the capacity of states to acknowledge hate crimes, and then conduct thorough investigations, punish the offenders, and impose appropriate sentences. When it comes to characteristics that are targeted by hate or bias motivation, they vary among states. Most of them criminalize hate crime on the grounds of race, color, religion, descent, or national or ethnic origin, but

* PhD, Research Fellow, Institute of criminological and sociological research in Belgrade, https://orcid.org/0000-0002-2053-9324. E-mail: andjelastoja@gmail.com. The current paper is part of a research endeavor funded by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia, conducted by the Institute of Criminological and Sociological Research, 2024, number 451-03-66/2024-03/200039.

[1] OSCE, ODIHR, *Hate Crime Reporting,* Available at: https://hatecrime.osce.org/, acessed 05.03.2024.

[2] Criminal Code, Official Gazette of the Republic of Serbia no. 85/2005, 88/2005 – corrected, 107/2005 – corrected, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019, Article 54a.

to a lesser extent when it comes to sex, gender, disability, and age, and some states generally criminalize conduct committed with a hate or bias motive, without referring to any specific ground (Ypma et. al., 2021: 58).

The position of the victim is often examined in the literature by evaluating arguments that relate to the justification of imposing enhanced criminal penalties for hate or bias crimes. There is an argument that they inflict greater harm than parallel crimes to the immediate victim of the crime, the affected community, and the overall society (Lawrence, 1994: 348). It cannot be assumed that hate crimes are more likely to be brutal or to do more physical harm than their counterparts, as they encompass a wide spectrum of criminal offenses motivated by hatred toward certain groups. Not all crimes classified as hate crimes necessarily entail some form of violence.

However, victims of hate crime may encounter a sense of personal vulnerability and diminished worth as a result of their association with a particular group. Additionally, they may perceive themselves as being more vulnerable to future hate-motivated criminal incidents. Victims' vulnerability is heightened by perpetrators' ability to recognize the majority of features that are commonly associated with a particular group. Most of the disadvantaged groups are linked to a well-established set of stereotypes, which can be described as a collection of constructed associations formed within social groupings and internalized from a young age, or to prejudice. This can result in less proactive professionals offering assistance to victims of hate crimes, increased biased or ambivalent assessments of the hate crime victim, and less severe responses towards the perpetrators. Hate crime victims can experience secondary victimization and blame, feeling disconnected from the criminal justice system, and a general absence of social support (Lyons, 2006: 40). For victims, hate crimes often result in heightened and prolonged psychological distress after the crime (Herek et al., 2002: 336).

Hate crimes possess a twofold effect: they inflict physical damage upon the direct targets and function as message crimes when the perpetrators intentionally designate an unidentified person or property to symbolize a certain group, doing so to convey their contempt or sense of superiority over the group. Therefore, hate crimes can have broader implications as they can instigate fear and intimidation not only in the immediate targets but also in those who share similar characteristics with the victims. As a result, those belonging to the specific group can experience comparable harm to that of the actual victim (OSCE/ODIHR, 2020a: 29). Hate crimes not only violate individual rights but also demonstrate discrimination against both the victim and the group or community to which the victim belongs or is perceived to belong. Although the hate crime victim implies a natural person who has suffered harm directly caused by a hate crime or family members of a person whose death was directly caused by a hate crime, to ensure protection and support for hate crime victims, it is important to also consider the distinctive characteristics of hate crime and the negative effects it has on both the victims and the affected group or community (EU High Level Group, 2017: 4).

When it comes to the protection of hate crime victims there are two most relevant documents: the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) which affirms access to justice and fair treatment for victims, and within the EU, the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support, and protection of victims of crime

(hereafter: Directive 2012/29/EU) which harmonizes the minimum standards for victims of crime within EU, including hate crime victims.[3]

With the exception of the EU framework, which is the most developed in this regard, the international law on victims, in general, is mostly built upon soft law, resolutions, and declarations of international organizations, and not on international treaties. However, within mechanisms for human rights protection, interpretations of fundamental rights established in treaties are also encompassing some of the victims' rights. In addition, organizations dedicated to the advancement of human rights have compiled comprehensive data on the experiences of victims subjected to harassment and hate-motivated violence and formulated a set of important guidelines concerning the protection of hate crime victims.

Concerning hate crimes, there is no legally binding human rights document with a norm explicitly devoted to hate crimes; nevertheless, in the context of discrimination prohibition norms, international human rights monitoring bodies have developed standards relevant to hate crimes.

However, within the EU, the Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia through criminal law, explicitly prescribes the obligation of Member States to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or that such motivation may be taken into consideration by the courts in the determination of the penalties.[4] The European Commission has proposed expanding the list of EU crimes to include hate speech and hate crime to establish minimum rules for the definition of criminal offenses and sanctions applicable in all EU Member States, with a particular emphasis on broadening the list of characteristics that are targeted by hate or bias.[5] This initiative is part of a broader set of EU actions to combat hate crimes and also emphasizes the need to develop training and capacity building for law enforcement, improve hate crime recording and data collection, as well as to encourage victims to report hate crimes. Within Europe, the Organization for Security and Co-operation in Europe ((hereafter: OSCE) is also particularly focused on ensuring an adequate response to hate crimes among member states.

RELEVANT STANDARDS

At the universal level, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recognizes the need to provide services and assistance to victims. It is stated that careful consideration should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as race, color, sex, age, language, religion, nationality, political or other opinion, cultural beliefs, or practices, property, birth or family status, ethnic or social origin, and disability.[6]

At the European level, the only treaty devoted to victims' rights is the European Convention on the Compensation of Victims of Violent Crimes, which is entirely focused on the right to compensation.[7] However, within the European Union, the most relevant document is

---

[3] A/RES/40/34, 29 November 1985; *Official Journal of the European Union,* 14.11.2012, L 315/57.

[4] *Official Journal of the European Union,* 6.12.2008, L 328/55, Article 4.

[5] COM(2021) 777 final, Brussels, 9.12.2021; *Official Journal of the European Union*, C 79/12, 2.3.2023.

[6] A/RES/40/34, 29 November 1985, Paras 17, 3.

[7] European Treaty Series - No. 116, Strasbourg, 24.XI.1983.

Directive 2012/29/EU, which recognizes the increased risk of secondary victimization for the victims of hate crimes and identifies specific protection needs.

According to the Recital of the Directive 2012/29/EU, the victim's personal characteristics should be taken into account during individual assessments. "They should also take into account the type or nature and the circumstances of the crime such as whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive, sexual violence, violence in a close relationship, whether the offender was in a position of control, whether the victim's residence is in a high crime or gang dominated area, or whether the victim's country of origin is not the Member State where the crime was committed" (Recital 56). Also, it is recognized that the "victims of human trafficking, terrorism, organized crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, and victims with disabilities and child victims tend to experience a high rate of secondary and repeat victimization, of intimidation and of retaliation. Particular care should be taken when assessing whether such victims are at risk of such victimization, intimidation, and retaliation and there should be a strong presumption that those victims will benefit from special protection measures" (Recital 57).

Article 22 of the Directive 2012/29/EU is devoted to the individual assessment of victims to identify specific protection needs: "In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organized crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered." (Article 22(3)). The additional bias or discriminatory motive is usually a broader term than hate crime because it includes more protected characteristics. Based on the 2020 European Commission Report on the implementation of Directive 2012/29/EU, nearly half of the Member States have either not implemented or have only partially implemented Article 22(3), and in certain Member States, the individual assessment procedure fails to account for the presence of bias or a discriminatory motive in the commission of a crime.[8] Research conducted by the Fundamental Rights Agency reveals that hate crimes are significantly underreported within certain communities. The European Commission has published a Strategy on Victims' Rights (2020-2025) that advocates for integrated support for hate crime victims. This entails fostering strong collaboration with the relevant communities and increasing the rate of hate crime reporting.[9]

In June 2006, the Council of Europe's Committee of Ministers adopted Recommendation Rec(2006)8, titled "On Assistance to Crime Victims." This recommendation includes several elements that are relevant to the protection of hate crime victims. Specifically, states need to guarantee that individuals who are especially susceptible to harm due to their personal attributes or the circumstances of the crime receive appropriate assistance tailored to their specific situation. Additionally, it is crucial to offer specialized training to all personnel who interact with child victims and victims of specific types of crimes, such as domestic or sexual violence, terrorism, and crimes motivated by racial, religious, or other prejudice.[10]

---

[8] COM(2020) 188 final, Brussels, 11.5.2020, p. 8.

[9] COM(2020) 258 final , 24.6.2020.

[10] *Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies*, Council of Europe, paras 3.4., 12.3.

The OSCE has made substantial efforts concerning hate crimes. OSCE's Decision 13/06 promotes hate crime reporting through educating front-line officers, executing outreach programs to enhance police-public relations, and providing education regarding offering referrals for victim assistance and protection.[11] In Decision 9/09, OSCE urged states to implement appropriate measures to promote the reporting of hate crimes by victims. It was acknowledged that inadequate reporting hinders states from formulating effective policies and urged states to ensure that victims have access to counseling, legal and consular support, and effective access to justice. Additionally, the OSCE recommended that states promptly investigate hate crimes, publicly condemn and acknowledge the hate motives, and conduct awareness campaigns.[12] The decisions focus on improving hate crime reporting and educating professionals, but they do not recognize the increased risk of secondary victimization.

The General Policy Recommendation released by the European Commission against Racism and Intolerance (ECRI) outlines the basic safeguards for victims who have been subjected to racial offenses or racial discrimination. [13]

INTERNATIONAL BODIES AND PROTECTION OF HATE CRIME VICTIMS

There are currently no universal standards explicitly addressing hate crimes, although human rights monitoring bodies increasingly pay attention to this issue. International human rights monitoring bodies generally recognize the necessity of criminalizing discriminatory motives and conducting effective investigations into these motives as part of efforts to prevent discrimination, and in some cases emphasize the need for crime victim protection. Other organizations, with a specific focus on promoting and safeguarding human rights, have formulated a set of recommendations and guidelines for protecting victims of hate crimes. Additionally, they have conducted surveys to investigate the circumstances faced by hate crime victims.

The Human Rights Committee frequently monitored the position of crime victims in general. When necessary, it emphasized the need to encourage the reporting of hate crimes and guarantee that these crimes are adequately investigated, perpetrators are prosecuted and punished, and victims are given effective remedies.[14]

The recommendations of the Committee on the Elimination of Racial Discrimination (hereafter: CERD Committee), which oversees the implementation of the Convention on the Elimination of All Forms of Racial Discrimination, are significant in this context.[15] The CERD Committee stressed the general importance of prosecuting racist acts, including minor offenses committed with racist motives, since any racially motivated offense undermines social cohesion and society as a whole.[16] The CERD Committee has repeatedly demanded of member states that they take effective measures to encourage the reporting of racist hate crimes, as well as to ensure that such crimes are thoroughly investigated, and prosecuted and that vic-

[11] MC.DEC/13/06, Brussels, 5 December 2006.

[12] MC.DEC/9/09, Athens, 1 – 2 December 2009.

[13] ECRI(2003)8 REV, par. 21.

[14] CCPR/C/IRL/CO/5, 26 January 2023, par. 18(d).

[15] United Nations, Treaty Series, vol. 660, p. 195, 21 December 1965.

[16] Committee on the Elimination of Racial Discrimination, from A/60/18, pp. 98-108, par. 15.

tims receive effective remedies.[17] UN Committee against Torture also under its competencies, monitors hate crime legislation and practices concerning torture victim protection.[18]

When it comes to European bodies that publish regular country reports, the Council of Europe's European Commission Against Racism and Intolerance (ECRI) provides a valuable overview of hate crimes and an evaluation of national trends, gaps, and challenges, including addressing the needs of hate crime victims.[19]

Significant to the protection of hate crime victims is a comprehensive set of guidelines, training programs, and reports created by the OSCE Office for Democratic Institutions and Human Rights (ODIHR). ODIHR assists member states and civil society organizations in developing the necessary frameworks, cooperation mechanisms, and tools to guarantee the protection, comprehensive access to justice, and specialized support of victims of hate crimes.[20]

The Advisory Committee on the Framework Convention for the Protection of National Minorities, an independent expert committee tasked with evaluating this matter, may address the matter of hate crime victim protection. Its assessment is based on comprehensive country-specific opinions that are adopted following the monitoring process.

The European Commission oversees the implementation of Directive 2012/29/EU within the European Union and released a report on this matter in 2020.[21] Non-EU member states seeking EU membership must also align their legislation with the EU's acquis. For example, the Republic of Serbia must likewise align victim protection according to Directive 2012/29/EU, and while great progress has been made, there are still important challenges that need to be addressed (Kolaković-Bojović, Đukanović, 2023: 62-67; Kolaković-Bojović, 2020: 41-54).

The work of the EU High Level Group on combating racism, xenophobia, and other forms of intolerance, established in 2016, is also relevant. It was recently renamed as the High Level Group on combating hate speech and hate crime. This renaming reflects the group›s expanded scope of action, which now encompasses more than just racist and xenophobic motives as outlined in the Framework Decision on combating racism and xenophobia. The primary objective of the High Level Group on fighting hate speech and hate crime is to facilitate the interchange and dissemination of effective strategies among national authorities, address current deficiencies, and enhance efforts to prevent and combat hate speech and hate crime.

The EU Agency for Fundamental Rights has gathered comprehensive data on individuals' encounters with hate-motivated violence and harassment. These surveys have specifically targeted the experiences of distinct demographic groups, including immigrants and their descendants, Roma, Jews, people of African descent, and LGBTI individuals.

---

[17] CERD/C/IRL/CO/5-9, 23 January 2020, par. 22; CERD/C/POL/CO/22-24, 24 September 2019, par. 20.

[18] Report of the Committee against Torture Forty-fifth session (1–19 November 2010) Forty-sixth session (9 May–3 June 2011), (A/66/44).

[19] ECRI Report on Poland (sixth monitoring cycle) Adopted on 27 June 2023; ECRI Report on Hungary (sixth monitoring cycle), Published on 9 March 2023.

[20] OSCE ODIHR Hate crime reporting, Enhancing victim protection and support, Available at: https://hatecrime.osce.org/odihr-tools/enhancing-victim-protection-and-support, Accessed 10. 03. 2024.

[21] COM(2020) 188 final, Brussels, 11.5.2020.

THE EUROPEAN COURT OF HUMAN RIGHTS PRACTICE

The European Court of Human Rights has established a set of standards regarding hate crimes in Europe, specifically in relation to the prohibition of discrimination. The Court stressed that when investigating violent incidents, it is the responsibility of State authorities to make every effort to uncover any racist motives and determine whether ethnic hatred or prejudice may have influenced the events. Undoubtedly, demonstrating racial motives will frequently be exceedingly challenging in practical terms.[22] The Court expanded the range of motives to include religion, sexual orientation, gender identity, political opinion, sex, and disability, and almost all of the cases concern the lack of adequate investigation of hate motive (Kolaković-Bojović, Đukanović, 2023: 41-55). Insufficient investigation or prosecution may contribute to the failure to safeguard the life or physical well-being of the victim.[23] There are some hate crime cases in the Court practice that even involve complete failure to investigate, not just motives.[24]

The practice of the Court also reveals the indifference of state officials concerning the immediate protection of victims, although the states have an obligation to take reasonable steps to protect and prevent ill-treatment which the authorities had or ought to have known. For instance, in one case the Court determined that the assault on the homes of the applicants was driven by racist motives. The police neglected to take any actions to safeguard the applicants' homes from the attack, and no valid justification was provided for their lack of action, despite being aware of the impending attack.[25] The obligation to protect was relevant in a case concerning the use of hate speech toward individuals who identify as homosexual. It was also obvious that the police chose not to take action to alleviate the situation and instead stayed outside the room where the incident took place.[26] The police officers' lack of action in these incidents can be attributed to the pervasive presence of stereotypes or prejudice, which encourage them to endorse criminal activities.

SUPPORT AND PROTECTION FOR VICTIMS OF HATE CRIMES DISTINCT CHARACTERISTICS

The protection of hate crime victims is also connected to the challenges arising from the fact that some states are presently in the process of building comprehensive victim support systems. Besides this general issue that also affects hate crime victims, there are some distinct characteristics related to hate crime victim support and protection. One of the main issues associated with hate crimes is the failure of authorities to acknowledge incidents as hate crimes, which is a crucial prerequisite for providing extra protection to the victims of such acts.

Directive 2012/29/EU acknowledges the necessity of providing specific safeguards for hate crime victims due to their increased susceptibility to secondary victimization, intimidation, and retaliation (Article 22). Victims of hate crimes will thus benefit most from the enforcement of specific protective measures.

---

[22] Bekos and Koutropoulos v. Greece, Application no. 15250/02, 13. December 2005, par. 69.

[23] Opuz v. Turkey, no. 33401/02, 9 June 2009, at paras. 143-146 and 173-174.

[24] Aghdgomelashvili and Japaridze v. Georgia, Application no. 7224/11, 8. October 2020, paras. 39, 45-50.

[25] Burlya and Others v. Ukraine, Application no. 3289/10, 6 November 2018, par. 131.

[26] Association Accept and others v. Romania Application no. 19237/16, 1 June 2021, paras. 105-113.

These specific protection measures according to Directive 2012/29/EU, include measures during criminal investigations and court proceedings. During criminal investigations, interviews must be done in designated settings by qualified personnel and the same individuals. If the victim requests, interviews should be performed by a person of the same sex in cases of sexual, gender-based, or intimate partner violence, unless conducted by a prosecutor or judge (Article 23 (2)). During court proceedings, specific remedies must also be available to victims. These include measures to prevent visual contact between victims and offenders, measures that enable the victim to be heard in court without physically being present, measures to prevent unwarranted intrusion into the victim's private life unrelated to the criminal offense, and measures to allow a hearing to take place in the absence of the general public (Article 23 (3)). Directive 2012/29/EU also includes additional safeguards where the victim is a child (Article 24).

Victims of hate crimes should be approached by criminal justice officials and victim assistance service providers who understand their unique requirements and the consequences of the hate crime. Hate crime victims commonly experience a fear of being victimized again. Victims, upon recognizing that they have been singled out based on their social identity and inherent traits that are beyond their control, experience fear of potential recurrence of such targeting. In addition, there is an increased risk of secondary victimization. Secondary victimization occurs when a victim is met with an unfavorable or prejudiced response from authorities, which reinforces their impression of the crime and can worsen the trauma that they have endured. Secondary victimization refers for example to a situation where a victim of a racially motivated hate crime reports the incident to the authorities, but instead of receiving support, they are subjected to additional racist remarks and/or have the underlying bias or hate motive behind the crime ignored or minimized (OSCE/ODIHR, 2020a: 18). Therefore, the distinctiveness of hate crime secondary victimization can lie in the failure to acknowledge or disregard the hate or bias motive, the display of negative attitudes or the reinforcement of the perpetrator's prejudices, and the subsequent mistreatment of the victim. It also involves showing sympathy towards the perpetrator for the same reason, as well as a lack of appropriate knowledge, experience, and skills to understand the importance of the victim's identity. (OSCE OSCE/ODIHR, 2020b: 14).

Reducing the negative repercussions that hate crime implies the essential requirement for providing personal safety and security for the victims, for example, victims can require extra security measures, such as being escorted to and from court hearings by police officers. The other services provided include practical assistance (this can include medical assistance, security arrangements for the property, and family support), emotional and psychosocial support, maintaining confidentiality and trust, offering information and guidance, aiding in navigating the criminal justice system, and ensuring respectful and dignified treatment (OSCE OSCE/ODIHR, 2020b: 16).

The EU High Level Group on Combating Racism, Xenophobia, and Other Forms of Intolerance produced a valuable document outlining basic principles for protecting and supporting victims of hate crime and hate speech**.** It is emphasized that the quality of services provided is heavily reliant on national authorities' and practitioners' awareness and ability to recognize and treat hate crime victims in a respectful, sensitive, tailored, professional, and non-discriminatory manner and that full respect for the principle of non-discrimination is especially important when dealing with hate crime victims. The impact of established practices should be assessed regularly by collecting data and statistics on how victims have exercised their rights, and victimization surveys can also help to better assess victims' enjoyment of rights (EU High Level Group, 2017: 6-7).

The second concern identified in the guidelines is the identification and resolution of real or perceived obstacles to reporting hate crimes. The victim's decision to report a hate crime can be influenced by a lack of comprehension of the nature of hate crimes or a lack of trust in law enforcement, which may stem from the same factors that led to the victim being targeted (Culotta, 2005: 25). Hence, it is imperative to enhance consciousness regarding the entitlements of hate crime victims and foster confidence in law enforcement. Special emphasis should be placed on the significance of reaching out to vulnerable groups and marginalized populations.

Directive 2012/29/EU (articles 3, 4, 6, 10, and 11) regulates the facilitation of participation in criminal procedures, which is also an essential protective measure for victims of hate crimes EU High Level Group, 2017: 8-10).

When considering redress, it is important to focus on addressing the specific nature and impact of the crime, as well as the unique qualities of the victim. Mediation and other forms of restorative justice should only be utilized if they are provided in a clear, consistent, and skilled manner by professionals who possess a thorough comprehension of the characteristics of hate crime (EU High Level Group, 2017: 11/12).

Ensuring protection against secondary victimization is recognized as crucial for victims of hate crimes. This is achieved by adhering to the rules outlined in Directive 2012/29/EU, which includes provisions for safeguarding victims during criminal investigations and interviews (Article 20), preserving the victim's privacy during legal proceedings (Article 21), and implementing specific protective measures based on an individual assessment of the victim's needs (Article 23). Directive 2012/29/EU (Article 19 and Article 23) provides safeguards against recurring victimization, reprisals, and intimidation, particularly in cases involving hate crimes. It also includes provisions for protective measures. When considering hate crime, it is important to consider both the type and form of the crime, as well as the characteristics of the victim who was targeted. Additionally, the specific social context in which the crime occurred, including social tensions, a hostile atmosphere, and the societal consequences of the crime, should also be taken into account (EU High Level Group, 2017: 12-13).

According to guidelines, the support should be specifically directed towards addressing the needs of victims of hate crimes. Article 9 of Directive 2012/29/EU guarantees the entitlement of hate crime victims to receive support from victim support services, which concerning hate crime victims, must reflect the unique characteristics of hate crimes and the societal context in which they occur. The individual approach to addressing a crime will differ significantly based on various factors and personal characteristics. These factors include the specific type of crime and the frequency of victimization, the nature and severity of the crime, the relationship between the victim and the perpetrator(s), the vulnerabilities of the victim, including any intersecting or multiple factors that may make them more susceptible to harm (such as health problems or disabilities), the victim's social and economic status, and the broader social context in which the crime occurred. Furthermore, according to Directive 2012/29/EU, it is mandatory to provide victims and their family members with free of charge and confidential general and specialized support services, tailored to their specific requirements (EU High Level Group, 2017: 13-14).

Presently, it is observed that assistance for victims of hate crimes is primarily offered by non-governmental organizations and community-based groups who work voluntarily. It is recommended to explore strategies for guaranteeing adequate resource allocation to ensure the long-term sustainability of these organizations, as they have the potential to provide valuable and tailored support services (EU High Level Group, 2017: 15). Importantly, all organ-

izations involved in assisting hate crime victims should create and distribute guidelines, as well as enforce mandatory training sessions for all professionals, about the appropriate and considerate handling of hate crime victims (ODIHR, 2022: 45).

CONCLUSION

Directive 2012/29/EU is essential in terms of the special protection of hate crime victims as an instrument constraining EU member states on the result to be achieved, but providing national authorities with the power to determine the form and methods to achieve the result.

However, crime victims in general could potentially gain advantages from the adoption of a binding international agreement, either at the United Nations or at the European level, which does not solely concentrate on the entitlement to compensation but encompasses all the rights of victims. This agreement should similarly to Directive 2012/29/EU acknowledge the specific requirements of hate crime or other vulnerable groups of victims, rather than solely concentrating on the exceptional safeguarding of victims who have endured significant harm as a result of the severity of the offense. Regarding the implementation of Directive 2012/29/EU, EU member states and states pursuing EU membership have a main responsibility to establish adequate general victim support systems, and above all to consider the existence of discriminatory motives during the individual assessment procedure. Victim assistance service providers must possess knowledge regarding the unique requirements of hate crime victims and the consequences of the hate crime itself. These repercussions primarily consist of increased susceptibility to secondary victimization and victim fear regarding the potential reoccurrence of hate-motivated incidents. Furthermore, it is crucial to increase awareness of the rights of individuals who have been victimized by hate crimes and cultivate trust in the law enforcement system.

Currently, most international organizations that oversee discrimination in general or specific domains also focus on hate crimes and acknowledge the importance of providing hate crime victims with effective remedies. In addition, organizations and groups dedicated to the advancement of human rights protection have formulated a set of valuable guidelines, training programs, and reports. Efforts are being constantly made to identify optimal strategies that can strengthen the position of hate crime victims.

The implementation of policies targeted at minimizing discrimination also may have positive consequences for both hate crime victims and the affected communities, given the wider implications associated with hate crimes.

REFERENCES

Aghdgomelashvili and Japaridze v. Georgia, Application no. 7224/11, 8. October 2020.

Association Accept and others v. Romania Application no. 19237/16, 1 June 2021.

Bekos and Koutropoulos v. Greece, Application no. 15250/02, 13. December 2005.

Burlya and Others v. Ukraine, Application no. 3289/10, 6 November 2018.

Committee of Ministers Recommendation Rec(2006)8, "On Assistance to Crime Victims", *Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies,* Council of Europe.

Communication from the Commission to the European Parliament and the Council - A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime. European Commission, Brussels, 9.12.2021 COM(2021) 777 final.

Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, 'EU Strategy on victims' rights (2020-2025)', COM(2020) 258 final , 24.6.2020.

Concluding observations on the combined fifth to ninth reports of Ireland, Committee on the Elimination of Racial Discrimination, United Nations, CERD/C/IRL/CO/5-9, 23 January 2020.

Concluding observations on the combined twenty-second to twenty-fourth periodic reports of Poland, Committee on the Elimination of Racial Discrimination, United Nations, CERD/C/POL/CO/22-24, 24 September 2019.

Concluding observations on the fifth periodic report of Ireland, Human Rights Committee, CCPR/C/IRL/CO/5, 26 January 2023.

Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, *Official Journal of the European Union,* 6.12.2008, L 328/55.

Criminal Code, Official Gazette of the Republic of Serbia no. 85/2005, 88/2005 – corrected, 107/2005 – corrected, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

Culotta, K. (2005) Why Victims Hate to Report: Factors Affecting Victim Reporting in Hate Crime Cases in Chicago. *Kriminologija i Socijalna Integracija:* Časopis *za Kriminologiju, Penologiju i Poremećaje u Ponašanju*, *13* (2), pp. 15-28.

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, *Official Journal of the European Union,* 14.11.2012, L 315/57.

ECRI General policy recommendation no. 7 on national legislation to combat racism and racial discrimination adopted on 13 December 2002 and amended on 7 December 2017, ECRI(2003)8 REV.

ECRI Report on Hungary (sixth monitoring cycle), Published on 9 March 2023.

ECRI Report on Poland (sixth monitoring cycle) Adopted on 27 June 2023.

EU High Level Group on combating racism, xenophobia and other forms of intolerance (2017) *Ensuring justice, protection and support for victims of hate crime and hate speech: 10 guiding principles***,** European Commission, Available at: file:///C:/Users/PC/Downloads/hlg_conclusions_paper_hate_crime_victims_final_F095A422-97E2-4F77-33D9CEF44BE99E67_48874%20(4).pdf, accessed: 23.03. 2024.

European Convention on the Compensation of Victims of Violent Crimes, European Treaty Series - No. 116, Strasbourg, 24.XI.1983.

General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, Committee on the Elimination of Racial Discrimination, from A/60/18, pp. 98-108, par. 15.

Herek, M., Jeanine, C., Gillis, R. (2002) Victim Experiences in Hate Crimes Based on Sexual Orientation. *Journal of Social Issues, 58* (2), pp. 319-339.

Kolaković-Bojović, M. (2020) *Direktiva o žrtvama (2012/29/EU) i kazneno zakonodavstvo Republike Srbije.* U: *Žrtva krivičnog dela i krivičnopravni instrumenti zaštite (međunarodni pravni standardi, regionalna krivična zakonodavstva, primena i mere unapređenja zaštite)*. Beograd: Misija OEBS-a u Srbiji, str. 41-54.

Kolaković-Bojović, M., Đukanović, A. (2023) *Zločini iz mržnje u Republici Srbiji*. Beograd: Institut za kriminološka i sociološka istraživanja.

Lawrence, M. F. (1994) The Punishment of Hate: Toward a Normative Theory of Bias-Motivated Crimes. *Michigan Law Review, 93* (2), pp. 320-381.

Lyons, C. J. (2006) Stigma or Sympathy? Attributions of Fault to Hate Crime Victims and Offenders. *Social Psychology Quarterly, 69* (1), pp. 39-59.

ODIHR (2022) Policy Brief Hate Crime Victim Support, OSCE Office for Democratic Institutions and Human Rights. Available at: https://www.osce.org/odihr/510857

Opinion of the European Committee of the Regions on extending the list of EU crimes to hate speech and hate crimes (2023/C 79/03), *Official Journal of the European Union*, C 79/12, 2.3.2023.

Opuz v. Turkey, Application no. 33401/02, 9 June 2009.

OSCE Ministerial Council Decision No. 9/09 on combating hate crimes, MC.DEC/9/09, Athens, 1 – 2 December 2009.

30. OSCE Ministerial Council, Decision 13/06, "Combatting Intolerance and Discrimination and Promoting Mutual Respect and Understanding", MC.DEC/13/06, Brussels, 5 December 2006.

OSCE ODIHR Hate crime reporting, Enhancing victim protection and support, Available at: https://hatecrime.osce.org/odihr-tools/enhancing-victim-protection-and-support, Accessed 10. 03. 2024.

OSCE, ODIHR, *Hate Crime Reporting*, Available at: https://hatecrime.osce.org/, accessed 05.03.2024.

OSCE/ODIHR (2020a) *Hate Crime Victims in the Criminal Justice System A Practical Guide,* Poland: OSCE Office for Democratic Institutions and Human Rights (ODIHR), Available at: https://www.osce.org/odihr/447028

OSCE/ODIHR (2020b), *Understanding the Needs of Hate Crime Victims*, Warsaw: OSCE Office for Democratic Institutions and Human Rights (ODIHR) Available at: https://www.osce.org/odihr/463011

Report from the Commission to the European Parliament and the Council on the implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, COM(2020) 188 final, Brussels, 11.5.2020.

Report from the Commission to the European Parliament and the Council on the implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

Report of the Committee against Torture Forty-fifth session (1–19 November 2010) Forty-sixth session (9 May–3 June 2011), (A/66/44).

Schweppe, J. (2021) What is a hate crime?. *Cogent Social Sciences*, *7*(1), pp. 1-15. https://doi.org/10.1080/23311886.2021.1902643

UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: resolution / adopted by the General Assembly, A/RES/40/34, 29 November 1985.

UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, United Nations, Treaty Series, vol. 660, p. 195, 21 December 1965.

Ypma, P., Drevon, C., Fulcher, C., Gascon, O., Network of national legal experts, Brown, K., Marsavelski, K., Giraudon, S. (2021) *Study to support the preparation of the European Commission's initiative to extend the list of EU crimes in Article 83 of the Treaty on the Functioning of the EU to hate speech and hate crime*, European Commission.

Thematic Session 6: Rights of Victims of Offenses Against Public Traffic Safety

Original Scientific Paper
DOI: 10.47152/Palic2024.18

Dragan OBRADOVIĆ*

THE INPUT OF ROAD TRAFFIC VICTIMS TO THE CAUSES AND CONSEQUENCES OF ROAD TRAFFIC ACCIDENTS

- From the perspective of a judge -

Abstract: The Law on Road Traffic Safety pays special attention to the protection of the most vulnerable road traffic users, which include children and the elderly. These categories of road traffic users very often have an input in or contribute with their improper actions to the occurrence and consequences of road traffic accidents. This paper points to certain official data regarding the injuries inflicted upon these road traffic users in Serbia and the world. In particular, individual court case examples depict how these road traffic users can cause road traffic accidents with their improper behavior.

Keywords: victims, road traffic accidents, consequences, minors, elderly people

1. INTRODUCTION

On all the roads of the world, as well as in Serbia, road traffic accidents occur on a regular basis, involving various participants and all with diverse consequences. Every year the lives of approximately 1.19 million people are cut short as a result of a road traffic crash. Between 20 and 50 million more people suffer non-fatal injuries, with many incurring a disability. Road traffic injuries cause considerable economic losses to individuals, their families, and to nations as a whole. These losses arise from the cost of treatment as well as lost productivity for those killed or disabled by their injuries, and for family members who need to take time off work or school to care for the injured. Road traffic crashes cost most countries 3% of their gross domestic product.[1] According to data from the World Health Organization (hereinafter: WHO), almost half of all the fatalities occurring during the year involve the most vulnerable road traffic users, and 27% of the total number of the fatalities on European roads is pedestrians. This has led to the fact that road traffic accidents are the leading cause of death for children and youths aged 5 to 29 (WHO, 2018).

Young people are most often killed in traffic accidents, especially in countries where investment in road traffic safety is not recognized as a social gain but rather, an extra expenditure. The United Nations General Assembly has set an ambitious target of halving the global number of deaths and injuries from road traffic crashes by 2030 (A/RES/74/299). WHO serves as the secretariat for the United Nations Decade of Action for Road Safety 2021–2030, which aims to reduce road traffic deaths and injuries by at least 50% by 2030.[2]

---

* PhD, Judge, Higher Court in Valjevo; full professor at the Faculty of Health and Business Studies in Valjevo, Singidunum University in Belgrade, https://orcid.org/0000-0002-3234-599X.
E-mail: dr.gaga.obrad@gmail.com.

[1] World Health Organization, Car Accidents: A Leading Cause of Childhood Deaths By Ty McDuffey, J.D., Road traffic injuries, 13 December 2023, https://www.findlaw.com/injury/car-accidents/car-accidents-leading-cause-of-childhood-deaths.html, retrieved on 6th March 2024.

[2] World Health Organization, Ibid, retrieved on 6th March 2024.

In traffic accidents involving children, the most vulnerable are schoolchildren, especially as pedestrians. Unlike adults, children have lower height, making them more difficult to notice in traffic. This problem is particularly emphasized in school zones, near parked vehicles that reduce children's ability to observe vehicles, and driver visibility. Children do not have well-developed cognitive and perceptive abilities, and their behaviour is unpredictable. Children often make wrong conclusions because they are unable to recognize the dangers in traffic (Brčić et al., 2019: 288).

The more serious the consequences of road traffic accidents, the more the media race to highlight the gravity of the consequences by using as many details and images as possible, with no regard for the victims and the ultimate consequences of the accidents. This is a typical headline from some of the latest in the media in connection with road traffic accidents in the world: "Italy and road traffic accidents: bus falls off overpass in Venice, more than 20 dead, among them children".[3]

The victims of road traffic accidents are people of various ages and either gender, who participate in road traffic in different roles every day: drivers or passengers in vehicles of different categories, pedestrians, two-wheeler drivers, etc. However, all victims of road traffic accidents fail to receive the same treatment, or in other words, they are not protected equally by the valid regulations and categorizations of the competent authorities. This issue is of extreme importance, as only certain road traffic users are treated as the most vulnerable and in need of receiving special attention. According to the categorization of the Road Traffic Safety Agency (hereinafter: RTSA), there are three vulnerable groups of traffic road users: children (0-14 years old), minors and young drivers (15-30 years) and people over 65 years old (hereinafter: the elderly). Furthermore, it is these categories of road traffic users who very often contribute with their improper behavior to the occurrence and the consequences of road traffic accidents. These consequences can range from minor injuries to death.

The safety of the elderly in road traffic is one of the most current traffic safety topics in recent years. Across Europe, the population is aging within all nations, and there is a notably large input of persons over 65. The Republic of Serbia is an example of a country where the number of people over the age of 65 is above the average, compared to the countries of the European Union. Based on 2013 data, persons over 65 made up 17.8% of the total population in Serbia,bbc while the average age of the population in Serbia at that time was 42.4 years (SORS, 2014). The average age of the population in Serbia is 42.4 years (SORS, 2014), which places the Republic of Serbia in the group of European countries with the highest average age of the population.

In a paper of a limited scope, we have endeavored to present the latest official data on the predicament of two categories of vulnerable road traffic users within the territory of the Republic of Serbia: the youngest and the oldest. In addition, we only pointed out certain oversights of these vulnerable road traffic users or victims, but also in general all other road traffic accident victims documented in court cases that have an input in or have contributed to road traffic accidents. The goal of the paper is, firstly, for judiciary experts (public prosecutors and judges) to recognize oversights and negligence and evaluate them adequately through their actions in practice. In today's Serbia, there is a big generation shift of judges and public prosecutors within the judiciary. According to information recently published by the media, almost 60% of judges from the current pool of judges in the Republic of Serbia will retire by 2030, and

[3] https://www.bbc.com/serbian/lat/svet-67003152, 4 October 2023, retrieved on 16th March 2024.

the judiciary will need to be greatly rejuvenated.[4] Thereby, this paper can be useful for future holders of various judicial functions in our country.

2. SOME DATA ON THE FATALITIES OF CHILDREN AND THE ELDERLY IN ROAD TRAFFIC AROUND THE WORLD

In every country in the world, regardless of the continent, minors are dying in road traffic accidents. Also, in every country, it is they who are the most harrowing victims of road traffic accidents. Road traffic accidents are the main cause of death in childhood and a greatly more frequent cause of injury, which is usually of minor severity (Brayant et al., 2004). This can be shown by the following official data.

Children are paying the highest price of annual road crash deaths. Every single day, more than 600 children and yung people die in road crashes across the world: the vast majority ow which occur in low-and middle-income countries.[5]

In 2021, motor vehicle traffic crash deaths were the 15th leading cause of deaths overall in the United States. Among children, it has been one of the top 10 leading causes for over a decade. According to the National Highway Traffic Safety Administration (NHTSA), an average of 3 children were killed in traffic crashes daily in 2021; furthermore, traffic deaths among children increased by 8 percent from 2020 to 2021. In 2021, there were 60.6 million children aged 14 and younger in the United States and motor vehicle traffic crashes is estimated to be the 6th leading cause of death.[6] WHO announced More than 90% of road traffic deaths occur in low- and middle-income countries. Road traffic death rates are highest in the WHO African Region and lowest in the European Region. Even within high-income countries, people from lower socioeconomic backgrounds are more likely to be involved in road traffic crashes. Road traffic injuries are the leading cause of death for children and young adults aged 5–29 years.[7]

Traffic-related deaths and injuries are the primary health impact of road transport in New Zealand (Briggs et al., 2016). This is evidenced by transport injuries being among the top ten leading causes of health loss in children aged 0–14 years in 2013 (New Zealand, Ministry of Health 2013). In 2016, 12 children aged 0–14 years died from road traffic injuries. In 2016, as in every other year, most deaths were vehicle occupants (8 out of 12 deaths).

According to numerous analyses, Europe is the safest continent in the world. Furthermore, the European Union (hereinafter: EU) has in 2030 created preconditions for the implementation of the Security Framework Policy. The same global goal prevails in international and European strategic documents, namely, to reduce the number of road traffic fatalities by 50% by the year 2030.[8]

---

[4] https://n1info.rs/vesti/ko-ce-da-nam-sudi-do-2030-godine-60-odsto-sudija-ce-otici-u-penziju/17.2.2024, retrieved on 16th April 2024.

[5] https://www.weforum.org/agenda/2022/11/children-road-safety/, Reclaiming the streets: Why we must put children at the heart of road safety road efforts worldwide, Nov 20, 2022, retrieved on 15 February 2014.

[6] Motor Vehicle Crash Among Children, Glendedora Dolce, August 31, 2023, https://enotrans.org/article/motor-vehicle-crash-deaths-among-children/ retrieved on 6th March 2024.

[7] Road traffic injuries, World health organization, Car Accidents: A Leading Cause of Childhood Deaths By Ty McDuffey, J.D., 13 December 2023, https://www.findlaw.com/injury/car-accidents/car-accidents-leading-cause-of-childhood-deaths.html, retrieved on 6th March 2024.

[8] Road traffic safety strategy in the Republic of Serbia for the period from 2023 to 2030, the 2023-2025

Comparison between EU countries gives a different picture depending on the indicator used. According to the mortality indicator (fatalities per million population) the countries in the east of the EU had the worst performance. The number of road fatalities among children per million inhabitants aged 0 to 14 is above the EU27 average in Eastern Europe. The mortality rate is highest in Romania, Bulgaria and Latvia. Portugal also lies above the EU average. Of the countries with the highest number of fatalities among children (France, Germany, Romania, Poland and Italy), Romania and Poland have a mortality rate above the European average.[9]

In Poland in the years 2000–2014, 135,438 accidents involving children aged 0–14 years were noted. As a result of those events 4334 children died and 141,009 were injured. The majority of casualties were children aged between 7 and 14 years (Goniewicz et al., 2017: 157).

When it comes to persons over 65 years of age, Comparative Analysis of Road Safety of the Elderly in Europe presents a detailed statistical analysis of the input of persons over 65 years of age in road traffic accidents in EU countries. The data were analyzed in the period from 2001 to 2010. Based on the conducted research, persons over 65 make up 22% of all road traffic fatalities in EU countries. The share of victims over 65 in the total number of fatalities ranges from 17% in Poland to 29% in the Netherlands. For example, in Poland, the highest percentage of people killed on the roads who are over the age of 65 were pedestrians, while in the Netherlands, cyclists from this age category constitute the most frequent fatalities (Yannis et al., 2013).

3. OFFICIAL DATA ON CHILDREN AND THE ELDERLY IN SERBIA AS FATALITIES

The first national strategy for traffic safety in the period from 2015 to 2020 set the most important goal of no children being killed in traffic from 2020, but that goal was not fully achieved. On average, 14 children died on the roads of the Republic of Serbia, which is a decrease of 35% compared to 2011.[10] The public risk of death in traffic in the Republic of Serbia decreased from 90 fatalities/million inhabitants in 2010 to 77 fatalities/million inhabitants in 2019. However, this is significantly higher than the public risk of death in traffic in the EU (51 fatalities/million inhabitants, in 2019), as well as the most successful countries in Europe.[11]

According to RTSA data, 13,269 road traffic fatalities were recorded in 2022 (a total of 19,603 persons). There were a total of 553 deaths, most of which involved drivers (336 or 60.66%), pedestrians (125 or 22.6%), and passengers (92 or 16.64%), and according to the report, one victim was of an unknown identity. Also, it states that 3,292 people suffered serious physical injuries and 15,758 people had minor ones.[12]

In regards to the most vulnerable traffic road users, the report states that 13 children died in 2022, representing the highest number in a five-year period (2018-2022), and 127 minors perished, also the highest number in the same five-year period, which was 25.7% higher than

Action Plan, p. 1, retrieved on 15th February 2014.

[9] European Commision, European Road Safety Observatory, Facts and Figures – Children 2022.

[10] Traffic safety strategy in the Republic of Serbia for the period from 2023 to 2030 with an Action Plan for 2023-2025, p.12. retrieved on 15th February 2014.

[11] Traffic safety strategy in the Republic of Serbia for the period from 2023 to 2030 with an Action Plan for 2023-2025, pp.10-11. retrieved on 15th February 2014.

[12] Road Traffic Safety Agency, Statistical report on the state of road traffic safety in the Republic of Serbia for 2022, pp. 27, 38 and 4, http://www.abs.rs/, retrieved on 15th December 2014.

in 2021. At the same time, 146 elderly persons perished, while the number of victims from this group in the observed five-year period (2018-2022) was lower only in 2020, during the infamous time of the Covid 19 pandemic, when movement of the elderly was also limited by official measures decreed by the competent state authorities.[13]

The RTSA report, which refers to the analysis of the injuries of children (0-14 years) in road traffic accidents during the 2018-2022 period on the territory of the Republic of Serbia, states that in the Republic of Serbia, children made up about 2% of those killed and 5% of those seriously injured. Thus, about 7% of injured persons, or on average annually about 12 lose their lives and some 1,360 (about 170 TTP and 1,190 LTP) children are injured in traffic accidents. In fact, in the above-mentioned period, 59 children perished and another 6,806 children were injured in road traffic accidents on Serbian roads, of which 859 suffered serious and 5,947 underwent minor injuries.[14]

According to the data announced by the head of the traffic police department of the MI of the RS, Slaviša Lakićević, on the eve of November 20, 2023 - the day of remembrance for the victims of traffic accidents, ten children have lost their lives and 122 children have been injured on Serbian roads.[15]

In regards to those over 65 years old, based on statistical indicators of road traffic safety in Serbia, an increase in the number of those over 65 years old as victims was observed in Serbia. Thus, during 2017, this category of road traffic users was the most vulnerable as pedestrians (persons older than 65 made up about 18% of the population in Serbia, while they made up about 26% of those killed and 10% of those injured in road traffic accidents), then as drivers/cyclists or moped riders and finally as passengers.[16]

In the RTSA report related to the analysis of the predicaments of persons over 65 years of age compiled on the basis of data on road traffic accidents involving elderly persons in the Republic of Serbia in the 2019-2021 period, 480 people perished in road traffic accidents and 6,338 elderly persons were injured. On average, during the same period, about 160 people are killed and more than 2,110 elderly people were injured in road traffic accidents in Serbia. Data show that people over 65 make up about 21% of the population in Serbia, while they contribute to about 31% of road traffic-related death.[17]

In the RTSA report that refers to the analysis of the predicament of persons over 65 years old as pedestrians, compiled on the basis of data on road traffic accidents in which elderly persons participated in the Republic of Serbia in the 2019-2021 period, and in relation to the nature of their involvement in road traffic accidents, elderly persons are most at risk as pedes-

---

[13] Road Traffic Safety Agency, Statistical report on the state of road traffic safety in the Republic of Serbia for 2022, pp. 57, 59 and 61 http://www.abs.rs/, retrieved on 15th February 2014.

[14] RTSA Overview report, Analysis of child mortality in the period 2018-2022, Road Traffic Safety Agency, May 2023, p. 2 http://www.abs.rs/, retrieved on 15th February 2014.

[15] https://www.telegraf.rs/vesti/srbija/3786093-od-pocetka-godine-u-srbji-poginulo-desetoro-dece, 19.11.2023, Od početka godine u Srbiji poginulo desetoro dece: Broj ukupno nastradalih u saobraća-ju prešao 400., retrieved on 16th April 2024.

[16] LRTS Overview report, February 2018, p. 2, http://www.abs.gov.rs/admin/upload/documents/20180316153119-bezbednost-u-saobracaju-lica-starijih-od-65-godina.pdf; retrieved on 21th March 2024.

[17] LRTS, Overview report, Safety of the Elderly (65+), 2022 in traffic, LRTS October 2022, p. 2 http://www.abs.rs/, retrieved on 15th February 2014.

trians, and then as pedestrians/cyclists. In regards to all the pedestrian and cyclist fatalities, on average, one in two pedestrians and one in two cyclists were over the age of 65.[18]

4.CHILDREN AND THE ELDERLY IN THE PROVISIONS OF THE LRTS

The current Law on Road Traffic Safety (hereinafter: LRTS)[19] entered into force on 10 June 2009, and its application began on 11 December 2009.

These vulnerable categories of road traffic users, although not directly mentioned, are discussed in the basic principles of road traffic safety, where the following is stated: "To a person who is not capable or has a limited ability to safely participate in road traffic, i.e. a person who is in a situation to need help, the road traffic user is obliged to provide help, unless they thereby expose themselves to danger" (Article 3 para. 2). In the provisions related to the meaning of the term, certain expressions are defined that are important for the topic of this paper, as children and the elderly can appear in all these roles. These are the following concepts: road traffic user, driver and pedestrian (Article 7, counts 67, 68, 69).

In the provisions related to road traffic rules, the manner of organized transportation of children in road traffic and the behavior of drivers in road traffic situations are regulated (Article 26 of the LRTS), as well as the manner of transportation of children up to 12 years old in a vehicle, i.e. children up to 135 cm in height (Article 31 of the LRTS), and children aged 12 years and younger riding bicycles (Article 88 of the LRTS).

The provisions of the LRTS regarding the road traffic rules related to the movement of pedestrians (Articles 93-98) are of particular significance, as they refer to all age categories of persons taking part in road traffic as pedestrians, including children and the elderly. Also, the provisions related to the obligations of drivers towards pedestrians are significant (Article 99). In the provisions related to the above, there is mention of certain categories of pedestrians: children, disabled persons, blind people who move with the use of a white cane and/or a guide dog, and disabled people in wheelchairs, or using other orthotic or prosthetic aids. Although they are not explicitly mentioned, we believe that elderly people can also be grouped within the category of infirm persons, especially if they move slowly and with difficulty.

5.THE INPUT OF INJURED AND THIRD PARTIES IN ROAD TRAFFIC ACCIDENTS - COURT PRACTICE

In the case of criminal offenses against public road traffic safety, regardless of whether the offense is endangering public road traffic or it involves a grave offense against public road traffic safety, and notwithstanding of the specific forms of the criminal offenses - whether they were committed intentionally or negligently, a first-instance court is obliged at the onset to determine not only whether there were oversights on the part of the defendant, but also whether the injured party had caused the road traffic accident through any oversights.[20] Only if, after

[18] LRTS Overview report, Safety of the Elderly (65+), 2022, LRTS October 2022, p. 1 http://www.abs.rs/, retrieved on 15th February 2014.

[19] Law on Road Traffic Safety, Off. Gazette of the RS, no. 41/09 dated 2 June 2009, enacted on 10 June 2009, started with application on 11 December 2009, *53/2010, 101/2011, 32/2013 (decision of the Constitutional Court), 55/2014, 96/2015, 9/2016 (decision of the Constitutional Court), 24/2018, 41/2018 (other law), 41/2018, 87/2018, 23/2019, 128/2020 (other law)*.

[20] Decision of the Appellate Court in Niš, Kž1 1008/2011 dated 31 March 2011, Selection of judicial practice, Glossary, Belgrade, 2/2012: It cannot be determined from the first-instance verdict whether

the evidentiary procedure has been carried out, it has been ascertained without any doubt that the defendant was guilty of causing the road traffic accident, the first-instance court, when making a decision on the verdict, evaluates the mitigating and aggravating circumstances on the part of the defendant.

When assessing the mitigating circumstances, in addition to the usual facts such as family status, parentage, age, previous convictions for similar or other criminal offenses, the first-instance court has the obligation to assess whether there has been an input by the injured person, a third party, the driver, etc. If there is such an input on the part of one of these persons, the first-instance court must resolutely state in the clarification of the verdict what that input consisted of, and assess it as a mitigating circumstance for the defendant. Otherwise, the first-instance verdict will lack all grounds for decisive facts, in the case when the clarification states that the input of the injured party to the road traffic accident is deemed to be a circumstance in bringing a verdict, while the verdict gives no reasons regarding the assessment of the court regarding the input of the injured party to the road traffic accident.[21]

Thus, one of the inputs by the injured party that is recognized in court practice is the failure of the injured party, now deceased, to wear a seat belt in the vehicle, and this negligence is deemed as his input in the occurring of the illegal consequence, but not for the road traffic accident itself.[22]

In one case, the court assessed the negligence of the organizers of a school outing who had failed to ensure the safe passage of pupils crossing a road as a mitigating circumstance, whereas, as a result of this road traffic accident, one pupil died, along with several persons, pupils and teachers who underwent injuries.[23]

It is still disputed in court practice whether the driver of a motor vehicle is obliged to foresee the improper behavior of another user. Starting from the principle of limited trust in traffic, this obligation exists only when, according to the circumstances of the specific case and experience, it is obvious that such improper behavior of another traffic user can be expected. Jurisprudence has recognized certain disputed situations: pedestrians suddenly crossing the roadway; pedestrians lying on the road at night; persons riding cyclists and motorcyclists and lately also electric scooters.

Jurisprudence rightly excludes the possibility of the input of a pedestrian crossing a zebra crossing, even in the event of a sudden change in the direction of pedestrian movement. A driver who had knocked a pedestrian down and caused fatal injuries should have, while approaching the pedestrian crossing and after noticing the pedestrian, reduced their speed to such an extent that they could stop the vehicle. The fact that the pedestrian, who, after having reached the middle of the crossing, may have suddenly turned back, fails to annul the

---

the defendant could have spotted the injured party in time and thereby prevented the road traffic accident, or the exact place of contact between the bus and the injured party, or the speed of the bus immediately before, that is, at the moment of the road traffic accident.

[21] Decision of the Court of Appeal in Niš, Kž1 932/2010 dated 23 July 2010, Selection of judicial practice, Glossary, Belgrade, 7-8/2012.

[22] Verdict of the Court of Appeal in Belgrade Kž1 615/19 dated 11 September 2019.

[23] Verdict of the Court of Appeal in Belgrade Kž1 338/20 dated 23 July 2020, Selection of case law, Glossary, Belgrade, 2/2021: The circumstance that the column of pedestrians crossing the road was improperly marked can only be considered as an input to the road traffic accident which does not query the conclusion of the first-instance court that the main fault that led to the road traffic accident was the defendant's.

existence of the defendant's responsibility for the criminal act of endangering public traffic an incurring fatal consequences.[24] However, the situation should be distinguished from the previous one (when the vehicle was already at the pedestrian crossing and the front of the vehicle had entered the crossing, and the pedestrian had stepped out onto the vehicle), and thereby it cannot be considered that there was negligence on the part of the driver, though such negligence by the pedestrian is causally related to the occurrence of the road traffic accident.[25]

In court practice, there have also been situations where pedestrians at night and during the winter, travel wearing dark clothes, in unlit areas and under the influence of alcohol, along roads even though there was a sidewalk for pedestrians to use, and as such they represent unpredictable and unexpected danger for drivers traveling in their lane.[26]

In the case when a pedestrian is lying in the road at night and an accident occurs, it is crucial to ascertain whether the driver was driving at a speed that was within the speed limit on the road section where the accident had occurred and had the appropriate lights on, and whether, considering the position of the pedestrian and the clothes they were wearing, the driver could see the obstacle in time. This is due to the fact that in a situation where a pedestrian is lying in the road, according to similar situations in court practice and according to the provisions of the LRTS, they are not classed as a traffic user, and court practice considers them to be an obstacle.[27]

In regards to motorcycle riders, driving at a speed higher than the permitted one is recognized in court practice as the one of the most common causes of an accident, though this sort of negligence is not considered the cause of a road traffic accident.[28]

---

[24] Verdict of the District Court in Belgrade, Kž 316/2005, Dragoljub Simonović, Criminal offenses in Serbian legislation, Off. Gazette, Belgrade, 2010, p. 583.

[25] Verdict of the Court of Appeal in Niš, Kž1 321/2017 dated 23 March 2017, Selection of case law, Glossary, Belgrade, 2/2018.

[26] Verdict of the Appellate Court in Niš, Kž1 892/2016 of 26.7.2016, Selection of case law, Glossary, Belgrade, 1/2018.

[27] Law on Road Traffic Safety, Article 7 count 69: a pedestrian is a person who uses the road, i.e. who pulls or pushes a vehicle, a handcart, a child's pram, a wheelchair for disabled persons or a person in a pram or a person in a wheelchair moving it themselves or by using an engine, or a person who skates, skis, sleds or rides on roller skates, skateboards, etc.

[28] Verdict of the Appellate Court in Belgrade Kž1 12/18 dated 17 January 2018: The defense attorney disputed the established factual situation without any basis, stating that the main cause of the road traffic accident was the improper movement of the motorcyclist, and that the defendant in the specific situation had no reason to expect or foresee such a thing as, regardless of the defendant's defense, the expert testified that the accident would not have occurred if the injured party had been traveling at a speed of no more than 60 km/h. Namely, according to the decision of this panel and as the first-instance court correctly concluded, even though in the specific case the injured party was moving improperly, i.e. at a speed higher than the permitted one, the defendant's behavior is the main cause of the road traffic accident, as he was not fully convinced that he could make a left turn safely, and failed to give the right of way to the vehicle traveling from the opposite direction and maintaining the direction of movement at the intersection, which negligence is directly causal and consequential with the occurrence of the road traffic accident, while the improper movement of the injured party can be considered an input in the road traffic accident, i.e. the severity of the consequences, which is why the appeal in this part was assessed as being unfounded.

Cyclists, as observed in court practice, most often make an oversight to the extent that they fail to give a timely hand signal when they wish to change direction: turning left or right, passing around parked means of transport - cars, tractors, work machines, etc., and due to their oversight and that of another road traffic user traveling behind them with their own means of transport, most often a road traffic accident occurs. In one case, there was a correctly placed traffic signal to indicate road works ahead, and the driver was obliged to adjust the speed of their vehicle to the road conditions so that the another road traffic user riding a bicycle around the traffic sign and a piece of construction equipment on the road could not be the sole cause of a road traffic accident, but rather, that the other user could be the cause of the road traffic accident.[29]

All the inputs by injured parties drawn attention to during the criminal proceedings, after the concluding of the legal proceedings, were once more pointed out during the civil proceedings for compensation for damages, which, as a rule, is filed against the legally convicted person in the criminal proceedings. In civil proceedings, on the other hand, that person is the defendant, and as a rule they point out the same objections stated as an input by the injured party, and now as negligence by the plaintiff through the so-called objections of shared accountability.

6.THE INPUT OF CHILDREN AND THE ELDERLY AS THE VICTIMS OF ROAD TRAFFIC ACCIDENTS

Apart from the disputed situations mentioned above, court practice has documented another situation: the improper behavior of children and the elderly.

With regard to children, the disabled and the elderly, there is a special limitation on the principle of trust to the extent that they are exempt from it, and thus their improper behavior should not be a surprise to drivers. Some authors state that there is an increased obligation of the drivers to act cautiously, so that even when the persons beside the road show no intention of crossing it, a driver must assess the possibility of their sudden crossing of the road more carefully than in regards to to other pedestrians (Obradović, 2013: 213). It should always be assumed that there is a possibility of their sudden crossing of the road and thus there is the obligation to adjust driving, even though this could not be concluded from anything in the specific case, as it would significantly slow down road traffic.

This especially applies to elderly road traffic users. Namely, elderly people have reduced biological potential: lower sensor sensitivity, reduced ability to assess danger, lower physical capabilities, weaker motor skills of the lower extremities, and a slighter reaction speed. Another disadvantage of the movement of the elderly is their slower gait, as it has been observed that older people walk more slowly when crossing the street (Holland, Hill: 2007). In addition, elderly pedestrians often have physical difficulties that prevent them from always correctly

[29] Verdict of the Appellate Court in Niš, Kž1 3036/2011 dated 22 March 2012, Selection of judicial practice, Glossary, Belgrade, 5/2014: The presented appellate allegations unfoundedly refuted the correctness of the factual situation that was established in the first-instance proceedings. Namely, the appeal unfoundedly points out that the court failed to determine the input of the injured party in this road traffic accident, since it follows from the contested verdict that the first-instance court found that injured party V. M. had an input in the road traffic accident in question and that negligence consists in the fact that they had initiated an inspection of the equipment and the road works without first checking that the inspection could be carried out safely and without notifying other road traffic users about it, which had created a moving obstacle in the path of movement of the defendant's passenger vehicle.

assessing the road traffic situation. Therefore, according to some previous research papers by certain authors, pedestrians aged 65 years and over have an increased incidence of injuries in road traffic accidents (Zeeger et al., 1993). Some authors report that older pedestrians experience a deterioration in their sensory cognitive abilities (Dunbar, Holland, Maylor, 2004; Kovalchik et al., 2004).

Due to their physical characteristics, when elderly people are involved in road traffic accidents as pedestrians, the ultimate consequence of the traffic accidents is usually fatal or causes serious bodily injuries. The elderly use walking as their main means of movement and involvement in road traffic, which is why they are more exposed to risk than other age groups. According to previous research, the percentage of fatal road traffic accidents for pedestrians over 75 years old exceeds 20%, while in contrast, for pedestrians under 14 years old, this percentage is 8% (Zegeer et al., 1993; Campbell et al., 1999).

However, the age of an individual road traffic user, regardless of their role in road traffic, does not necessarily mean that the age of that user had caused a road traffic accident. In one case, the defendant's defense attorney pointed to the age of the driver and the vehicle driven by that driver involved in the road traffic accident, but the court correctly concluded that these facts had no effect on the accuracy and inclusiveness of the established factual situation, unless doubt in this regard arises during the procedure.[30]

One of the oversights, as observed in court practice, most often committed by elderly people as pedestrians is crossing the street carelessly, passing between parked vehicles when this causes road traffic accidents in which they sometimes suffer only injuries due to their own oversight, and sometimes they are fatally injured.

In such situations, the court stated in one case that the defendant was not obliged to foresee that the injured party would appear from behind a parked truck, and if he was not able to stop the vehicle in order to avoid the accident from the moment he saw the injured party when they stepped into the road, there was no evidence that they had made an oversight regarding the speed of driving at the time of the accident, which is causally related to the resulting road traffic accident with fatal consequences.[31]

7. CONCLUSION

Road traffic is a living organism in which accidents of different types occur, with one or more vehicles, and with different consequences on the basis of which various criminal proceedings are conducted – criminal offenses, misdemeanors, and fines.

---

[30] Verdict of the Appellate Court in Niš, Kž1 180/2018 of 10/5/2018, Selection of case law, Glossary, Belgrade, 3/2019: The fact that the injured party was an 80-year-old person who, on a critical occasion, was driving a 40-year-old Tam vehicle without seat belts, which were the facts pointed out by the defense counsel, has no effect on the accuracy and inclusiveness of the established factual situation, since in the evidentiary proceedings there was no doubt regarding the fact that any of the mentioned facts, the age of the injured party and the age of his vehicle, were in direct connection with the occurring of the accident.

[31] Verdict of the Appellate Court in Niš, Kž1 301/2015 dated 21 May 2015, Selection of case law, Glossary, Belgrade, 10/2015: It is a correct conclusion that in the specific situation the defendant was not obliged to foresee that the injured party would appear from behind the parked truck and that he had no technical possibility to stop the vehicle from the moment of seeing the injured party. Also, the accident could have been avoided, as the expert stated in his report, if the driver could have seen the injured party at the moment when the party stepped on the road, which was not the case here.

In the world and in Serbia, the same vulnerable categories of road traffic users are recognized - children, minors and young people and people over 65 years of age, which is confirmed by foreign and domestic official data.

The paper points out the most important decisions from court cases that relate to the input or contribution of these two vulnerable categories of victims in criminal proceedings - children and the elderly. The aforementioned decisions from court proceedings can be a good guide for judiciary experts - public prosecutors and judges, especially bearing in mind the great shift in the judiciary of Serbia, where an increasing number of newly elected public prosecutors and judges are to encounter road traffic accidents and their consequences for the first time, in regards to the oversights and negligence by various categories of road traffic users which had cause these accidents.

REFERENCES

Bryant, B., Mayou, R., Wiggs, L., Ehlers, A, Stores, G. (2004) Psychological consequences of road traffic accidents for children and their mothers. Psychological Medicine. 34, 335–346. United Kingdom, Cambridge University Press, https://doi.org/10.1017/S0033291703001053

Briggs D, Mason K, Borman B. (2016) Rapid assessment of environmental health impacts for policy support: The example of road transport in New Zealand. *International Journal of Environmental Research and Public Health,* pp 13: 61.

Brčić, D., Slavulj, M., Šojat, D., Radulović, B. (2019) Analysis of pedestrian safety in school zones with guidelines for improvement. *Zbornik radova. Knj. 1 = Proceedings. Vol. 1 / XIV Međunarodna konferencija Bezbednost saobraćaja u lokalnoj zajednici, Kopaonik, 10. - 13. april 2019. = XIV International Conference Road Safety in Local Community, Kopaonik, April 10 - 13, 2019*. (str. 287-294) Београд: Криминалистичко-полицијска академија.

Campbell, B., C.V. Zegeer, H. Huang, M. Cynecki, (1999) *Pedestrian Safety Research in the U.S.*, Federal Highway Administration.

Dunbar, G., Holland, C.A., Maylor, E.A. (2004) *Older Pedestrians: A Critical Review of the Literature*. London: DfT.

Goniewicz, K., Goniewicz, M., Pawłowski, W., Fiedor, P., Lasota, D. (2017) Risk of road traffic accidents in children. *Medical Studies/Studia Medyczne*, *33*(2), pp 155–160.

Holland, C., Hill, R. (2007) The effect of age, gender and driver status on pedestrians' intentions to cross the road in risky situations. *Accident Analysis & Prevention*, *39*(2), pp 224–237.

Kovalchik, S., Camerer, C.F., Grether, D.M., Plott, C.R., Allman, J.M. (2004) Aging and decision making: a comparison between neurologically healthy elderly and young individuals. *Journal of Economic Behavior and Organization*. *58*(2), pp 79–94.

Obradović, D., (2013) *Krivična dela protiv bezbednosti javnog saobraćaja na putevima*, doktorska disetacija, Beograd: Pravni fakultet Univerziteta UNION.

Yannis, G. et al. (2013). Comparative Analysis of Road Safety of the Elderly in Europe, *International Congress: Mobility and Road Safety in an Ageing Society. Vienna*.

Zegeer,C.V., Stutts,J.C., Huang,H., Zhou,M., Rodgman,E. (1993)Analysis of elderly pedestrian accidents and recommended countermeasures. *Transport. Res. Record*, 1405, pp 56–63.

Regulations and official data - foreign and domestic:

World Health Organization (2018). Global status report on road safety.

European Commision (2022). European Road Safety Observatory, Facts and Figures – Children.

Ministry of Health (2013). Health Loss in New Zealand 1990–2013: A report from the New Zealand Burden of Diseases, Injuries and Risk Factors Study. Wellington: Ministry of Health.

Environmental Health Intelligence (2021). Road traffic injuries in children aged 0–14 years. [Factsheet]. Wellington: Environmental Health Intelligence NZ, Massey University.

Zakon o bezbednosti saobraćaja na putevima, Službeni glasnik RS br.41/09, 53/2010, 101/2011, 32/2013 (Odluka Ustavnog suda), 55/2014, 96/2015, 9/2016 (Odluka Ustavnog suda)), 24/2018, 41/2018 (drugi zakon), 41/2018, 87/2018, 23/2019, 128/2020 (drugi zakon).

Strategija bezbednosti saobraćaja u Republici Srbiji za period od 2023 do 2030. godine sa Akcionim planom za 2023.-2025. godinu

ABS RS (2024), Statistički izveštaj o stanju bezbednosti saobraćaja u Republici Srbiji za 2022.godinu, Dostupno na: http://www.abs.rs/.

ABS RS (2023) Pregledni izveštaj, Analiza stradanja dece u periodu 2018-2022. godine, Maj 2023, Dostupno na: http://www.abs.rs/.

ABS RS (2024) Pregledni izveštaj Februar 2018. Dostupno na: http://www.abs.gov.rs/admin/upload/documents/20180316153119-bezbednost-u-saobracaju-lica-starijih-od-65-godina.pdf.

ABS RS, (2022) Pregledni izveštaj, Bezbednost starijih lica (65+), 2022 u saobraćaju, Agencija za bezbednost saobraćaja Oktobar 2022, Dostupno na: http://www.abs.rs/.

ABS RS (2022) Pregledni izveštaj, Bezbednost lica starijih od 65 godina u svojstvu pešaka, Oktobar 2022, Dostupno na: http://www.abs.rs/.

Republički zavod za statistiku, (2014), Dostupno na: http://webrzs.stat.gov.rs .

Court cases - domestic:

Presuda Okružnog suda u Beogradu, Kž 316/2005, Dragoljub Simonović, *Krivična dela u srpskoj legislativi*, „Službeni glasnik", Beograd, 2010, str.583.

Rešenje Apelacionog suda u Nišu, Kž1 932/2010 od 23.7.2010., Izbor sudske prakse, Glosarijum, Beograd, 7-8/2012.

Rešenje Apelacionog suda u Nišu, Kž1 1008/2011 od 31.3.2011., Izbor sudske prakse, Glosarijum, Beograd, 2/2012.

Presuda Apelacionog suda u Nišu, Kž1 3036/2011 od 22.3.2012., Izbor sudske prakse, Glosarijum, Beograd, 5/2014

Presuda Apelacionog suda u Nišu, Kž1 301/2015 od 21.5.2015., Izbor sudske prakse, Glosarijum, Beograd, 10/2015.

Presuda Apelacionog suda u Nišu, Kž1 892/2016 od 26.7.2016., Izbor sudske prakse, Glosarijum, Beograd, 1/2018.

Presuda Apelacionog suda u Nišu, Kž1 321/2017 od 23.3.2017., Izbor sudske prakse, Glosarijum, Beograd, 2/2018.

Presuda Apelacionog suda u Beogradu Kž1 12/18 od 17.1.2018

Presuda Apelacionog suda u Nišu, Kž1 180/2018 od 10.5.2018., Izbor sudske prakse, Glosarijum, Beograd, 3/2019

Presuda Apelacionog suda u Beogradu Kž1 615/19 od 11.9.2019.

Presuda Apelacionog suda u Beogradu Kž1 338/20 od 23.7.2020., Izbor sudske prakse, Glosarijum, Beograd, 2/2021

ONLINE SOURCES

McDuffey, J.D. T. (2023) World health organization. Road traffic injuries, Car Accidents: A Leading Cause of Childhood Deaths 13 December 2023. Dostupno na: https://www.findlaw.com/injury/car-accidents/car-accidents-leading-cause-of-childhood-deaths.html, preuzeto 6.3.2024.

Dolce, G.(2023) Motor Vehicle Crash Among Children, August 31,2023. Dostupno na: https://enotrans.org/article/motor-vehicle-crash-deaths-among-children/ preuzeto 6.3. 2024.

Reclaiming the streets:Why we must put children at the heart of road safety road efforts worldwide, (2022) Dostupno na: https://www.weforum.org/agenda/2022/11/children-road-safety/, Nov 20, 2022., preuzeto 15.2.2024.

https://www.bbc.com/serbian/lat/svet-67003152, 4 oktobar 2023, preuzeto 16.3.2024.

Ko će da nam sudi – do 2030.godine 60 odsto sudija će otići u penziju. *TV N1*. 17.2.2024. Dostupno na: https://n1info.rs/vesti/ko-ce-da-nam-sudi-do-2030-godine-60-odsto-sudija-ce-otici-u-penziju /, preuzeto 16.4.2024.

Od početka godine u Srbiji poginulo desetoro dece: Broj ukupno nastradalih u saobraćaju prešao 400. *Telegraf*. 19.11.2023. Dostupno na:

https://www.telegraf.rs/vesti/srbija/3786093-od-pocetka-godine-u-srbji-poginulo-desetoro-dece, preuzeto 16.4.2024.

Review Paper

Slobodan SAVIĆ*

DOI: 10.47152/Palic2024.19

THE IMPORTANCE OF FORENSIC MEDICAL EXPERTISE IN EXERCISING THE RIGHTS OF VICTIMS OF CRIMINAL OFFENSES AGAINST PUBLIC TRAFFIC SAFETY

Abstract: Injury and death can occur in association with any form of transport, but road traffic accidents account for the great majority worldwide, causing approximately 1.19 million deaths each year. It is important to point out that traffic accidents cause the catastrophic consequences on individuals, their families and society as a whole, both in fatal and non-fatal cases. The thorough and adequate medico-legal investigation determines all external and internal injuries as a consequence of traffic accidents, it includes collecting of all biological and other important traces on the victim, and enables the reconstructing the manner in which the traffic accident took place. In that way forensic experts help the prosecutors and the courts to properly determine whether there is any criminal responsibility of a person for the resulting traffic accident and injury to the participants, thus exercising the rights of victims of criminal offenses against public traffic safety.

Key words: transportation injuries, victims, forensic medical expertise

1. INTRODUCTION

Injury and death can occur in association with any form of transport, but numerically road traffic accidents account for the great majority worldwide, causing more than 3,000 deaths each day and killing more than a million people annually and injuring some 20–50 million [3]. In developed countries, road traffic accidents represent the most frequent cause of death in the below-50 age group, this trend being even more marked in young men. According to data from the World Health Organization, traffic accidents are the leading cause of death and serious bodily injury of children and persons under the age of 24. In the last five years in Serbia, an average of 520 road users died annually, while more than 3,200 suffered serious and 16,000 minor injuries. The most vulnerable in traffic are pedestrians and cyclists, as well as people over the age of 65. The proportion of pedestrians as victims varies greatly according to the traffic patterns of different countries. For example, India has a high rate of pedestrian accidents, whilst countries such as Germany and the USA, with a higher vehicle density, produce relatively more car occupant injuries. It is important to point out that traffic accidents cause the catastrophic consequences on individuals, their families and society as a whole, both in fatal and non-fatal cases.

Accidentogenic factors that influence the occurrence of traffic accidents are the following: 1. Man (as a pedestrian, driver, passenger, motorcyclis, cyclist) is the most important factor in 85-90% of cases. 2. Vehicle - malfunctions. 3. Road - curves, intersections, level crossings, narrowings. 4. Environment - external atmospheric conditions (rain, snow, fog) and microclimatic conditions in the car [1]. Serious traffic accidents with fatal and non-fatal injuries can happen even without the subjective responsibility of the participants. The task of the investigative procedure is to reconstruct the manner in which the traffic accident took place and determine whether there is any criminal responsibility of a person for the resulting traffic accident

* PhD, retired full professor at the Faculty of Medicine, University of Belgrade. E-mail: savkenzi@gmail.net.

and injury to the participants. Forensic medical expertise is an indispensable and extremely important part of investigative and often criminal proceedings.

2. CHARACTERISTICS OF INJURING AND INJURIES IN MODERN TRAFFIC ACCIDENTS

The characteristics of injuring and injuries in modern traffic accidents are the following: (1) Polytraumatism – polytrauma is often found in victims of traffic accidents. (2) Polyphasic injuring – the mechanism of injuring usually contains a few phases (a typical example is injuring of pedestrians). (3) Multiplicity of injuries – injuries are usually multiple, located all over the body, both external and internal. (4) Polymorphism of injuries – injuries vary according to their type and appearance (different types of mechanical injuries are the most frequent, but also injuries due to asphyxiation, burns, and chemical injuries may occur). (5) Disproportion between external and internal findings – very often the external injuries are minimal when compared with severe and even fatal internal injuries. This may cause inadequate and late clinical diagnosis, and therefore accusation for malpractice and negligence.

3. FORENSIC EXPERTISE IN THE INJURED VICTIMS WHO SURVIVED AFTER TRAFFIC ACCIDENTS

The most important task of the treating physician is to properly diagnose and adequately cure the victims of traffic accidens, which is usually a complex procedure due to a presence of polytrauma in many cases. Howerver, in all cases, the treating physician should always bear in mind the *legal consequences of road accidents* and *medicolegal aspects* of these injuries.

3.1. Medicolegal importance of the clinical examination

The victim of a traffic accident must be thoroughly examined, including the *clothing* where available. Damage to the latter may be important in reconstruction of the accident, especially if the victim was unconscious (the later detailed examination of clothing will be a task for the police or forensic laboratory).

The doctor should look for tears, soiling by oil, grease, road dirt, and traces of the vehicle such as *particles of the broken windscreen or headlight and paint flakes*. These traces must be carefully collected and preserved for the police, which is especially important for identifying the unknown vehicle.

The exterior of the victim should be carefully examined then, all injuries recorded and properly described in medical documentation. Injuries should be measured with a ruler. In pedestrian victims, *the distance of major injuries above heel level should be measured*, so that the height of an impact point can be compared with any suspect vehicle. Sometimes the level of injury appears too low for the normal bumper height of most cars, but this may indicate that the vehicle was braking violently at the moment of impact, going down on its suspension as the front wheels decelerated or locked, unless dip compensators were fitted.

The special attention should be paid to the so called *"patterned injuries"* such as "tire marks" or head-light imprint. *Patterned injuries* occur when the force is applied at or near a right angle to the skin surface. If a weapon with a patterned surface strikes the skin, or the body falls against a patterned surface, the abrasion of the epidermis follows the ridges of the object. The best example of this is seen when a motor tyre passes over the skin, leaving a pattern where the skin has been squeezed into the grooves of the rubber tread (the so-called "tyre marks").

These injuries are extremely important in identifying the unknown car, and must be carefully described and photographed if possible.

It happens more and more frequently that the driver flees from the scene of the accident after injuring a pedestrian and thus commits a criminal offense under the article 296 of the Criminal Code of the Republic of Serbia (Failure to provide assistance to a person injured in a traffic accident). In those cases, it is extremely important to find the suspicious vehicle as soon as possible and perform a detailed inspection of the damages and discover and collect the biological traces left by the injured pedestrian (blood, hair, tissue parts).

Any foreign objects or material on the skin or in wounds such as *paint flakes, glass fragments or metal,* should be carefully retained for the police. This material can also be found during wound debridement or surgical operation for internal injuries. Forensic science laboratories can identify types of vehicle from chemical and microscopic analysis of tiny paint flakes or from head-light or windscreen glass.

The *usual mistake* during this clinical treatment refers to almost complete *neglect of external injuries*, so if the person outlives for a recent period or even survives this accident, the primary appearance of subsequently healed and often disappearing external injuries cannot be reconstructed in later expertise due to lack of their description in medical records.

The *blood sample for alcohol analysis* should be taken. In addition to alcohol, the doctor must always bear other drugs in mind, including dependence drugs and therapeutic substances, which either alone or in combination with alcohol, may have contributed to the accident.

According to the previous experiences, the treating physicinas in Serbia often neglect their medico-legal obligations during the examination of the victims injured in traffic accidents. Because of that in the medical records usually miss many medicolegally important facts about injuries, which may be of great help in the medicolegal expertise. A possible way to overcome these shortcomings is for the authority of the procedure (a prosecutor or a judge) to request the performance of a clinical forensic medical examination of the injured by a forensic medical expert after the traffic accident in question. In practice, this happens relatively rarely.

4. FORENSIC EXPERTISE IN THE FATALLY INJURED VICTIMS OF TRAFFIC ACCIDENTS

The task of medicolegal autopsy and possible later expertise in the court is not only to determine cause of death of the victim of traffic accident, but also to discover and properly describe all external and internal injuries, which is necessary for further reconstruction of the mechanism of injuring.

In *pedestrian* accidents the folowing phases may occur: (1) *primary contact* between the body and the vehicle (*primary injuries*); (2) *secondary contact* between the body and the vehicle, so called „scooping-up" (*secondary injuries*); (3) *fall on the ground*, when injuries occur due to striking the ground or other object (*tertiary injuries*); (4) *"running over"* occurs when *a wheel passes over the body* (*"running over injuries"*).

All of the above-mentioned phases are not necessarily present in each traffic accident. The whole mechanism of injuring depends on various factors, such as: height of the pedestrian, position of the body (standing, sitting or lying on the ground), characteristics of the vehicle (height, form of the front side), and velocity of the vehicle. For example, a fall on the ground may occur immediately after the primary contact, without secondary contact between the

body and the vehicle. If a pedestrian is injured lying on the ground, only "running over injuries" will happen.

The usual prejudy exists that a car driver is always responsible for traffic accident in which a pedestrian is injured. On the contrary, in some cases a pedestrian may be the only responsible person e.g. due to running over the roadway (highway) outside the pedestrian crossing and between vehicles, moving on the wrong side of the road, walking under influence of alcohol and/or other psychoactive substances. If in such cases the investigation procedure is not properly done, especially without an adequate forensic expertise, the driver may be undeservedly accused as an offender of the criminal offense against public traffic safety (Articles 289 and 297 of the Criminal Code of the Republic of Serbia) [2], thus becoming a real victim of the court procedure. Regarding the estimating responsibility for the traffic accident, *the most important is to determine the position of the pedestrian at the moment of the primary contact* with the vehicle.

Regarding *car occupants*, the usual problem is to determine who a driver was if there were more than one person in the car. The front seat passenger often suffers more serious injuries than the driver. In some cases, especially if only two persons are in the car in the moment of accident, when a driver survives, and a front seat passenger is fatally injured, the real driver may try to show that he did not drive the car, and that a driver was a passenger who was sitting in the front right seat. For successful solving of this investigating problem, the thorough analysis of the characteristics of injuries in both persons is very important, as well as the assessment of interior damages in the car, and especially the proper collecting of biological traces inside a car, such as blood and hair.

Besides the procedures that have been mentioned concerning clinical examination and external body investigation, some *special autopsy procedures* should be performed often. After the usual internal examination of the whole body, including, if necessary, special techniques for discovering pneumothorax, air embolism, neck injuries, as well as cervical spinal trauma, the longitudinal incisions along the back of the body, buttocks and back side of the legs are made with preparation of deeper soft tissues and bones. Only in this way is it possible to discover all internal injuries (contusion, lacerations, fractures), especially in the cases with minimal external lesions.

An autopsy sample of blood should be taken from a femoral vein, if the death occurred within 24 hours of the accident. If the survival period is longer than this, the analysis of blood alcohol is no longer reliable, as metabolism and elimination of alcohol was completely finished.

Regarding *reconstruction of the mechanism of injuring*, the medicolegal expert must take in consideration all collected facts about the scene of the accidents, the actual vehicle(s) (damages, biological traces such as blood and hair), as well as the autopsy findings.

It is impossible to precisely estimate the speed of impact from the nature of injuries in pedestrian in each individual case, although some general estimates can be made. These can be fatal even at slow speeds of the order of 10 kph, yet occasionally high-speed impacts can produce only minor damage.

As it has already been mentioned, the medicolegal expertise may assist in *identifying the unknown vehicle*, e.g. on the basis of the traces found (broken glass fragments, paint flakes, etc.)

In the cases of severe body mutilation caused by train, the *possibility of post-mortem injuring* must be taken into consideration (simulation of suicide with the body of the previously murdered victim). In such cases a medicolegal autopsy is inevitable for estimating vitality of sustained injuries.

5. CONCLUSION

The forensic medical expertise is of an essential importance in the investigating and the court procedure of traffic accidents, thus exercising the rights of victims of criminal offenses against public traffic safety. The thorough and adequate medico-legal investigation determines all external and internal injuries as a consequence of traffic accidents, it includes collecting of all biological and other important traces on the victim, and enables the reconstructing the manner in which the traffic accident took place. In that way forensic experts help the prosecutors and the courts to properly determine whether there is any criminal responsibility of a person for the resulting traffic accident and injury to the participants.

REFERENCES

Aleksandrić, B., Ječmenica, D., Stanojević, A. (2023) Traffic injuries. In: Atanasijević, T., Popović, V. (Eds.) *Forensic medicine, textbook for medical students*. Faculty of Medicine, University of Belgrade, pp. 217-228.

Criminal Code of the Republic of Serbia, Official Gazette of the Republic of Serbia, 35/2019.

Saukko, P., Knight, B. (2016) Transportation injuries. In Saukko, P., Knight, B. (Eds.) *Knight's Forenscic Pathology*. CRC Press, Taylor & Francis Group, Boca Raton, London, New York. pp. 277-297.

Original Scientific Paper
Dragana ZGONJANIN-BOSIĆ*
DOI: 10.47152/Palic2024.20

THE IMPORTANCE OF DNA FORENSIC EXPERTISE IN TRAFFIC ACCIDENT INVESTIGATIONS

Abstract: Identification by DNA analysis is now widely used in traffic accident investigations, but the public is largely unaware of the components of DNA that are investigated and the way in which the analysis is conducted. If DNA sources such as blood or tissue are obtained, it is relatively easy to analyze DNA. However, DNA samples from these cars are often present in traces, "touch DNA" (DNA transferred by touch), and they give mix of complex profiles. In order to better locate traces and determine the degree/type of an activity, it was pointed out to the processing of accident cases and collection of samples in several important areas in the car. Implementation of scientific methods in establishing facts relevant for criminalistics and legal proceedings can no longer be imagined without involving forensic examination of biological traces through analysis of DNA molecules.

KEYWORDS: DNA analysis, STR, Traffic accident investigations, DNA transfer, Car

INTRODUCTION

Today's daily human habits are connected with many potentially dangerous activities, and most people are participants in traffic in different capacities. In criminal investigation, forensic DNA testing has a significant importance by its ability to generate unique STR profiles from biological material obtained from crime scenes, and through comparison to DNA profiles of known individuals or profiles stored in the database, it could provide identification or exclusion (Roewer, 2013). Identification by DNA analysis is now widely used in traffic accident investigations, which has been aided by improvements in the recovery and profiling of trace quantities of DNA. Cars are frequently involved in criminal activities and sampled for DNA to assist investigations (Mapes et al., 2009; Lenz, 2006; Castella, Mangin, 2008).

This has been aided by improvements in the recovery and profiling of trace quantities of DNA. The DNA recovered from cars is often of trace quantities and produces mixed or complex profiles. More data are desired relating to the transfer, persistence, prevalence and recovery of DNA (DNK-TPPR) within cars (van Oorschot et al., 2019; Ishiko et al., 2008). There is a need to improve our awareness of whose profile is likely to be detected from which sites within a car, given the car's history of use. In order to better understand how different circumstances affect DNA transfer, persistence, prevalence and recovery (DNA-TPPR) in car accidents, and to obtain more reliable and probable guidelines for obtaining individual DNA profiles; we have presented our experiences working with these samples.

The demonstrated ability to attribute a DNA profile to a specific person, and the increased sensitivity of the profiling systems to generate these profiles from decreasing quantities of DNA, has seen an increasing reliance on trace biological samples, especially from touched

* PhD, Dr sci., Permanent Forensic Expert in Forensic Genetics and Forensic Toxicology; Head of the DNA Department of the Centre for Forensic Medicine, Clinical Centre of Vojvodina; Research Associate at the Faculty of Medicine Novi Sad, University of Novi Sad.
E-mail: dragana.zgonjanin.bosic@gmail.com.

objects, to assist investigations of criminal activity. The increased sensitivity and the types of objects from which samples are collected, however, also means that many of the profiles generated are mixed profiles, that is, DNA from multiple contributing individuals represented together in one profile. Consequently, the number of potential scenarios that may have led to the transfer and deposition of detected DNA have increased substantially. There is, thus, apart from the need to determine the identity of individuals whose DNA has become part of the evidence, an increasing need to understand how the DNA within a trace got to where it was collected from.

It is also very important for all those interacting with an item of interest to have an awareness of DNA transfer possibilities post criminal activity, to limit the risk of contamination or loss of DNA. Although the analysis of traces of biological origin and the interpretation of the obtained results is the task of DNA analysts/forensic experts, the fact is that the observation, collection and transport of samples to the laboratory are the duty of the investigation body, and the evaluation and concrete appraisal of the practical significance of the analysis results is the task of the court, which imposes the need to be familiar with the basic issues to all participants in the procedure.

1. FORENSIC SCIENCE IN TRAFFIC ACCIDENT INVESTIGATIONS

When a traffic accident occurs, an investigation is launched to determine the party responsible for the accident and the manner in which the accident occurred. During the accident investigation, various forensic analysis techniques are used and often can be useful to clarify where the responsibility for the accident lies and how much damage has been caused by the accident. Such forensic analysis includes an estimation of the assailant vehicle and the damages suffered by the victim in the hit-and-run accidents, the vehicle that was most severely damaged in multiple traffic accidents, the driver of the vehicle in cases in which all occupants have died, whether the death was caused by the accident or an illness, the presence or absence of alcohol or drugs, and biological objects left at the scene of the accident, such as bloodstains.

DNA analysis is a forensic analysis method carried out in the event of a traffic accident and is a powerful tool for identifying the persons involved in an accident.

There are frequent reports of cases in which DNA identification has led to the identification of traffic accident perpetrators such as hit-and-run offenses. As a result, psychological effects such as prevention of escape of perpetrators and reduction of deliberately caused traffic accidents can be expected. Although the prevalence of the word "DNA testing" has increased in newspapers and other mass media, the public is not widely aware of how DNA analysis is actually used in criminal investigations.

2. BIOLOGICAL MATERIAL AND USING DNA

2.1. Crime scene biological samples

Biological material such as blood, saliva and semen are often transferred during altercations, either while still fresh or at some time after it has dried. Blood and saliva transfer at a similar rate (Goray et al., 2010), with wet/liquid biological materials being transferred more readily than dried deposits. When all other variables (substrates and manners of contact) are kept constant, wet/liquid biological sources had significantly higher transfer rates than when the same biological materials were dry (Goray et al., 2010).

Skin flakes left on an object after it has been touched or handled could be a source of DNA. These skin flakes tend to be deposited in considerably smaller amounts than from routinely tested cells of blood, semen or saliva. Although, highly sensitive DNA analysis procedures are able to provide results from trace amounts of DNA there are still some fundamental difficulties inherent to these samples, including variability in quality and quantity of extracted DNA and exaggerated stochastic effects, making it hard to reliably interpret DNA profiles of these samples.

DNA deposits by hand transfer at a different rate to blood and saliva (Goray, Mitchell, van Oorschot, 2010). Goray et al. (Goray, Mitchell, van Oorschot, 2010) found that such DNA deposits transfer at significantly lower rates than blood and saliva; however, drying has little impact on touch (at least 24 h post deposit) and therefore increased transfer rates, but not necessarily total amounts of DNA, were noted for 'touch DNA' compared to dried biological liquids (Goray, Mitchell, van Oorschot, 2010).

Source identification of the main biological substances can be highly relevant to the activity level assessment, either because the type of cellular material (1) will inform the probability of the material transferring, persisting or being recovered, or (2) may be informative regarding the alleged activity.

2.1.1. *DNA testing of touched samples*

Touched samples usually contain less than 100 pg of DNA (Kloosterman, Kersbergen, 2003), and often fail to generate conclusive profiles after 28 cycles of amplification with routine testing methodology. The study by van Oorschot and Jones (van Oorschot, Jones, 1997) indicated that the amount of DNA deposited by hands was dependent on the individual. van Oorschot and Jones (van Oorschot, Jones, 1997) observed that substantial transfer of DNA material occurs during initial contact. One may predict that there will be some accumulation of DNA on an object due to increased duration or frequency of contact. How contact is made with an object will impact the level of transfer. Goray et al. (Goray et al., 2010; Goray, Mitchell, van Oorschot, 2010) demonstrated that in most situations, when two objects come into contact with each other, more DNA tends to be transferred when pressure with friction is applied compared to passive contact or pressure contact without friction.

Different parts of a hand will contact different items in different ways. In some circumstances, it may be relevant to have an awareness of the impact of these differences on the amount of DNA deposited and the profiles generated.

Touched evidence frequently contains DNA mixtures whose DNA profiles could not be determined. Biological mixtures of the same cell types are challenging for interpretation because profiles of mixed DNA samples can contain multiple alleles at multiple locations. Also, due to allele sharing and imbalance of allele heights, it is often difficult to assign DNA profiles to their individual contributors'. In traffic accident investigation this touched evidence, and consecutively DNA mixtures are very often in forensic DNA analysis. Instead of sampling for example substrates/surfaces by swabbing it entirely (which is routinely done in forensic laboratories), it is suggested few sections of substrates/surfaces swabbed and tested separately. The majority of samples from substrates/surfaces can be either two-person mixtures or single source samples. By taking samples in sections, this approach reduced the complexity of three-person mixture.

2.1.2. *Persistence of transferred DNA*

Any biological material can be transferred. Material such as blood when transferred tends to provide a stain that can be identified as 'what appears to be blood'. However, stains or smears may be of a minute level that is not obvious to the eye and/or present on a surface type and/or colour that makes visualisation difficult. Methods are available to visualise these stains, and to some extent provide an indication of the likely source of the material (Finnis, Lewis, Davidson, 2013; Vandenberg, van Oorschot, 2006). Various tests are available to determine the source of biological materials (Virkler, Lednev, 2009).

The DNA of biological samples, including those assumed to be deposited by handling, can retain sufficient quantity and quality to generate full STR profiles for several years, even decades, which is being successfully exploited to assist cold case investigations (Raymond et al., 2009; Raymond et al., 2009). The persistence of any biological material will be dependent on a range of environmental factors, including: temperature, exposure to UV, rain, wind, humidity and presence of micro-organisms on the surface.

One contact event can simultaneously include both direct/primary and indirect/secondary transfer events. Transfer of DNA during a hand contact can result in deposits of DNA of the person making the contact as well as any other DNA that may have been present on that person's hand. For example, following contact with a DNA-free surface, most of the self DNA deposited within the handprint may be considered a direct deposit, but the non-self component will have been indirectly deposited.

Within some casework scenarios an object of interest that belonged to, and was originally used by, one person may be temporarily used by a second person. This second person may be the POI (person of interest), but rather than the object not being used again after an action of interest, it was used again by the original user, prior to securing the item for examination. For example, an accused may claim that they: Had been an incidental driver in a vehicle at some time in the past rather than at the time of the offence; i.e. that after they drove the vehicle, it was used again by the regular driver/owner.

2.2. Methods of collecting traces for DNA forensics in traffic accident scenes

Trace evidence can be used to link people or objects to places, other people or other objects, and often serves as a starting point, or lead, for a particular line of investigation.

After recognizing and documenting the traces of blood at the scene, it is possible to remove the traces. In general, with blood traces it is worth collecting first those most exposed to possible destruction or damage. In the areas of traffic accidents, these are:

- Traces of blood that can be found on major traffic arteries or roads,

- Traces found on the vehicle door, windshield, fenders, front, rear parts of the suspect's vehicle, fibers, pieces of fabric, tissue, blood, hair

- Traces found on the exterior windows and pieces of glass (headlights and windshield),

- Traces of fallen parts from the vehicle, traces on the victim of the traffic accident, on the clothes and shoes of the victim, objects and means of transport.

Bloodstains and contact DNA traces from inside the vehicle found on movable objects can be temporarily protected by moving the object to a safer location. This primarily refers to traces from inside the vehicle, namely:

- traces from the driver's side through to the passenger's side (including areas of seats, seat belts, steering wheel, gear lever, front console, doors) as well as the external driver and passenger door handles.

- traces from the biological deposits of airbags,

- samples the individuals from burned materials in cars.

2.2.1. *Collection, packing, preservation and transportation of biological sample for DNA analysis*

Forensic analysis of any form of physical evidence, but most particularly biological evidence, can lead to critical investigative information, identification of involved parties, exclusion of those wrongly accused, and conviction within a judicial proceeding. However, the ultimate power of modern technology can be shattered if the foundation upon the manner in which a piece of physical evidence was collected and preserved is deemed scientifically, ethically, and legally inappropriate. Many new relevant standards, namely those associated with crime scene analysis, as well as handling and analysis of biological materials, have been recently published after extensive research, dialogue, and peer review.

After observing and fixing the biological trace at the site of the investigation, proper sampling and packaging follows, in order to deliver the DNA to the laboratory that performs the analysis/expert examination.

There are several basic guidelines and precautions that should be taken for the collection and packaging of traces of blood and other biological materials, in order to preserve the integrity of the trace, avoid degradation or possible contamination between samples.

1. Traces on the substrate that can be delivered do not need to be excluded, but are delivered together with the substrate to the DNA laboratory.

2. Wet items must be dried at room temperature (drying at high temperature is not acceptable).

3. Dried items must be packed separately and delivered to the laboratory in paper bags or paper envelopes.

4. Traces on a substrate that cannot be delivered to a DNA laboratory are sampled in one of three ways by wiping with a sterile cotton swab, scraping, using adhesive tape, and cutting/cutting out the substrate around the trace itself.

5. According to the recognized guidelines of The Scientific Working Group on DNA Analysis Methods (SWGDAM), dried blood traces can be removed with sterile cotton swabs that need to be moistened with sterile distilled water or saline solution, and then wipe the appropriate surface (carefully wipe the blood trace so that the largest possible amount of trace is collected on the smallest surface of the swab). Return the removed swab to the swab tube, leave it open for drying and label the swab adequately.

6. Dried blood stain and other body fluid stains: Scrap the crust onto paper with scalpel and pack in a paper envelope or transfer onto a moistened clean cotton gauze cloth by rubbing against the stain, air dry and pack in paper envelope. Collect proper negative control from adjacent area.

7. Stain at vehicle, carpet, wall paper, wooden object: Cut the stain area. Allow to dry in room temperature or shade. Pack each cutting separately. Collect the negative control cutting as control from adjacent area.

8. Wet blood samples are also removed with sterile cotton swabs, and left to dry in the air (a sterile stick is dipped into the trace of blood to absorb the blood). Collect the samples with a sterile cotton cloth swab, air dry the swab and pack in a paper envelope.

9. Wearing protective clothing is absolutely required; Disposable gloves should be changed between processing two tracks; Do not handle items with bare hand.

10. Manipulate the evidence material as little as possible and do not open the bag after packing,

11. A large number of tracks must not be packed together; Package each item separately into a paper bag of suitable dimensions; avoid commingling items to prevent cross-contamination.

12. Plastic bags are not preferred for storage because of the possibility of bacterial growth or mold.

13. Label items according to procedures. At a minimum, mark each package with a unique identifier, the identification of the person who collected it, place and the date of collection. The unique identifier should correspond to the item description noted on the property/evidence report (e.g., evidence tag, property sheet, property receipt, or property invoice).

Recovery of only the most obvious and visible evidence may result in leaving the most relevant evidence behind. Because is very important adequate recovery methods avoid loss, degradation or contamination of the evidence. Indiscriminate evidence recovery might potentially overburden the laboratory with irrelevant items and thus hinder the investigation.

When biological traces are collected in an adequate way, it is important to outline in a right order for DNA expert opinion:

• it is very important that the order is clear so that the expert can act adequately way and to deliver findings and opinions as soon as possible. Example text for the order:

"Determine DNA profiles from biological traces from submitted objects and compare them with DNA…."

3. OUR EXPERIENCE FROM PRACTICAL WORK IN TRAFFIC ACCIDENT INVESTIGATIONS

According to our experience and results in the analysis of forensic samples (Zgonjanin et al., 2017; Zgonjanin et al., 2014), as well as other authors (Ishiko et al., 2008; van Oorschot et al., 2019), targeted analyzed traces that include regions of interest with contact DNA traces in parts of traffic accidents are: steering wheel/ gear lever, driver and passenger door handles (interior and exterior), areas of seats, seat belts, traces from the biological deposits of airbags.

For DNA analysis, not only blood, but also other various biological samples were taken from parts of traffic accidents. Our previous experiences show a large number of cases in which DNA expert examinations/DNA analysis were successfully used in the investigation of traffic accidents.

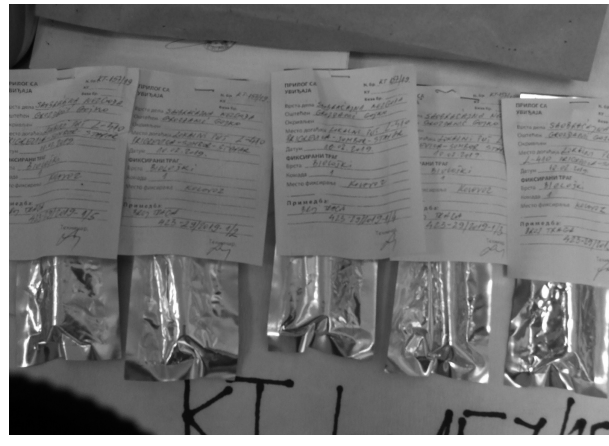
3.1. Blood, hair and tissue samples traffic accident

For example: In one of the cases (Court in Ada KRI 72/08), hair fragments and tissue were discovered from the damaged front and end of a vehicle after a traffic accident with a fatal pedestrian. The police put forward the assumption that fragments of hair and traces of tusks could encourage the injured pedestrian. To clarify whether that car was involved in the

accident, samples were taken from the vehicle and subjected to DNA analysis. The analysis of the DNA isolated from the sample of the analyzed tissue and hair traces resulted in a complete DNA profile identical to the DNA profile obtained by the analysis of the indisputable sample of the deceased, the injured pedestrian. Another case (Basic Public Prosecutor's Office in Sombor KT 157/19) where after an accident during the night, the body of a dead young man was found on a local road outside the city. The passenger car was found several hours after the accident. Taken traces from the scene of the traffic accident, from the road surface and samples from the car with visible traces of red color on the top of the swab (benzidine reaction for the presence of blood gave a positive result, Figure 1). Figure 2. shows sterile swabs properly taken and marked from the scene). Analysis of a sample from the exterior of the vehicle and samples from the roadway yielded a complete DNA profile of a male person identical to the DNA profile of the deceased. A young man whose permanent blood stain was removed during the autopsy and used for analysis as an indisputable sample, and thus DNA analysis led to the identification of the perpetrator of the traffic accident.

Figure 1. Blood trace from the road surface from the scene of the traffic accident on top of the swab

Figure 2. Sterile swabs properly taken and marked from the scene of the traffic accident



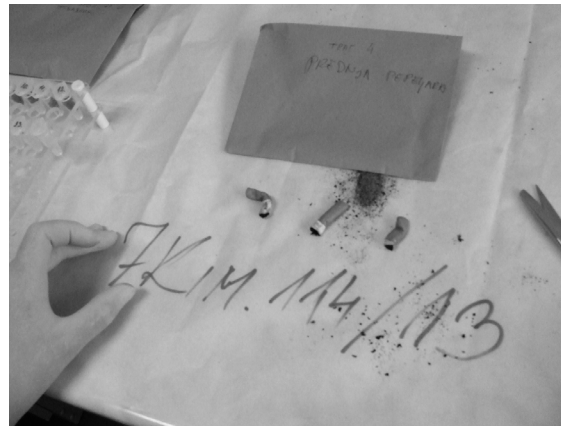
3.2. Biological materials, such as the touch DNA samples available in most scenes, and other items

In a large number of cases of traffic accidents determined by the order of the courts and the prosecution, the subject of DNA expertise in our laboratory is providing an answer to the question of who is in the position of the person in the car, i.e. giving an answer as to who was driving. In one of the cases after stealing a car (High Court in Subotica 7 Kim.114/13), driving violently and running over several people with serious bodily injuries, an adult suspect claimed that he was driving a minor in order to avoid criminal responsibility. Traces from the clothes of the victim (Figure 3), the young man who was run over, with traces of blood, as well as traces of blood at the place where he was run over, were analyzed. All these traces came from the biological material (blood) of the injured person.

Samples collected from several places in the front part of the vehicle were submitted in order to determine the driver of the vehicle and possible passengers/participants in the mentioned event, namely swabs marked with the inscriptions „passenger's door handle", „driver's door handle" and „steering wheel", as well as cigarette butt samples from ashtrays in the car (Figure 4). The contents of the front ashtray, as well as the contents of the rear ashtray of the vehicle, were also submitted. DNA analysis showed a total turnaround in the case. By analyzing the „driver's handle" and „steering wheel" swab samples, a mixed DNA profile was obtained, originating from at least two people, and the DNA profile of the adult suspect. Analyzing the cigarette butt sample from the front ashtray yielded a full DNA profile of the adult suspect, and analyzing samples from the rear ashtray yielded DNA profiles of an unknown male DNA profile of a male person (NN1 male person) and an unknown female person (NN2 female person). By comparing the DNA profile of the suspect, the adult P1 and the female person and the male person, it was determined that they were in the first degree of biological relationship, i.e. the parents of the adult suspect. The event scenario that the car was driven by a minor M2, whose traces were not found in the vehicle at all, was created in order to avoid the guilt of an adult perpetrator.

Figure 3. Traces from the clothes of the young man who was run over, with traces of blood; traffic accident victim

Figure 4. Cigarette butt samples from the front ashtray in the car



3.3. Determining the position of persons in a passenger vehicles

Determining the position and the state of persons in a passenger vehicle at the time of a traffic accident in forensic medical practice is often raised as a question, even in cases where all the passengers suffered only insignificant bodily injuries, and they want to avoid responsibility, especially in those cases where someone suffered a fatal injury. Then, in order to try to avoid criminal responsibility and possible punishment, the survivors state that the deceased was driving the vehicle at the time of the collision. By applying DNA analysis, it has been possible, in recent times, to unambiguously determin to which person the marks on the driver's seat and the area around him and/or the passenger's area belong. Attention should be paid to this, already, during the investigation itself, when the appropriately equipped and educated team of police technique would take biological traces from the vehicle, properly package them, mark them and send them for analysis.

3.4. DNA within cars: prevalence of DNA from driver, passenger and others

Sufficient DNA was recovered to generate profiles from 25 of the 30 handprint samples. Regular, sole drivers are a major contributor of DNA to their cars. The reason for the regular driver being a major contributor to profiles from some handprints could be due to the manner and duration of contact with the steering wheel for the period immediately preceding deposition of handprints. Especially given relatively high quantities of DNA present inside cars (including areas of seats, seatbelts, steering wheel, front console, doors) originating from the regular user (Boyko, Mitchell, van Oorschot, 2019). The variation in proportions of DNA derived from the regular and temporary drivers will also have been impacted by the relative shedder status (Goray et al., 2016; Kanokwongnuwut et al., 2016).

Known close associates, including co-resident partners and passengers/friends, as well as other unknown individuals, who had not driven the car, are also detected on many of the inside car sampled of sites cars. Touched evidence frequently contains DNA mixtures indicating that non-self DNA acquired by drivers is transferred to their cars. This foreign DNA often includes DNA from close associates, especially co-resident partners that may have been acquired by the driver prior to entering a car. DNA from other associates such as friends/passengers may also be indirectly transferred to the steering wheel via the driver.

3. DISCUSSION

Based on several presented cases of DNA expertise, DNA analysis was required to (1) determine the perpetrator in case of fleeing from the scene of the accident and (2) the position of the passenger in the vehicle at the time of the accident from biological deposits inside the vehicle. There are frequent cases of applying DNA analysis for the purpose of humane identification of individuals from burnt material from burned cars (Zgonjanin et al., 2015).

Not only blood but also various biological deposits at the scene were used for DNA analysis. If DNA sources such as blood, bloodstains, or tissue are obtained, it is relatively easy to analyze DNA, since abundant DNA is often contained in such samples. However, biological materials, such as the touch DNA samples available in most scenes, contain low amounts of DNA (Suzuki, 2004). Thus, it is difficult to analyze DNA in touch DNA samples. The regions of interest for sampling these samples and obtained samples in most cases are from several parts of the car, including the steering wheel, gear lever, door handles, etc., and also from unrelated people. When a biological sample obtained by a traffic accident contains DNA derived from more than one person, it is necessary to clarify which DNA is derived from which person.

To overcome this problem, we suggest taking samples in sections, this approach reduced the complexity of three-person mixture. The sectioned sampling approach could also be applied to mixtures of cells of similar type, such as epithelial. The sectioned sampling approach was proven to be a promising method in improving mixed sample interpretation, and was found to have potentials in generating database eligible DNA profiles from evidences that were previously considered unsuitable for forensic identification.

Despite considerable progress in the development of methods for analyzing traces of blood and other biological traces, if the sample is not properly collected and preserved, no latest procedures will be able to correct the incorrect collection of the biological trace. In fact, most of the legal regulations related to material traces/biological samples put in the foreground the recognition, collection and preservation of traces, and not the scientific methods that were applied for trace analysis (B. Fisher, D. Fisher, 2012). The The Scientific Working Group on DNA Analysis Methods (SWGDAM) has proposed several guidelines for the collection of evidence found at the scene, which are an excellent source of information.

Not only must the collection and preservation of traces be carried out in a way that will preserve the nature of the trace itself as best as possible, but it must be done through a process in which documentation is created thoroughly. The general characteristics of the biological trace, its structure and the place where it is located will be very important in the reconstruction of the event, but will also allow the forensic scientist in the laboratory to determine which traces have a greater evidentiary force. When a potential trace of blood or other biological trace is located, a thorough documentation must be created. Photographs must include a general overview of the scene showing an object, or sample of blood traces of significance in relation to the rest of the scene, and finally detailed photographs of the sample itself.

In recent years, it has become clear that in addition to identifying individuals using DNA it is possible to estimate age (Fu, Allen, 2019) and the color of one's hair or pupils using DNA (Katsara, Nothnagel, 2019). It is expected that traffic accident investigations will be conducted more efficiently using various information obtained from DNA.

CONCLUSION

DNA identification is successfully used in criminal investigations of traffic accidents. Regular, sole drivers are a major contributor of DNA to their cars, while samples from the exterior of cars after traffic accidents contain biological traces of the victims.

The principle of DNA test is that, even with the best available technology, it is just as important as the well-collected sample. Therefore, working closely with investigative authorities is essential to identify and collect evidentiary trace samples. Establishing early communication at the scene and between scene and laboratory personnel creates a better understanding of possible further examinations that could be conducted on physical evidence and significantly improves the outcome of the case.

REFERENCES

Boyko T., Mitchell R.J., van Oorschot R.A.H., DNA within cars: prevalence of DNA from driver, passenger and others on steering wheels, *Aust. J. Forensic Sci. 51 (S1)* (2019) S91–S94. DOI: 10.1080/00450618.2019.1572788

Castella V, Mangin P. DNA profiling success and relevance of 1739 contact stains from caseworks. *Forensic Sci Int. 1:* 2008; 405–407.

Finnis J., Lewis J., Davidson A., Comparison of methods for visualizing blood on dark surfaces, *Sci. Justice 53 (2)* (2013) 178–186.

Fisher Barry A. J., Fisher David R. Techniques of Crime Scene Investigation, 2012., Boca Raton. Taylor and Francis.

Fu J., Allen R.W., Amethod to estimate the age of bloodstains using quantitative PCR, *Forensic Sci. Int. Genet. 39* (2019) 103–108.

Goray M, R.J. Mitchell, R.A.H. van Oorschot, Investigation of secondary DNA transfer of skin cells under controlled test conditions, *Leg. Med. 12 (3)* (2010) 117–120.

Goray M, Fowler S, Szkuta B, van Oorschot RAH. Shedder status - an analysis of self and non-self DNA in multiple handprints deposited by the same individuals over time. Forensic Sci Int. 2016;23:190–196. doi:10.1016/j.fsigen.2016.05.005

Goray M, E. Eken, R.J. Mitchell, R.A.H. van Oorschot, Secondary DNA transfer of biological substances under varying test conditions, *Forensic Sci. Int. Genet. 4 (2)* (2010) 62–67.

Ishiko A, Tsuji A, Yamaguchi H, Hayashiba Y, Inoue H, Ikeda N. Experimental studies on identification of the driver based on STR analysis. *Leg Med. 10:* 2008; 115–118. doi:10.1016/j. legalmed.2007.09.001

Katsara M.A., Nothnagel M., True colors: a literature review on the spatial distribution
of eye and hair pigmentation, *Forensic Sci. Int. Genet. 39* (2019) 109–118.

Kloosterman, A.D., Kersbergen, P., 2003, Efficacy and limits of genotyping low copy number (LCN) DNA samples by multiplex PCR of STR loci. *J Soc Biol 197*, 351-359.

Kanokwongnuwut P., Martin B., Kirkbride K.P., Linacre A., Shedding light on shedders, *Forensic Sci. Int. Genet. 36* (2018) 20–25.

Lenz C, Flodgaard LR, Eriksen B, Morling N. Retrieval of DNA and genetic profiles from swabs taken inside cars. *Int Congr Ser. 1228:* 2006; 595–597. doi:10.1016/j.ics.2005.12.032

Mapes AA, Kloosterman AD, van Marion V, de Poot CJ. Knowledge on DNA success rates to optimize the DNA analysis process: from crime scene to laboratory. *J Forensic Sci. 61(4)*: 2016; 1055–1061. doi:10.1111/1556-4029.13102

Roewer, L., 2013, DNA fingerprinting in forensics: past, present, future. *Investig Genet 4, 22.*

Raymond J.J., van Oorschot R.A.H.,. Gunn P.R, Walsh S.J., Roux C., Trace evidence characteristics of DNA: a preliminary investigation of the persistence of DNA at crime scenes, *Forensic Sci. Int. Genet. 4 (1)* (2009) 26–33.

Raymond J.J., van Oorschot R.A.H.,. Walsh S.J., Roux C., Gunn P.R, Trace DNA and street robbery: a criminalistic approach to DNA evidence, *Forensic Sci. Int. Genet. Suppl. Ser. 2 (1)* (2009) 544–546.

Suzuki T., Introduction to Criminalistics as Forensic Sciences in Japan, Nihonshasingakkaisi, vol. 67, 2004 339–344.

van Oorschot RAH, Szkuta B, Meakin GE, Kokshoorn B, Goray M. DNA transfer in forensic science: A review. *Forensic Sci Int. 38:* 2019; 140–166. doi:10.1016/j.fsigen.2018.10.014

van Oorschot R.A.H., Jones M.K, DNA fingerprints from fingerprints, *Nature 387 (6635)* (1997) 767.

Virkler K, Lednev I.K, Analysis of body fluids for forensic purposes: from laboratory testing to non-destructive rapid confirmatory identification at a crime scene, *Forensic Sci. Int. 188 (1-3)* (2009) 1–17.

Vandenberg N., van Oorschot R.A.H., The use of Polilight® in the detection of seminal fluid, saliva, and bloodstains and comparison with conventional chemicalbased screening tests, *J. Forensic Sci. 51 (2)* (2006) 361–370.

Zgonjanin D, Petković S, Maletin M, Vuković R, Drašković D. Case report: DNA identification of burned skeletal remains, *Forensic Science International: Genetics Supplement Series* (2015);5: e444–e446. ISSN 1875-1768 doi.org/10.1016/j.fsigss.2015.09.176

Zgonjanin D, Perruccio Soler M, Antov M, Redhead P, Milić A, Validation and implementation of the Investigator® 24plex QS kit for forensic casework, *Forensic Science International: Genetics Supplement Series.* 2017. Vol. 6, e77-e79, ISSN 1875-1768, doi.org/10.1016/j.fsigss.2017.09.051x-Stojan PetkovicSearch for articles by this authorAffiliations

Zgonjanin-Bosić D, Petković S., Maletin M., Vuković R., Stoiljković G., (2014): Primena DNK analize u forenzičkoj genetici i sudskomedicinskoj praksi. Vek tehnologije molekularne genetike, Zbornik radova sa naučnog skupa: 275-290. Srpska Akademija Nauka i Umetnosti

Original Scientific Paper
DOI: 10.47152/Palic2024.21

Olga TEŠOVIĆ*

JUSTICE AFTER THE CRASH: ANALYZING THE ROLE OF JUDICIAL PRACTICE IN SUPPORTING TRAFFIC ACCIDENT VICTIMS

Abstract: This article examines the role of judicial practices in supporting victims of traffic accidents, focusing on the interplay between legal frameworks, victim support systems, and societal values. Through a comparative analysis of global legal systems and an in-depth exploration of domestic laws in Serbia, the study highlights the importance of judicial sensitivity, victim participation, and the integration of public health perspectives in legal responses to traffic accidents. The research reveals substantial variability in the implementation of victim support mechanisms and underscores the potential of restorative justice practices in fostering recovery and reconciliation. Key conclusions advocate for enhanced victim participation in the judicial process, improved accessibility to support services, continuous education for judicial officials, and necessary legislative reforms to strengthen victim rights and protections. The findings aim to contribute to the ongoing discourse on improving judicial practices to better support traffic accident victims, reflecting a broader commitment to justice and human dignity.

Keywords: judicial practice, traffic accident victims, restorative justice, victim support, legal frameworks

1. INTRODUCTION

The aftermath of a traffic accident unveils a complex landscape of grief, loss, and, oftentimes, a struggle for justice and support by the victims and their families. The intersection of traffic law, victim support systems, and judicial practices in addressing the needs of traffic accident victims presents a multifaceted challenge that societies and legal systems worldwide continue to grapple with. The judicial handling of traffic accident cases not only reflects on the efficacy and sensitivity of the legal system but also embodies the societal values placed on human life, safety, and justice.

In Serbia, as in many parts of the world, the legal discourse around traffic offenses and victim support has evolved significantly, albeit with considerable room for improvement. One insightful examination of the victimization resulting from traffic offenses underscores a pivotal element of contemporary legal discourse - the imperative for a robust, victim-centered approach within the judicial system (Pavlović, 2023). This perspective is essential, recognizing that beyond the immediate physical injuries, traffic accidents inflict profound psychological, emotional, and economic distress on victims and their families. Also, this approach necessitates not only a legal framework that rigorously penalizes traffic offenses but also one that adequately supports and acknowledges the victims of such incidents.

* PhD, Research Fellow, Institute of Criminological and Sociological Research in Belgrade, https://orcid.org/0009-0005-3121-8752. E-mail: otolgates@gmail.com.The current paper is part of a research endeavor funded by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia, conducted by the Institute of Criminological and Sociological Research, 2024, number 451-03-66/2024-03/200039.

The discourse on traffic safety and victim support is not isolated to the legal and professional domains. It resonates deeply with the public, often manifesting in spontaneous reactions to tragic traffic incidents. These reactions, while emotional, underscore a fundamental demand for justice and support for victims, reflecting broader societal expectations and the perceived gaps in the judicial response to traffic offenses.

Further compounding the issue is the recognition of traffic accidents as a significant public health concern. According to the World Health Organization (WHO), road traffic crashes are the leading killer of children and youth aged 5 to 29 years and are the 12th leading cause of death when all ages are considered, with more than half of fatalities among pedestrians, motorcyclists and cyclists. There were an estimated 1.19 million road traffic deaths in 2021. The WHO emphasizes that these incidents are not isolated tragedies but rather a preventable public health issue that requires comprehensive interventions spanning legislation, enforcement, and victim support (World Health Organization, 2023).

This research aims to delve into the role of judicial practice in supporting victims of traffic accidents. Through a systematic examination of case studies and legal frameworks, the study seeks to illuminate the intricacies of the judicial response to traffic victimization and explore potential avenues for enhancing victim support within the legal process.

The main research questions and objectives are:

1. How do judicial practices in Serbia address the support and rights of traffic accident victims?

2. What are the gaps and strengths in the current legal frameworks regarding victim support post-traffic accidents?

3. How can legal reforms and judicial practices be enhanced to provide comprehensive support to traffic accident victims, considering the societal impact and public health implications of traffic accidents?

By foregrounding the voices and experiences of victims within the judicial process, the research endeavors to propose actionable recommendations for a more empathetic and effective legal response to traffic accidents.

2. COMPARATIVE AND DOMESTIC LAW PROVISIONS

2.1. Comparative overview of global practices

This chapter examines the diverse ways in which different jurisdictions support traffic accident victims, particularly focusing on their representation in criminal proceedings. The legal frameworks, compensation mechanisms, and the role of victim advocacy vary significantly across countries, reflecting distinct legal cultures and policy priorities.

2.1.1. United States

In the United States, traffic accident victims are primarily supported through tort law and insurance claims for compensation. However, in criminal cases involving serious offenses like driving under the influence (DUI) or vehicular manslaughter, victims have the right to be informed, present, and heard at certain stages of the proceedings. Victim advocacy groups and state laws ensure victims voices are considered in plea bargains, sentencing, and parole hearings. Generally, in the US victims of crime in most states are afforded the following set of

rights: the right to be present at all stages of the criminal justice processes, the right to be compensated for losses suffered, the right to be heard, the right to be informed about the criminal justice processes and other services, the right to be treated fairly and respectfully, and with dignity and privacy, the right to be protected against humiliation from the offender and any other person; and the right to restitution (Boateng, Abbes, 2017: 4). However, it is emphasized that criminal justice officials, as implementers of laws granting victims access to information and participation in the justice process, must undergo compulsory training to enhance their understanding of victims' rights and needs, thereby ensuring victims receive accurate information and support during criminal proceedings.

2.1.2. Australia

Australia's approach combines statutory compensation schemes with victims' rights in criminal proceedings. While compensation schemes offer a non-litigious avenue for support, Australian jurisdictions have also enacted legislation to bolster victims' rights in criminal trials. This includes the right to give victim impact statements at sentencing, contributing to the consideration of victims' experiences and the impact of the offense on their lives. Legal reforms continue to advocate for enhanced representation and participation of victims in criminal justice processes, reflecting a balance between compensation mechanisms and active involvement in legal proceedings (Cook, David, Grant, 1999).

2.1.3. Japan

Japan's system provides basic compensation through compulsory automobile liability insurance (CALI), with additional claims processed through voluntary insurance or litigation (GIROJ, 2023). In criminal proceedings arising from traffic accidents, victims can participate as auxiliary prosecutors in trials involving serious offenses, such as negligent operation of motor vehicle resulting in death or injury. The court will determine whether the participation is appropriate considering the nature of the crime, relationship between the victim and defendant, and other factors, after hearing the opinion of the defendant or defense counsel. This role allows victims or their families to express their views and request specific sentences, enhancing their representation and involvement in the justice process (Matsui, 2011: 77).

2.1.4. India

India has made significant strides in recognizing and enforcing the rights of traffic accident victims within criminal proceedings. The Motor Vehicles (Amendment) Act 2019 not only increases compensation but also strengthens the legal framework for victims' rights. Motor Accident Claims Tribunals (MACT) expedite compensation claims, and recent legal reforms have focused on ensuring victims' voices are heard in criminal trials. The introduction of victim impact statements and the provision for legal aid to victims underscore India's commitment to enhancing victim representation in the judicial system (Ministry of Law and Justice, India, 2019).

2.1.5. European Union

The European Union emphasizes victims' rights across member states, ensuring they receive information, support, and protection throughout criminal proceedings. The EU Directive 2012/29/EU establishes minimum standards on the rights, support, and protection of

victims of crime, including traffic accident victims involved in criminal cases. This Directive encourages member states to provide legal representation for victims, guaranteeing their right to participate actively in criminal trials. Special attention is given to victims with specific protection needs, highlighting the EU's commitment to an inclusive and supportive legal environment (European Parliament and Council, 2012). This harmonized approach reflects the EU's commitment to an inclusive, victim-centered legal culture.

The EU Directive 2012/29/EU serves as a cornerstone, yet the implementation and augmentation of these rights reflect each country's legal culture and policy orientation. For example, Germany offers a unique model where traffic accident victims can join the criminal proceedings as private accessory prosecutors, allowing them an active role in the justice process. This model is particularly empowering for victims, offering them a voice in the proceedings and a pathway to claim compensation directly linked to the criminal case (European Union Agency for Fundamental Rights, 2017).

France's legal system includes a provision for traffic accident victims to become civil parties in criminal trials, enabling them to present their damage claims within the criminal proceedings. This integration of civil claims within the criminal trial underscores France's holistic approach to victim support, ensuring that victims' financial and emotional needs are addressed concurrently with the prosecution of the offender (French Ministry of Justice, 2012). Also, France has developed a network of victim support services that offer legal, psychological, and financial assistance. These services are instrumental in guiding victims through the often complex legal proceedings and in helping them access the compensation and support they deserve. The Guarantee Fund for Victims (*Fonds de Garantie des Victimes*) plays a crucial role in this ecosystem by providing compensation to victims who are unable to receive it from other sources, such as in cases involving uninsured or unidentified drivers (Fonds de Garantie des Victimes, 2021).

Sweden's victim-centric policies ensure comprehensive support for traffic accident victims, including legal representation, information about the criminal process, and access to compensation and support services. The Swedish Crime Victim Authority (Brottsoffermyndigheten) exemplifies the country's commitment to providing robust support systems for victims. They offer help in various areas, including compensation and damages for injuries, destroyed property, medical costs, pain and suffering, and aggrievement. Additionally, they provide information to victims about the offender's status, such as if the offender is granted leave, does not return from leave, escapes, or is released (Swedish Crime Victim Authority, 2024).

Spain's legal system provides comprehensive support for traffic accident victims, integrating legislative reforms and victim assistance services to create a victim-centered approach. The Ley 35/2015 and Organic Law 4/2015 are pivotal, enhancing compensation rights and institutionalizing victims' rights within criminal proceedings, ensuring timely information, legal aid, and psychological support (Boletín Oficial del Estado, 2015). These laws, coupled with nationwide victim assistance services, empower victims to actively participate in the justice process, navigating the system effectively and asserting their rights. The comprehensive nature of Spain's victim support mechanisms - combining legislative reforms, compensation schemes, and victim assistance services - illustrates the country's commitment to upholding the rights and dignity of traffic accident victims. This approach not only aids in the victims' recovery and rehabilitation but also enhances the overall effectiveness and fairness of the criminal justice system.

2.1.6. Global Insights: Advancing Victim Support in Traffic Justice

This comparative overview reveals a rich tapestry of global and European practices aimed at supporting traffic accident victims, especially concerning their representation in criminal proceedings. From the United States' advocacy-driven model to the European Union's harmonized legal framework, the diversity in approaches underscores a universal recognition of the need for victim-centric justice systems. Countries like Japan and India demonstrate the potential for innovative legal mechanisms that empower victims, while the EU's Directive establishes a foundational commitment to victims' rights that transcends national boundaries.

The synthesis of these varied practices points to a few key conclusions. Firstly, the integration of victim support services with the legal process significantly enhances victims' ability to navigate the justice system. Whether through direct compensation mechanisms or participation in criminal trials, providing victims with the necessary tools and information is paramount. Secondly, legislative reforms, as seen in Spain and France, play a crucial role in institutionalizing victims' rights, ensuring their needs are recognized and met within the criminal justice framework.

However, the discussion also highlights gaps and challenges. The variability in the implementation of victims' rights, even within the EU, suggests the need for continued advocacy, education, and policy development to ensure these rights are fully realized. Moreover, the importance of training for criminal justice officials emerges as a critical factor in effectively supporting victims, pointing to an area for future investment and focus.

In conclusion, while significant strides have been made in supporting traffic accident victims across different jurisdictions, the journey toward fully integrated, victim-centered justice systems continues. The lessons learned from this comparative overview not only shed light on best practices but also pave the way for ongoing reforms aimed at enhancing the dignity, rights, and recovery of traffic accident victims worldwide.

2.2. Domestic Legal Framework

The legal environment in Serbia is evolving to address the needs of traffic accident victims, aligning local regulations with international norms. While efforts are made to support victims, challenges remain in fully realizing their rights and dignity. The process reflects an ongoing journey towards enhancing the legal framework for victim support in traffic incidents.

2.1.1. *Relevant provisions of the Constitution*

The Serbian Constitution (2006) lays the foundational stone for the protection of human rights, including the rights of traffic accident victims. It embodies the principles of equality before the law and the right to legal remedy and protection (Article 36). Everyone has the right to judicial protection if a human or minority right guaranteed by the Constitution is violated or denied, as well as the right to remove the consequences caused by the violation (Article 22. paragraph 1.) and victims' rights are implicitly supported under the umbrella of personal rights and dignity, providing a constitutional guarantee for their protection and support (Article 23) Also, every citizen and especially victims in criminal proceedings have the right to legal aid (Article 67).

2.1.2. *National strategic framework*

Action plan for the implementation of *the National Strategy for the realization of the rights of victims and witnesses of criminal acts in the Republic of Serbia* for the period 2020-2025, in the period 2023-2025 (2023) is a strategic document which should have been mark a significant step towards enhancing the protection and support provided to victims, including those of traffic offenses. It outlines the goals and measures for improving the legal and institutional framework, ensuring victims' rights are fully recognized and effectively implemented. The Strategy highlights the importance of a coordinated response from all relevant stakeholders, including government bodies, the judiciary, and civil society organizations, to uphold the rights and needs of victims.

It is important to say that the current support system for victims of crime in Serbia is fragmented, leading to many individuals not accessing necessary services. This issue partly arises because victim support primarily targets specific demographics, such as women, or those affected by certain types of crime, like domestic violence or human trafficking. However, a more significant challenge lies in the inadequate geographical distribution of services, coupled with the absence of a centralized referral system and poor coordination among existing services (Kolaković-Bojović, 2016: 361)

The National Strategy represents a pivotal step towards fundamentally improving the support system for victims and witnesses in Serbia. It acknowledges the existing legal alignment with international standards while emphasizing the need for further reforms to address remaining gaps. Through strategic planning and implementation, it aims to establish a comprehensive and accessible support network, ensuring that victims and witnesses are provided with the necessary assistance and protection in accordance with their rights.

2.1.3. *Penal legislation*

The Serbian Criminal Code (2006) addresses traffic delinquencies with specific emphasis on the protection and support of victims. It outlines the criminal acts against road traffic safety, detailing the legal repercussions for offenders while also focusing on the rights of victims. Serbia's Criminal Code, within its Chapter XXVI, addresses the spectrum of offenses against public traffic safety through nine distinct criminal offenses. The core of these legal provisions (articles 289-297 of the Criminal Code) is the protection of public traffic safety. Despite the challenging state of traffic safety, with a significant number of victims, the primary objective of these laws is to deter traffic delinquency through preventive measures while employing criminal law norms as essential tools for suppression.

Almost all the norms that prescribe the rules of traffic behavior in our penal law are found in legal provisions in the zone of misdemeanor punishment. Once the statutory conditions are met, the responsibility shifts from misdemeanor to criminal law. This transition occurs when a violator's actions compromise traffic safety to the extent of causing an accident that results in bodily injury, property damage, or fatalities. This framework not only represents the current ideology of the Serbian Criminal Code but also indicates a subtle trend towards decriminalization, acknowledging the impact of technological advancements in vehicles (including boats) and traffic safety regulation, from vehicle operation to licensing requirements (Pavlović, 2023: 381-382).

The Law on Juvenile Offenders and Criminal Protection of Minors (2005) provides specialized protection for minors who are victims of traffic accidents, emphasizing the need for

sensitive treatment and the prioritization of their rights throughout all criminal proceedings. It in general outlines procedures designed to minimize trauma and ensure the child's best interests are considered in legal proceedings.

The existing Code of Criminal Procedure - CPC (2011) when it comes to exercising the rights of victims in criminal proceedings in general, including victims of traffic crimes, is largely harmonized with Directive 2012/29/EU. Namely, the very concept of the injured person under the CPC is broader than the concept of victim contained in the Directive since it also includes legal entities, and when it comes to the victim's right to compensation, it is quite clear that the provision of Article 258 of the CPC sets the decision on a property claim as a rule in criminal proceedings (it is a completely different matter that the application of this rule is rare in practice) (Kolaković-Bojović, 2020: 47-48; Stevanović, Vujić, 2020: 93-95).

On the other hand, the right to inform the victim about his rights from the first contact with the competent authority and specify the information that the victim should receive (Article 6 of the Directive) has great significance in the Directive and it is largely contained in the rights that the injured party is in the CPC (Article 50), but not completely and not in a sufficiently systematic way. In theory, it is justifiably proposed that the simplest and at the same time the most effective would be to introduce a special form that would contain all the relevant information explained in simple language about the rights that the injured party has in criminal proceedings (Škulić, 2020: 32). Thus, from the first contact with the competent authority, which is most often the police in the pre-investigation procedure, the victim would receive all the relevant information, by handing over a short brochure, the content of which would be regulated by a by-law, and under Article 50 of the CPC it would be established the special right of the injured party to receive a written instruction from the procedural authority that would explain what rights and duties the injured party has in criminal proceedings.

2.1.4. *Traffic regulations*

The Law on Road Traffic Safety (2009) directly addresses the prevention of traffic accidents and the protection of participants in traffic, including victims. It establishes regulations aimed at enhancing road safety, delineates the rights of traffic accident victims, and specifies the obligations of authorities in responding to accidents. Traffic participants are obliged not to disturb, endanger or injure other participants with their behaviour, as well as to take all necessary measures to avoid or eliminate dangerous situations caused by other traffic participants, if they don't put themselves or others in danger (Article 3, paragraph 1).This law and gives substance to criminal law provisions that are of a blanket nature when it comes to traffic offenses and plays a pivotal role in both the prevention of accidents and the support of victims post-accident.

3. CASE STUDIES

In exploring the intricate dynamics of judicial practices in traffic accident cases, the case study method proves invaluable. This method allows for a deep dive into specific instances where the theoretical frameworks of law intersect with the personal and often traumatic experiences of individuals involved in traffic offenses. By focusing on detailed examinations of actual cases, researchers can glean insights into the practical applications and implications of legal principles and victim support mechanisms.

For this research, the case files were meticulously selected and examined from basic courts in Niš and Požega. The selection process was conducted under the supervision of presidents

of the criminal departments of the mentioned courts, ensuring a focus on cases that are representative of the typical judicial handling of traffic offenses. These cases were specifically chosen based on two criteria: the nature of the offense being traffic-related and the active participation and representation of injured parties in the proceedings. Such criteria ensure that the cases selected provide a rich source of data concerning the legal processes and the extent of victim support and participation within these processes.

Data collection involved a thorough inspection of entire case files, encompassing all documents, evidence, court decisions, and records of interactions between the court and the involved parties. This comprehensive approach allowed for an in-depth understanding of the procedural nuances, judicial decisions, and the implementation of victim support protocols.

3.1. Case Study 1: Challenges in victim support and restorative justice

In 2018, the Basic Public Prosecutor's Office in Požega filed an indictment against the defendant N.N. for the criminal offense of serious crime against the safety of public traffic from Article 297, paragraph 4, in connection with Article 289, paragraph 3, in connection with paragraph 1 of the Criminal Code, due to the existence of justified suspicion that he did not act following traffic signals and signs while driving a motorcycle in critical situations, that he was moving at a higher speed than allowed by the posted traffic sign and that he overtook where it was prohibited by the traffic signal, thereby acting contrary to the provisions of Articles 20, paragraph 1, 43, paragraph 1, and 55, paragraph 3, item 44 of the Law on Road Traffic Safety. As a result of the aforementioned action, at the moment of encountering the part where the works were being carried out, when the traffic light was on, he began overtaking the truck at a speed of no less than 77 km/h using the left lane where the works are being carried out and which is closed for the movement of the vehicle through the visibly placed vertical barriers on the left half of the road in front of the part of the roadway where part of the asphalt was removed and in the middle of the roadway he passed the barriers with his motorcycle, with the intention of returning to the right lane after overtaking, but he lost control of the motorcycle due to encountering the part road where the reconstruction of the road was carried out and where part of the flat curtain was removed. Then the motorcycle drifted, after which N.N. returned to the left lane and hit the guardrail, as a result of which the passenger in the vehicle, M.M., fell on the dirt surface, and the motorcycle with the driver bounced off the impact of the guardrail, hit the beginning of the edge of the bridge, and the motorcycle and the driver fall on the road. Companion M.M. died on the spot due to the destruction of vital brain centers, breathing disorders due to the destruction and bruising of the lungs, and bleeding into the chest cavity from ruptured blood vessels on the spot of multiple fractures of the ribs and spine.

Acting on the indictment, the Basic Court in Požega found the defendant guilty of the criminal offense of serious offense against public traffic safety from Article 297, paragraph 4 in connection with Article 289, paragraph 3 in connection with paragraph 1 of the Criminal Code, and sentenced him to prison for the duration of one year and four months and the imposition of a security measure prohibiting driving a motor vehicle for the duration of one year. In the explanation of the sentencing verdict, based on Article 54 of the Criminal Code, as mitigating circumstances on the part of the defendant, his previous lack of conviction, the fact that he himself sustained injuries in the aforementioned traffic accident, and that the incorrect installation of the vertical barrier contributed to the occurrence of the traffic accident. The court did not find any aggravating circumstances.

The Court of Appeals in Kragujevac, acting on the appeals of the public prosecutor and the defense attorney, confirmed the aforementioned verdict, except for the part of the decision on costs, where it was partially annulled and returned to the first instance court for re-decision.

During the entire criminal proceedings, both before the public prosecutor and at the main trial, the intolerance and misunderstanding of the defendant who was the deceased's partner with the injured parties - the deceased's family, her father, mother, and sister - was evident. In the statements given before the public prosecutor, and then at the main trial, the injured parties unanimously stated that they were against this relationship because the defendant put into first place riding a motorcycle at every opportunity and lived such a lifestyle, and they were afraid for the life of their daughter - sister who recently avoided contact with them under the influence of the defendant and started to live with him. At the main hearing, the sister particularly pointed out that this tragedy had an impact on her business and private life, and that the defendant continued going out with new girlfriends, riding a motorcycle, and partying, and all the time after the accident he posted on social networks about the accident itself, stressing that he is not guilty, and when she asked him to delete her sister's profile, he did not do so, which hurts them greatly. At the main hearing, the injured parties unanimously declared that they join the criminal prosecution of the defendant, without asserting the claim for property rights, and they specifically pointed out that immediately after the accident, the father of the defendant offered a white envelope with an unknown amount of money to the father of the deceased, which he did not want to accept, stating that that act hurt them a lot.

On the other hand, at the main trial, the defendant did not show any kind of empathy in his attitude towards the victims, responding to the sister of the deceased testimony with the words that he could post whatever he wanted on his Instagram profile and that if someone doesn't want to see it, he doesn't have to follow it, then to the statement of the mother of the deceased that she can provide the court with a video recording of their engagement so that it can be seen how "unhappy" the deceased was, and to the part of the statement of the father of the deceased who gave through constant crying, which reads "If you declare that you love someone and that someone is your "flake", you have to take care how you drive a motorcycle, because you can easily get hurt on a motorcycle and if you see a curve, solid line, column, speed limit, you have to take care of all that ", the defendant replied with the words that the will of the deceased was to ride with him on a motorcycle.

In connection with this case, two questions of importance for judicial practice arise:

1. Should the relationship of the defendant towards the injured parties - the family of the deceased - be appreciated when determining the punishment in terms of Article 54 of the CC, as his behavior after the crime, or as the relationship of the defendant towards the victim of the crime?

2. Should the court in the specific case have applied the principles of restorative justice and in what way, as well as whether the injured parties were adequately provided with legal assistance and support?

The answer to the first question is certainly affirmative, because even according to the Directive about victims 2012/29/EU, family members of a person whose death is a direct consequence of a criminal offense and who suffered injury or damage as a result of the death of that person, are victims of a criminal offense in the broader sense (Article 2). As the concept of the injured party according to the Criminal Procedure Code is much broader (Article 2, point 11 and Article 57), in this particular case the relationship of the defendant towards the family of the deceased should certainly have been valued when determining the punishment as the

relationship towards the victim of the criminal offense in the aforementioned sense, which was evidently negative, with constant hurt to their feelings after the accident. In any case, if the concept of victim in Article 54 of the Criminal Code were to be understood in a narrower sense in the sense of Directive 2012/29/EU, it was necessary that the striking relationship between the defendant and the injured parties be considered as his extremely negative attitude after the crime committed and assessed as an aggravating circumstance in the specific case.

It is not possible to give a simple answer to the second question for the basic reason that in our legal system, there are no established and demographically equally distributed services for the support of victims of criminal acts, and especially there are no services related to traffic offenses. The aforementioned services should provide help and support to the injured throughout the entire process, especially in cases of death, including in terms of reconciliation with the perpetrator of the crime.

Otherwise, restorative justice should be defined as a way of responding to criminality, which includes a set of procedures (process) and measures that lead to the repair of damage caused by a criminal act and relationships damaged by a criminal act, which is based on certain principles and is not necessarily in conflict with the traditional, retributive way of responding to criminality, it can already be a form of "diversion" of the criminal procedure or be an integral part of it (Ćopić, 2015: 34). Therefore, both judges and prosecutors can play the role of mediators in criminal proceedings, but based on international standards and comparative legal solutions, it is far more acceptable that in order to achieve dialogue between the victim and the perpetrator, judges and prosecutors refer the case to mediation or some other restorative process where there could be a settlement, apology, agreement on compensation for damages or another restorative outcome. In this particular case, such a possibility was not applied for the simple reason that it does not represent part of court practice, and there is no regulation that would encourage such an activity of the holders' judicial functions (only in the case of a private lawsuit, Article 505 of the CPC stipulates such an obligation of the acting judge).

On the other hand, as it has been pointed out, services for the support of victims of criminal offenses do not exist in most courts, nor in the non-governmental sector outside the larger city centers (and even then, they are mostly dedicated to gender-based violence and certain forms of serious crime which are in the jurisdiction of some specialized departments of the courts), so that this kind of support was not provided to the injured parties in this case either. Admittedly, from the very beginning, they were represented by an elected representative from the ranks of lawyers, but during the entire procedure, it was never pointed out by any process participant that they should possibly discuss the topic of reaching some kind of agreement and reconciliation.

In this case, after the final conclusion of the criminal proceedings, the impression of bitterness remains, and not of justice, even though the formal sentence was imposed within the legal framework. Namely, the victim passed away, the injured members of her family were deeply hurt by the very consequences, but also by the defendant's offensive behavior after the crime was committed, and the defendant has not been under any obligation to reconcile and apologize either before, during, or after the criminal proceeding, or after the execution of the prison sentence.

So, this case study of the traffic accident in Požega provides critical insights into the strengths and weaknesses of victim support in Serbian judicial practice regarding traffic offenses:

1. *Need for comprehensive victim support services*: There is an evident need for a more structured approach to victim support that extends beyond legal representation to include emotional and psychological assistance. This should be part of a systemic response that acknowledges the trauma associated with such incidents.

2. *Incorporation of restorative justice*: The absence of restorative justice practices in this case highlights a significant oversight. Integrating these practices could enhance the judicial process by addressing the needs of both victims and the broader community for reconciliation and healing.

3. *Enhancing judicial sensitivity*: The judicial handling of the case points to a need for greater sensitivity and consideration of the victim's family's emotional state and expectations. Training for judges and prosecutors in victim-centered approaches could improve the effectiveness and humaneness of the judicial process.

4. *Policy and legal reforms*: To better support victims, legislative and policy reforms are necessary. These reforms should aim at enhancing victim participation in the justice process, establishing dedicated victim support services, and promoting the use of restorative justice methods.

This case study underscores the imperative for a multifaceted enhancement of the legal and support frameworks for victims of traffic offenses, suggesting a shift towards more empathetic, inclusive, and restorative judicial practices in Serbia.

3.2. Case Study 2: the Niš traffic incident and judicial response

In 2020, the Basic Public Prosecutor's Office in Niš filed an indictment against the defendant N.N. for the criminal offense of endangering public traffic from Article 289, paragraph 3, in connection with paragraph 1 of the Criminal Code, in conjunction with the criminal offense of failure to provide assistance to a person injured in a traffic accident from Article 296, paragraph 1, of the Criminal Code, due to the existence of a justified suspicion that the driver of the passenger vehicle used a motor vehicle in violation of Article 55, Paragraph 3, Point 1 of the Law on Road Traffic Safety. Namely, on critical occasions he overtook a column of vehicles in which there were three vehicles, which he was not allowed to do according to the aforementioned regulation, so he crossed to the traffic lane intended for the movement of vehicles from the opposite direction, and in which lane was moving one vehicle in which managed by the injured M.M. who, in order to avoid a direct collision with the defendant's vehicle, turned to the right, so his vehicle went off the roadway onto the curb on the right side of the roadway and overturned onto the grassy area, as a result of which the driver M.M. and the passenger suffered minor injuries. The defendant continued to drive his vehicle and left the injured parties without help, whose injuries he caused with his vehicle.

Acting according to the aforementioned indictment, the Basic Court in Niš first acquitted the defendant of the charges for the aforementioned acts, but the High Court in Niš overturned that verdict upon appeal by the public prosecutor and sent the case back to the court of first instance for a retrial. In the renewed proceedings, the Basic Court in Niš issued a verdict declaring the defendant guilty of the criminal offense of failure to provide assistance to a person injured in a traffic accident from Article 296, paragraph 1 of the Criminal Code and sentenced him to a fine in the amount of one hundred and twenty thousand dinars, as and the secondary penalty of revocation of driver's license for one year, and he refused the charge regarding the criminal offense of endangering public traffic from Article 289, paragraph 3, in relation to paragraph 1 of the Criminal Code, due to the statute of limitations for criminal

prosecution. In respect of the property claim, the injured parties were sent to civil proceedings. The High Court in Niš, acting on the appeal of the public prosecutor, confirmed the aforementioned verdict.

During the main trial, the accused denied having committed the criminal acts charged against him, stressing that after overtaking he safely returned to his lane and that he did not notice the vehicle that was coming from the opposite direction and left the road. During the entire criminal proceedings, the injured party described how the event in question took place as described in the accusation, joining the criminal prosecution and asserting a property claim. During the entire procedure, it is noticeable that no action was taken by the public prosecutor's office and the court in order to provide assistance and support to the injured parties who were questioned on three occasions - before the police, which was stated in the form of an official note, as well as before the public prosecutor and at the main trial. During the proceedings before the public prosecutor and at the main hearing, the injured party was represented by an elected representative from the ranks of lawyers.

The procedural handling of this case raises several points of concern regarding victim support:

1. *Lack of immediate assistance*: After the accident, the defendant left the scene without providing assistance to the injured parties, M.M. and his passenger, who sustained minor injuries. The legal focus was on the defendant's failure to assist, which is critical but only part of broader victim support.

2. *Inadequate legal support and guidance*: Throughout the trial, there was no indication that the victims received any substantial support or guidance from the judicial system beyond representation by a private attorney. This lack of support was evident despite the victims being repeatedly called to testify, which could have compounded their trauma.

3. *Referral to civil litigation for compensation*: The victims were directed to seek compensation through civil litigation. While this is a standard procedure, it places an additional burden on the victims, requiring them to engage in further legal battles to address their losses and injuries.

4. *Lack of proactive measures by prosecution and court*: The court and prosecution did not take proactive measures to offer psychological or legal support to the victims, nor was there any mention of victim support services that could assist in dealing with the aftermath of the incident.

So, the Niš traffic case highlights also several areas for improvement in victim support within the Serbian judicial system:

1. *Enhanced on-site support*: Immediate support at the accident scene and during the initial legal proceedings can help mitigate the immediate impact on victims. This support could include medical assistance, psychological support, and legal guidance.

2. *Comprehensive victim support services*: Establishing dedicated victim support services within the judicial system could provide continuous support throughout the legal process. These services should offer counseling, legal advice, and assistance in filing compensation claims.

3. *Training for legal professionals*: Judges, prosecutors, and police officers should receive training focused on the needs of victims, especially in handling cases involving physical and psychological trauma.

4. *Streamlining compensation processes*: Simplifying the process for victims to claim compensation through criminal proceedings could reduce the need for separate civil actions, thus lessening the legal burden on victims.

5. *Integrating restorative justice practices*: Introducing restorative justice elements could provide a platform for victims to express their needs and for offenders to acknowledge their actions, potentially facilitating a more comprehensive healing process.

In summary, while the legal proceedings in the Niš case adhered to statutory requirements, they fell short in providing holistic support to the victims. This case serves as a critical reflection point for enhancing victim support mechanisms to ensure a more empathetic and supportive approach within the judicial system.

3.3. Case Study 3: the Požega road incident - legal outcomes and victim advocacy challenges

In 2022, the Basic Public Prosecutor's Office in Požega filed an indictment against the defendant N.N. for the criminal offense of serious offense against public traffic safety from Article 297, paragraph 1 of the Criminal Code and the criminal offense of failure to provide assistance to a person injured in a traffic accident from Article 296, paragraph 2 of the Criminal Code, as well as the criminal offense of preventing and obstructing evidence from Article 336 Paragraph 2 of the Criminal Code. Namely, the defendant is justifiably suspicious that while driving a passenger motor vehicle in critical situations late at night, contrary to Article 35, Paragraphs 1 and 2 of the Law on Road Traffic Safety, he did not move on the right side of the roadway in the direction of movement and did not hold the vehicle while moving, which closer to the right edge of the roadway and that, contrary to Article 187, paragraph 2 of the aforementioned law, he was driving the vehicle under the influence of alcohol of 1.90 per mille, and as a result of not keeping to the right side of the road, the front left side of the vehicle hit the front part of the motorcycle driven by the injured M.M. From that contact, the victim's body was thrown out and came into contact with the windshield of the car, and then he fell from the motorcycle to the ground, during which the victim suffered serious injuries in the form of a fracture of the left femur, a fracture of the left clavicle, a fracture of the cheekbone and maxillary bone, and a concussion. After that, the defendant got out of the vehicle, approached the victim, and after making sure that he was alive because he heard him breathing and "snoring", he left the scene of the accident with his vehicle, leaving the injured victim without help, and before that he picked up only the fallen parts of his vehicle so that they would not be found during the investigation and put them in the back seat of his vehicle.

The Basic Court in Požega, acting on the aforementioned indictment, declared the defendant guilty of the aforementioned three criminal acts and sentenced him to a single prison term of one year and five months and a fine in the amount of one hundred and fifty thousand dinars. The injured party is informed that he can pursue his property-related claim in civil proceedings. In the explanation of the verdict, the first-instance court considered the family circumstances of the defendant as mitigating circumstances, that is, the fact that he is the father of a minor child and also his previous lack of conviction. The court did not find any aggravating circumstances.

Acting on the appeal of the defendant's counsel, the Court of Appeals in Kragujevac overturned the first-instance court's sentence in terms of punishment, sentencing the defendant to a single prison sentence of one year, which will be served in the premises where the convicted

person lives, without the application of electronic surveillance[1]. In the verdict's explanation, the appellate court clarified that it reduced the sentence due to several factors not adequately considered by the trial court. Specifically, the appellate court recognized mitigating circumstances including the injured party's manner of driving, which a traffic expert determined contributed to the accident due to his proximity to the roadway's dividing line. Additionally, the court noted that the defendant had acknowledged his serious violation of public traffic safety under Article 297, paragraph 1 of the Criminal Code, demonstrated genuine remorse, and attempted to contact the victim post-accident. These aspects were previously overlooked.

During the main trial, the injured party was represented by an elected representative from the ranks of lawyers. The property claim was highlighted and in the final statement clearly defined in the exact amounts for the mental pain suffered and the reduction of general life activity, given that the treatment is still ongoing, as well as for the physical pain suffered and in the name of the fear which was suffered, but during the criminal proceedings no expert examination was carried out in the aforementioned sense, so the injured party has already been referred to civil proceedings.

In the course of the proceedings, no activity aimed at supporting the victim of this criminal offense was proposed by the public prosecutor or the court, nor was there any contact between the defendant and the injured party in order to settle and repair the damage caused to the injured party by the execution of the aforementioned criminal acts. The defendant stated that after the accident he tried to get in touch with the injured party through his colleagues, but that he did not want to talk to him, so he apologized to the injured party at the main trial, stating that he was sorry for everything that had happened to him and that he was glad to have recovered.

So, several critical issues emerge concerning victim support in this case:

1. *Insufficient immediate assistance*: Post-incident actions by N.N. showed a severe lack of responsibility and empathy. He left the scene without assisting the severely injured victim, only removing evidence potentially detrimental to his case. Such behavior not only exacerbated the victim's physical and psychological trauma but also highlighted the urgent need for robust legal measures to ensure immediate victim assistance at the scene.

2. *Legal representation and compensation claims*: Although the victim was represented by legal counsel, the criminal proceedings directed the compensation claims to civil litigation. This referral necessitates an additional legal battle for the victim, compounding their distress and possibly delaying essential compensation for recovery and rehabilitation.

3. *Lack of proactive victim support*: Throughout the proceedings, there was no indication of any significant efforts by the judiciary or prosecution to provide or even propose comprehensive support mechanisms for the victim. This oversight includes a lack of psychological counseling, victim advocacy, or facilitation of restorative justice measures, which could have helped address the emotional and physical fallout experienced by the victim.

4. *Restorative justice and reconciliation attempts*: The defendant's reported attempts to contact and reconcile with the victim post-incident, while potentially indicative of remorse,

[1] Unrelated to the issue of the victim's position, the question of the adequacy of this sanction in this particular case arises, especially as it concerns the execution of the sentence of house arrest without the application of electronic monitoring, where the control of its execution due to the absence of electronic monitoring in numerous cases proved to be very difficult, and even impossible in the evening hours, at night and on non-working days (Kolaković- Bojović, Batrićević, Matić-Bošković, 2022: 40).

were not formally recognized or facilitated by the court. This missed opportunity for restorative justice could have provided a platform for acknowledgment of harm done and potentially facilitated a more meaningful resolution for the victim.

The case from Požega presents a scenario where legal proceedings primarily focused on penalizing the offender with limited structured support for the victim. In conclusion, the following recommendations can be derived to enhance victim support in similar cases:

1. *Immediate and mandatory victim assistance*: Implementing mandatory on-site victim assistance protocols, including medical care and crisis counseling, can significantly mitigate the immediate impact of the incident.

2. *Integration of victim support services in criminal proceedings*: Courts should have mechanisms to integrate victim support services directly into the criminal justice process. This integration could include providing victim advocates and ensuring that psychological and financial assessments are part of the initial proceedings.

3. *Enhanced restorative justice practices*: As it mentioned in previous case studies, establishing formal procedures for restorative justice within the criminal process can aid in healing and provide victims with a sense of closure and justice. This practice should be encouraged and facilitated by the judiciary.

4. *Streamlining compensation processes*: The criminal court system should have the authority to adjudicate compensation claims within criminal proceedings to avoid the need for subsequent civil litigation, thereby reducing the burden on the victim.

The Požega case underscores a critical need for systemic changes in how victims are supported through the judicial process, emphasizing the importance of immediate assistance, comprehensive support, and the potential benefits of integrating restorative practices within the criminal justice system.

4. DISCUSSION AND CONCLUSIONS

The multifaceted role of judicial practices in supporting traffic accident victims represents a significant aspect of legal discourse, demanding a comprehensive understanding of the intersection between legal frameworks, victim support systems, and societal values. Throughout this research, various judicial responses to traffic accidents have been explored, illustrating both the potentials and limitations within different legal systems.

Judicial sensitivity and victim support are crucial. It is evident that the sensitivity of judicial responses can significantly influence the support victims receive. The inclusion of victim impact statements and the provision of legal and psychological support are vital in addressing the comprehensive needs of traffic accident victims. Such practices not only provide a platform for victims' voices but also emphasize the human aspect of legal proceedings, which is often overshadowed by the procedural and punitive components of the law.

Regarding legal frameworks and public health, traffic accidents are recognized not merely as legal issues but also as critical public health concerns. The ability of legal systems to integrate public health perspectives into judicial practices can enhance their response to traffic accidents. Viewing traffic accidents through a public health lens allows legal systems to adopt more preventative measures and focus on comprehensive victim support, rather than solely punitive outcomes.

The comparative analysis of global practices has revealed that while many countries have robust victim support mechanisms, their implementation often varies. This variance under-

scores the importance of not only having laws in place but also ensuring their effective application. Countries that have succeeded in integrating these practices offer valuable lessons on potential improvements in judicial responses to traffic accident victims.

Lastly, the exploration of restorative justice practices has highlighted their potential in addressing traffic accidents. These practices focus on repairing the harm caused by the crime and reconciling the relationship between the victim and the offender. Implementing restorative justice practices could lead to more meaningful resolutions and foster a sense of healing and closure for victims. This research underscores the critical role of judicial practices in shaping the support system for traffic accident victims, reflecting broader commitments to justice and human dignity.

So, this paper's comprehensive examination, including a comparative law analysis and an evaluation of domestic legal provisions in Serbia alongside representative case studies, provides an insightful overview of the strengths and weaknesses within existing frameworks. The key findings are summarized as follows:

1. *Enhanced victim participation*: There is a clear need for enhanced participation of victims in the judicial process. This includes the right to be heard, to present victim impact statements, and to be adequately informed about the proceedings. Ensuring these rights can significantly improve the victim's experience and satisfaction with the judicial process.

2. *Integration of support services*: Integrating support services with legal processes is essential for providing comprehensive support to victims. Services such as legal aid, psychological counseling, and financial compensation should be readily accessible to victims to alleviate the additional stressors associated with their victimization.

3. *Education and training*: Judicial officials must receive ongoing education and training on the rights and needs of victims. This training should focus on sensitivity, understanding of trauma, and the importance of a supportive judicial response to improve the overall effectiveness of the justice system in dealing with traffic accident victims.

4. *Policy reforms*: Legislative reforms should continue to evolve to strengthen the rights and protections afforded to traffic accident victims. This includes revisiting existing laws, implementing new policies based on successful international models, and ensuring that these laws are effectively enforced to maximize their intended benefits.

5. *Restorative justice practices*: Further research and pilot programs should explore the integration of restorative justice principles in cases involving traffic accidents. Such practices could potentially transform the traditional punitive approach into a more therapeutic and rehabilitative process, benefiting both victims and society at large.

By addressing these areas, judicial practices can significantly contribute to the support and rehabilitation of traffic accident victims, ultimately reflecting a society's commitment to justice and human dignity.

REFERENCES

Action plan for the implementation of the National Strategy for the realization of the rights of victims and witnesses of criminal acts in the Republic of Serbia for the period 2020-2025, in the period 2023-2025, *Official Gazette of the Republic of Serbia,* no. 65/2023 of 4 August 2023.

Boateng, F. & Abbes, G. (2017). Victims' role in the criminal justice system: A statutory analysis of victims' rights in U.S. *International Journal of Police Science and Management.* 19(4). https://doi.org/10.1177/1461355717730834

Boletín Oficial del Estado (2015). Law 35/2015, of September 22, reforming the system for the assessment of damages caused to people in traffic accidents (Ley 35/2015, de 22 de septiembre, de reforma del sistema para la valoración de los daños y perjuicios causados a las personas en accidentes de circulación). Available at: https://www.boe.es/diario_boe/txt.php?id=-BOE-A-2015-10197 last accessed 8.4.2024.

Boletín Oficial del Estado (2015). Organic Law 4/2015, of April 27, on the Statute of the victim of crime (Ley Orgánica 4/2015, de 27 de abril, del Estatuto de la víctima del delito). Available at: https://www.boe.es/buscar/act.php?id=BOE-A-2015-4606 last accessed 8.4.2024.

Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia,* no. 98/2006 and 115/2021 - amendments.

Cook, B., David, F. & Grant, A. (1999). *Victims' Needs, Victims' Rights Policies and Programs for Victims of Crime in Australia*. Australian Institute of Criminology. Available at: https://www.aic.gov.au/sites/default/files/2020-05/rpp019.pdf last accessed 8.4.2024.

Code of Criminal Procedure of the Republic of Serbia, *Official Gazette of the Republic of Serbia,* no. 72/2011 … 62/2021 - Decision of the UC RS.

Criminal Code of the Republic of Serbia, *Official Gazette of the Republic of Serbia,* no. 85/2005…35/2019.

Ćopić, S. (2015) *Restorative justice and the criminal justice system: theory, legislation and practice*. Institute of Criminological and Sociological Research, Belgrade.

European Parliament and Council (2012). Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime. Available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF last accessed 8.4.2024.

European Union Agency for Fundamental Rights (2017). Rights of crime victims to have access to justice - a comparative analysis, Country Report Germany. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/germany-rights-of-crime-victims-justice_en.pdf last accessed 8.4.2024.

Fonds de Garantie des Victimes (2021). Rapport d' activite. Available at: https://rapportdactivite.fondsdegarantie.fr/2021/ last accessed 8.4.2024.

French Ministry of Justice - Ministiere de la Justice de France (2012). Guide for Victims (Guide sur les droits des victimes). Available at: https://www.justice.gouv.fr/documentation/ressources/guide-droits-victimes last accessed 8.4.2024.

General Insurance Rating Organization of Japan – GIROJ (2023). Automobile Insurance in Japan. Available at: https://www.giroj.or.jp/english/pdf/Automobile.pdf last accessed 8.4.2024.

Kolaković - Bojović M., Batrićević, A., & Matić-Bošković, M. (2022). *Analysis of the impact of the application of alternative sanctions and measures in the Republic of Serbia in the period from 2015 to 2020*, Institute for Criminological and Sociological Research, Belgrade

Kolaković-Bojović, M. (2016). Victims and Witnesses Support in the Context of the Accession Negotiations with EU. In: Scientific and professional meeting with international participation «*European integration: justice, freedom and security*", collection of papers: Volume 2. Criminalistics and Police Academy; "Hans Seidel" Foundation, Belgrade, pp. 355-366.

Kolaković - Bojović, M. (2020). Victims' Rights Directive (2012/29/EU) and Criminal Legislation of the Republic of Serbia. In: Bejatović, S. (ed.) *The victim of a crime and criminal protection instruments (international legal standards, regional criminal legislation, implementation and measures to improve protection)*, OSCE mission in Serbia. pp. 41-54.

Law on Juvenile Offenders and Criminal Protection of Minors, *Official Gazette of the Republic of Serbia,* no. 85/2005 of 6 October 2005.

Law on Road Traffic Safety, *Official Gazette of the Republic of Serbia,* no. 41/2009…76/2023.

Matsui, S. (2011). Justice for the Accused or Justice for Victims?: The Protection of Victims' Rights in Japan. *Asian-Pacific Law & Policy Journal.* 13(1), pp. 54-95.

Ministry of Law and Justice, India. (2019). The Motor Vehicles (Amendment) Act, 2019. Available at: https://morth.nic.in/sites/default/files/notifications_document/MV%20Act%20English.pdf last accessed 8.4.2024.

Pavlović, Z. (2023) Victimization through traffic offences. In: Batričević, A. & Obradović, D. (ed.) *Traffic, criminality and urban safety*. Thematic conference proceedings of international significance, Institut of Criminological and Sociological Research, Belgrade. pp. 375-388.

Stevanović, I. & Vujić, N. (2020): International legal standards on criminal law instruments for the protection of injured persons and the reasons for the necessity of their implementation in the national criminal legislation. In: *Injured person and criminal protection instruments (international legal standards, norms and practice)*: LX regular annual consultation of the association. Serbian Association for Criminal Law Theory and Practice; "Intermex", Belgrade. pp. 88-108.

Swedish Crime Victim Compensation and Support Authority - Brottsoffermyndigheten (2024). If you have been a victim of crime. Available at: https://www.brottsoffermyndigheten.se/other-languages/english/ last accessed 8.4.2024.

Škulić, M. (2020). Injured person and criminal legal protection instruments (concept and criminal-political reasons for the necessity of foreseeing special criminal legal protection instruments). In: *Injured person and criminal protection instruments (international legal standards, norms and practice)*: LX regular annual consultation of the association. Serbian Association for Criminal Law Theory and Practice; "Intermex", Belgrade. pp.11-49.

World Health Organization (2023). *Global status report on road safety 2023*. Geneva. Available at: https://www.who.int/publications/i/item/9789240086517 last accessed 8.4.2024.

Review Paper
Milan BOŽOVIĆ*
DOI: 10.47152/Palic2024.22

FAKE VICTIMS OF TRAFFIC ACCIDENTS

Abstract: Efforts by UN member states aimed at reducing the number of deaths in traffic accidents have yielded results, but the outcomes are far from desired, necessitating further efforts to reduce deaths. Traffic safety management is based on principles of general prevention and the findings of statistical reports on traffic accidents highlighting influential factors, collected and processed according to the CaDaS (Common Accident Data Set) protocol. Expert examination of traffic accidents identifies specific problems to be addressed with preventive measures, as well as fake victims of traffic accidents, which should be disregarded in traffic safety management processes to achieve the desired effect. Fake victims of traffic accidents impede traffic safety management, burden judicial and prosecutorial processes, insurance companies, and often obstruct investigations, prevent the defense of the accused, hinder the pursuit of justice and fairness, and jeopardize the rights of other participants in the proceedings.

Keywords: fake victims of traffic accidents, expert examination of traffic accidents, traffic safety management

1. INTRODUCTION

It is estimated that globally, during 2021, 1.19 million people died in traffic accidents, a decrease of 5% compared to 2010 when 1.25 million people died. During this period, more than half of the UN member states achieved a reduction in the number of deaths in traffic accidents within their territories despite nearly doubling the number of vehicles and an increase in the population by almost a billion people. These data indicate that efforts to improve road traffic safety have yielded results, but the outcomes are far from desired, thus necessitating further efforts to enhance the level of traffic safety (WHO, 2023).

The Republic of Serbia has years of experience in regulating traffic safety in line with international conventions, agreements, and other obligations. It is one of the signatories of the first international Road Traffic Convention (Paris, 1909), followed by the implementation of numerous domestic and international regulations and measures related to road traffic safety management (Antić, et al., 2011). The modern history of traffic safety in Serbia records progress in the implementation of measures to improve traffic safety as early as the beginning of 2002 when a significant reduction in the number of fatalities was achieved without substantial changes in regulations but with the help of increased fines by 7 to 10 times and the initiation of intensified enforcement by the traffic police (accompanied by a media campaign). In 2002, a 33% decrease in the number of fatalities was recorded compared to 2001. Without taking other measures, the state of traffic safety could not be further improved, so from 2002 to 2009, the number of fatalities in traffic accidents did not significantly change (Simić et al., 2012).

The next significant step in reducing the number of fatalities was the implementation of the Traffic Safety Act (hereinafter: TSA) on roads in December 2009. The implementation of the TSA was accompanied by a strong media campaign about new regulations, punitive provisions, and penalty points. During 2010, there was a 47.5% decrease in the number of fa-

* Milan Božović, PhD student at the Faculty of Traffic in Belgrade. E-mail: bozovicmilan@yahoo.com

talities in traffic accidents compared to 2001, but as the year progressed, the effects of the Act weakened. By the end of the year (November 2010), there was a 23% increase in the number of fatalities compared to February of the same year (Antić et al., 2011).

The number of deaths and injuries in traffic remains a significant global health and developmental challenge. According to WHO data (2023), traffic accidents were the leading cause of death among children and young people (aged 5 to 29 years) in 2019, and when considering all age groups, traffic accidents were the 12th leading cause of death. Two-thirds of the total number of deaths are economically active individuals (aged 18 to 59 years), causing enormous health, social, and economic damage to society as a whole (WHO, 2023).

When discussing victims of traffic accidents, the focus is usually on the dead or injured as direct victims of traffic accidents, while wrongfully accused individuals who are subsequently acquitted or convicted under pressure (e.g., from the public) and who may not be guilty are not considered victims of traffic accidents. Participants in legal proceedings who are subjected to stress and public condemnation for their work (decisions) in the proceedings are also not considered victims of traffic accidents.

Numerous authors point out a problem observed through the dead and injured, but often survivors in traffic accidents with fatalities are fakely portrayed as killers of the dead by the public. The reasons are numerous, with the most common being "clearing one's conscience" by the dead's close circle or the appropriate approach of representatives of the injured to pursue their own interests by exerting pressure on the procedural body or participants in the proceeding through the public (portraying the dead, who was responsible for the traffic accident, as a murder victim). Pressures are usually exerted through media appearances and expressing personal opinions on the specific case in the media, but these views are not simultaneously presented to the procedural body. If the accused is convicted in criminal proceedings, pressures through the public for the specific case cease, but the practice continues in some other cases in the same or similar form.

If the accused is acquitted (or convicted with a sentence that the dead's close circle or representatives of the injured are not satisfied with), then pressures intensify to justify the previous work of the close circle or representatives.

This paper aims to highlight the importance of identifying actual shortcomings of traffic accident participants in the effects of traffic safety management (as opposed to management effects based on results from the traffic accident database) and of participants in traffic accidents turned into victims due to errors in work or public pressure during the proceeding.

2. EFFECTS OF TRAFFIC SAFETY MANAGEMENT BASED ON TRAFFIC ACCIDENT EXPERTISE

The research was conducted in three closed systems (one of which operates globally) and was implemented in (for the author) an acceptable manner in one closed system.

The initial hypotheses of the research were:

- The level of traffic safety in a closed system (company) depends on the readiness of management to improve the level of traffic safety.
- The level of traffic safety in a closed system (company) in which there is a willingness of management to improve the level of traffic safety depends on the knowledge of staff capacities to identify and eliminate problems their drivers encounter.
- Improving the level of traffic safety is easier to achieve if preventive measures are based on the results of traffic accident expertise.

The results of the survey conducted in three closed systems are presented in Table 1.

	Company A	Company B	Company C
Do you manage traffic safety?	Yes.	Yes.	Yes.
Do you conduct analyses of every traffic accident involving your vehicles?	Yes.	Yes.	Yes.
Are traffic accidents caused by your drivers or other traffic participants?	By other traffic participants, not by our drivers.	Mostly by other traffic participants, and to a lesser extent, by our drivers.	Mostly by other traffic participants, and to a lesser extent, by our drivers.
Do you base preventive measures on the results of internal examinations of traffic accidents involving your vehicles?	No, because our drivers do not make mistakes.	No, but rather based on the principle of general prevention (use of seat belts, driving without the influence of alcohol and psychoactive substances, etc.)	No, but rather based on the principle of general prevention (use of seat belts, driving without the influence of alcohol and psychoactive substances, etc.)
Are you willing to attempt to improve traffic safety based on internal examinations of traffic accidents involving your vehicles?	No, because we won't learn anything new.	Yes.	Yes.
Do you have internal case files including photo documentation and sketches?	No.	No.	No.

The analysis of the survey conducted in company A shows that the management believes that the drivers of their company are victims of unsafe behavior by other traffic participants and that there is no room for improving traffic safety through changing the behavior of their drivers. By analyzing the number of traffic accidents involving vehicles of this company over a period of three years, it was observed that there were no significant changes in the number or type of traffic accidents.

The analysis of the survey in company B indicates that they do not have a clear stance on the shortcomings of the participants in traffic accidents involving their vehicles, nor do they have the willingness to try to improve the behavior of their drivers. After compiling a file that primarily consisted of European traffic accident reports and photographs of damage, and to a lesser extent, records of accident investigations with statements from the participants, a systematic analysis of the shortcomings for the occurred traffic accidents, focusing solely on the drivers of company B, was conducted. Out of 22 traffic accidents annually, 77.3% involved collisions with other vehicles or objects during stopping or starting, leading to suspicions of insufficient driver training. Driver testing was conducted on a specially prepared driving course, including slalom maneuvers forward and backward. Out of 40 tested drivers, 35 hit the cones with their vehicles, confirming the initial hypothesis. Company B was not prepared to continue this type of driver training, and over the course of three years, there was no significant change in the number and type of traffic accidents involving vehicles of company B.

The analysis of the survey in company C reveals that they do not have a clear stance on the shortcomings of the participants in traffic accidents involving their vehicles, but they are willing to try to improve the behavior of their drivers. After compiling a file, a systematic analysis of the shortcomings for the occurred traffic accidents, focusing solely on the drivers of company C, was conducted. Out of 197 traffic accidents annually, 69% involved vehicle damage in parking lots, with over 97% of cases where the damage occurred while the driver was not near

the vehicle. Through interviews with randomly selected drivers, it was assumed that drivers had difficulty maneuvering their vehicles while parking. In order to address this issue, 60 out of 150 vehicles were replaced with new ones, and training on vehicle handling was conducted. In the following year, 124 traffic accidents were recorded, and it was assumed that additional training on the same topic could reduce the number of traffic accidents by an additional 50%.

The initial hypotheses were confirmed through the conducted research, and a prerequisite for effective traffic safety management is the correct attitude towards the shortcomings of the occurred traffic accidents.

3. SPECIFIC EXAMPLES

Numerous studies focus on the direct victims of traffic accidents (dead and injured). However, a broader view suggests that there are other victims of traffic accidents who are neither dead nor injured. Apart from the close environment of the victims of traffic accidents, victims can also be found among the accused or other individuals involved in the proceedings before the competent judicial authorities (public prosecutor's office - court).

In the first case, after 14 years from a traffic accident that occurred in Ovčar Banja, where several individuals were killed, followed by three conducted traffic-technical expert opinions and one accident reconstruction, a final verdict was issued acquitting the accused. Six months after the finality of the verdict, the accused passed away.[1]

In the second case, besides the usual investigative documentation, there was also a video recording of the accident scene. Two vehicles were involved in a collision while driving on a road where one vehicle was overtaking the other. A third vehicle was merging from the right side onto the road. The vehicle that was previously traveling in the right traffic lane collided with the rear of the merging vehicle. The driver of the merging vehicle sustained minor injuries. Three traffic-technical expert opinions were conducted during the proceedings. According to the first opinion, the speed of the vehicle traveling in the right traffic lane at the beginning of the braking distance was 86 km/h, attributing the cause of the accident to the driver of the merging vehicle, with a contribution (in terms of the possibility of avoiding the accident) on the side of the driver of the vehicle traveling in the right traffic lane and overtaking the merging vehicle. According to the second opinion, the speed of the vehicle traveling in the right traffic lane at the beginning of the braking distance was 106 km/h, the speed at the moment of the collision was 60 km/h, attributing the cause of the accident to the driver of the vehicle traveling in the right traffic lane and overtaking the merging vehicle, while the driver of the merging vehicle was not at fault for the accident. According to the third opinion, the speed of the vehicle traveling in the right traffic lane at the beginning of the braking distance was 86 km/h, attributing this speed as the cause of the accident (due to misleading the driver of the merging vehicle), with a contribution to the occurrence of the accident on the side of the driver of the merging vehicle. After three years and eleven months from the traffic accident, a final verdict was issued acquitting the driver of the vehicle traveling in the right traffic lane. The driver of the vehicle traveling in the right traffic lane left Serbia due to pressure from the surrounding environment, which found reasons for pressure (threats) in the second traffic-technical expert opinion.[2]

In the third case, a vehicle was turning left to exit the road into a parking area, while another vehicle was overtaking at that moment, resulting in a collision. The sketch of the accident

[1] Verdict of the Appellate Court in Kragujevac, Kž1 1320/2014

[2] Verdict of the Municipal Court in Novi Pazar, K 361/2022

scene showed that at the location of the collision, there was a short dashed line dividing the lanes, while the rest of the road had an unbroken line dividing the lanes. The file contained a poor-quality photocopy of the photographic documentation in black and white format. Towards the end of the proceedings, electronic photographic documentation was requested and obtained. Upon reviewing the electronic photographic documentation, it was noted that the asphalt at the collision site was scratched due to replacement of the road surface, so there was no horizontal signalization on the road surface. A decision was made based on the conclusion that the accident investigation report (which included a sketch of the accident scene) was a credible document as it was compiled by the police.[3]

4. FAKE VICTIMS OF TRAFFIC ACCIDENTS

Insurance fraud has existed since the inception of insurance companies but has evolved over time in appearance and execution methods. However, it often occurs in mass insurance schemes, primarily in motor vehicle insurance, life insurance, fire insurance, transport insurance, and credit insurance.

After law enforcement activities in the first decade of the 21st century, new forms of insurance fraud emerged, such as victims claiming whiplash injuries. With the development of traffic, these injuries have become increasingly common and today represent a significant legal-medical problem (Farmer et al, 2003). According to domestic authors, according to insurance company data, whiplash injury of the cervical spine is the most common injury sustained by traffic accident participants in major cities. Whiplash injury of the cervical spine is the most common injury in traffic accidents in Western countries. New statistical data indicate an increasing incidence, with some countries (USA, England) having more than 1000/100,000 injured individuals. For example, in the USA, 1.8 million people suffer whiplash injuries each year, of which 25% have a chronic form.

Vehicles collide in order to ensure undeniable contact, while alleged passengers in the front vehicle report whiplash injuries. Investigation and medical documentation are requested, and later, through expert examination, it is determined whether such injuries could have occurred. Modern methods of insurance fraud involve prior analysis of future traffic accidents using advanced tools for accident analysis. Participants in insurance fraud receive information about the speed at which they should collide to cause whiplash injuries. After receiving such information, they proceed to execute their plans.

In Serbia, it is little known that the existence or non-existence of the mentioned injuries can also be proven from a traffic-technical aspect. According to Obradović and Anđelković, to properly assess the causal relationship between a traffic accident and the occurrence of an injury, or the possibility of sustaining a whiplash injury of the cervical spine, it is necessary to consider the traffic-technical circumstances of the accident itself. Only when a traffic-technical expert, based on the rules of their profession, determines the technical possibility of sustaining a whiplash injury of the cervical spine, should the court appoint an expert examination by a medical expert to determine the presence of such injury. These traffic accident victims (injured individuals) affect the overall statistics of traffic accidents, which are used to make decisions regarding traffic safety management. Such data in statistical analyses distort the true picture and contribute to making incorrect or incomplete management decisions.

[3] Verdict of the III Municipal Court in Belgrade, K 308/2019

5. SUMMARY

Accurate determination of the causes and circumstances of traffic accidents, as well as adopting a stance for objectively accepting responsibility for the accident, reduces the number of traffic accident victims. Conversely, new victims of some new procedures involving participants in the traffic accident and their surroundings emerge after the traffic accident. In order to alleviate such a situation, the task of participants in the process after a traffic accident (professionals) should be to objectively assess the mistakes of the participants in the traffic accident, to inform them of these mistakes in an acceptable manner, and to prevent the creation of new victims of the process.

Incorrect initial assumptions and shifting the blame onto the victim of the traffic accident create new victims of the process after the traffic accident. Processing statistical data based on incorrect initial assumptions leads to errors in traffic safety management, which further contributes to the consequences created by the wrong approach.

REFERENCES

Antić, B., Vujanić, M., Jovanović, D., Pešić, D., (2011) Impact of the new road traffic safety law on the number of traffic casualties in Serbia (DOI: 10.5897/SRE 11.1419)

Farmer CM, Wells JK, Lund AK. (2003) Effects of head restraint and seat redesign on neck injury risk in rear-end crashes. *Traffic Inj. Prev*., 4, pp. 83-90.

Obradović, D, & Andjelković, B, (2013) Naknada štete u saobraćaju – utvrđivanje postojanja povrede vratne kičme i podeljene odgovornosti u saobraćaju. *Zbornik radova XVI Međunarodna naučna konferencija: Osiguranje i naknada štete,* (str. 295-303). Zlatibor: Udruženje za odštetno pravo & Pravosudna akademija.

Ivančević, K., (2007) Procena opravdanosti zahteva za naknadu nematerijalne štete nastale kao posledica trzajne povrede vratnog dela kičme u saobraćajnim nezgodama. *Zbornik „Aktuelni problemi zakonodavstva u Republici Srbiji"* (str. 245-256). Beograd: Udruženje za odštetno pravo,

Piščević V., (2012) Trzajna povrda vrata i njen aspekt na procenu umanjenja životne aktivnosti. *Zbornik radova sa XI simpozijuma„ Analiza složenih saobraćajnih nezgoda i prevare u osiguranju"*, (str. 182 – 184). Zlatibor: Traffic safety group.

Simić, D., Malešić, S., Milinković, B., (2012) Stanje bezbednosti saobraćaja u Republici Srbiji u 2011. godini (VII Međunarodna konferencija "Bezbednost saobraćaja u lokalnoj zajednici", Srbija, Donji Milanovac, 19-21 april 2012.)

REGULATIONS:

Zakon o bezbednosti saobraćaja na putevima, Službeni glasnik RS br.41/09, 53/2010, 101/2011, 32/2013 (Odluka Ustavnog suda), 55/2014, 96/2015, 9/2016 (Odluka Ustavnog suda)), 24/2018, 41/2018 (drugi zakon), 41/2018, 87/2018, 23/2019, 128/2020 (drugi zakon).

World Health Organization, (2023), Global status report on road safety 2023

COURT CASES - DOMESTIC:

Presuda Apelacionog suda u Kragujevcu Kž1.br.1320/14

Pravnosnažna presuda Osnovnog suda u Novom Pazaru K br.361/22

Pravnosnažna presuda III Osnovnog suda u Beogradu K br.308/19

CIP - Каталогизација у публикацији Народна библиотека Србије, Београд

343.851:343.62(082)
341.231.14(082)

INTERNATIONAL scientific thematic conference The Position of Victims in the Republic of Serbia (2024 ; Palić)

Thematic conference proceedings of international significance / International scientific thematic conference The Position of Victims in the Republic of Serbia, Palić, 12-13 June 2024.; [editors Milica Kolaković-Bojović, Ivana Stevanović]. - Belgrade : Institute of Criminological and Sociological Research, 2024 (Beograd : Birograf comp). - 300 str. : graf. prikazi., tabele; 24 cm

Tiraž 200. - Str. 9-10: Foreward / Milica Kolaković-Bojović, Ivana Stevanović. - Napomene i bibliografske reference uz tekst. - Bibliografija uz svaki rad.

ISBN 978-86-80756-66-0

а) Жртве насиља -- Правна заштита -- Зборници

б) Дигиталне комуникације -- Насиље -- Зборници

COBISS.SR-ID 145412105