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Redactor:	Raluca Teodoru
Tehnoredactor:	Flori Ivana
Copertă:	Aurelian Leahu

Redacție:
tel.: 0732.320.666
e-mail: redactie@universuljuridic.ro

Distribuție:
tel.: 021.314.93.15
fax: 021.314.93.16
e-mail: distributie@universuljuridic.ro
editurauniversuljuridic.ro
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Portal:
tel.: 0725.683.560
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Journal of Eastern-European Criminal Law could stand out as a unique publication, at least in this part of the world, as an outcome of the partnership between specialists in Criminal law and Criminal Procedure law from the law faculties of the West University in Timisoara and the University in Pecs, who aimed at presenting, in a different language from their own, the serious amendments of criminal legislation that occurred in their countries in the post-communist era, an essential requirement for the rule of law. We envisage this journal, published semesterly, to be open to all researchers in the academic environment from the former communist countries, to professors, PhD students, but also, to magistrates and other professionals interested in the evolution of criminal legislation and in the more and more firm response to be given to the criminal phenomenon, while observing the fundamental human rights.

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laura.stanila@e-uvt.ro; flaviu.ciopec@e-uvt.ro; gal.istvan@ajk.pte.hu; zoran.pav@hotmail.com

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The Right to Privacy of Children in the Digital World and the Responsibility of Adults with Special Focus on Social Networks as Modern Media Communication

PhD Zoran Pavlović*
Full Professor of Criminal law
Law Faculty
University of Business Academy Novi Sad
Provincial Protector of Citizens – Ombudsman, AP Vojvodina
Republic of Serbia

PhD Dragana Ranđelović**
Assistant Professor of Civil law
International University of Novi Pazar
Republic of Serbia

PhD Aleksandar R. Ivanović****
Assistant Professor of Criminal law
International University of Novi Pazar
Republic of Serbia

Abstract:

The authors deal with the issue of the right to privacy of children on the Internet from the aspect of international and domestic regulations in the field of personal data protection. In this regard, the authors try to address certain issues related to the form of violating the right to privacy of children on the Internet by publishing their personal data on social networks and electronic media, as well as the question of the responsibility of adults above all for such acts. The aim of this paper is to advocating the problem of violating the right to privacy of children on the Internet by parents, teachers, trainers, peers or media workers, as well as the relationship between such acts and children's dignity and security.

Key words: *right to privacy, protection of children, social networks, security, responsibility.*

* E-mail: zoran.pav@hotmail.com.
** E-mail: d.randjelovic@uninp.edu.rs.
*** E-mail: a.ivanovic@uninp.edu.rs.

1. Introduction

The right to privacy is one of the basic human rights that every human being has regardless of race, sex, age, skin color. They are not owed to the state or to its will, they has a moral and not a positive legal character. They come from a normative order that is above the state and the state has to respect them irrespective of whether they have explicitly agreed or not. One of the first definitions of privacy as right originates from the year 1890 by young Boston lawyers Samuel Warren and Louis Brandeis which define privacy as "right to be let alone" (Warren & Brandeis, 1890:193). Warren and Brandeis argued that it was necessary for the legal system to recognize the right to privacy because, when information about an individual's private life is made available to others, it tends to influence and even to injure the very core of an individual's personality "his estimate of himself" (Warren & Brandeis, 1890:197). According to this view, the right to privacy implied the protection of personal autonomy, moral and physical integrity, the right to choose a lifestyle and lifestyle, interactions with other people, and so on. To inventors of the right to privacy, it's meant that each individual had the right to choose to share or not to share with others information about his or her private life, habits, acts, and relations (Glancy, 1979:2). This simple definition reflects the recognition of privacy at the end of the 19th century, when print media and new technological innovations like photography were responsible for the growing invasion on private and domestic areas. The authors express that the circulation of personal information is perceived as privacy to violation and suggest prioritizing human's basic right over the interest of the society to spread information (Kolter, 2010:21). Over time, this understanding is supplemented by mechanisms for practicing these rights. Thus, the citizen is enabled to have certain expectations from the entities that process his data in relation to the way this data is used (Ivanović, 2017:155).

The right to privacy is regulated both by international and national regulations. All international instruments for the protection of human rights guarantee the right to privacy.

Universal Declaration of Human Rights (UDHR)[1] in Article 12 prescribes that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks. In Europe right to privacy was established in the European Convention on Human Rights (ECHR) was drafted in 1950[2], and contained an article declaring that everyone has the right to respect for private and family life. Namely, Article 8 of paragraph 1 (ECHR) prescribes that everyone has the right to respect for his private and family life, his home and his correspondence. In the Article 8 paragraph 2 (ECHR) prescribes that there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. European Conventions have continued

[1] UN General Assembly. (1948), *Universal declaration of human rights* (217 [III] A), Paris. Retrieved from: http://www.un.org/en/universal-declaration-human-rights/.

[2] Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, Retrieved from: http://www.refworld.org/docid/3ae6b3b04.html.

to meet to establish standards to protect the privacy of information from European citizens. Namely, under European Union law, personal data can only be gathered legally under strict conditions, for a legitimate purpose. Furthermore, persons or organizations which collect and manage personal information must protect it from misuse and must respect certain rights of the data owners which are guaranteed by European Union law. The European Union's Data Protection Directive[3] also foresees specific rules for the transfer of personal data outside the EU to ensure the best possible protection of personal data when it is exported abroad (Ivanović, 2017:157).

Data archiving has always played a very important role in society. Keeping important information and historical events is invaluable for tracking the exact history of events and guaranteeing that this information will be available to future generations. The society, however, tends to forget important information. Fortunately, in the present stage of digitization of human society, we have an internet that allows us to store huge amounts of data for an indefinite period of time. Namely, as Mayer-Schoenberg points out: "Due to digital technologies, the ability of society to forget is suspended, and replaced with almost perfect memory" (Mayer-Schönberger, 2009:16). On the other hand, it also has its negative effects that are reflected in the loss of the individual's ability to control their personal data in the sense of their archiving and distribution over the Internet. Namely, the creation, collection and distribution of data are ongoing and constant. If we take into account the possibilities of the internet everyday, whether we were aware of it or not, we are generating and transmitting our personal data in many ways. Also, our personal data is collected and shared daily by organizations that manage this mass communication medium. In this way, the data became the "new currency" of the digital age, and it seems almost impossible for us to fully protect our privacy and sensitive personal information in the digitalization era. Namely, while it is very easy for individuals to upload images, comments, videos, etc. on the web pages, on the other hand, it is very difficult for them, and sometimes it is impossible to completely delete these contents from the Internet. In a word, when some information, information or file is uploaded to the Internet, it can have lasting significance, or consequences (Ivanović & Dečković, 2016:478). It's actually about the problem that David Lindsay called "digital eternity" (Lindsay, 2014:290). The problem of the so-called. "Digital Eternity" is important because there is an concerning shared by numerous authors that all we have ever posted on Internet can to persecute us one day. Likewise, something somebody about us in the past lignifiedly announced on Internet in the future can upset or disturb our further life (Ivanović & Dečković, 2016:478). All this makes understanding of privacy and the right to protection of personal data in the digitalization era by quite complicated and demanding issues. Namely, if we understand the concept of privacy as a possibility of protecting and controlling the distribution of personal data, we can conclude that the realization of complete protection of personal data in today's situation is almost impossible. In today's world, the protection of private and family life, the protection of privacy is still in its infancy and is confronted with a plethora of challenges. Photographs and footage can certainly be qualified as personal data according to the rules of internal and European law (Pavlović, 2018:94). When it comes to the question of right to privacy of children situation is more complicated because of digital era of nowadays. Namely, world of today's children has been significantly changed in relation

[3] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, *Official Journal L 281, 23/11/1995 P. 0031 – 0050.*

to the world of their parents. In the world of childhood of today's parents there were no smart phones, computers, laptops, you tube, twitter or various on-line games. Reading and writing were learned first and only later work on a computer came. Today, children are using a computer and a smart phone even before learning to read and write. This fact shows about how the world of today's children has changed in relation to the world of their parents. Today, through the new technologies, the media have entered much not only into our lives, but also into the lives of our children, that it is difficult to imagine the growth of today's children without the media (Pavlović, 2018: 92).

The Convention on the Rights of the Child (CRC) makes clear that children have a specific right to privacy. Tracking the language of the UDHR and ICCPR, Article 16 of the CRC states that "[n]o child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation" and reaffirms that "the child has the right to the protection of the law against such interference or attacks. "The right to privacy includes a wide range of rights: the right to respect of the private and family life, the right to respect the inviolability of the home, the right to respect the inviolability of correspondence, the right to respect for honor and reputation" (Dimitrijević, 1995). Privacy is also defined as the right of an individual group or institution to determine when, how and to what extent information about them will be communicated to other persons. Although the term "privacy" has been in legal traffic for some hundred years, the issue has "exploded" with the development of information technology and the development of the media. The right to privacy and protection of personal data becomes, theoretically and practically, the center of interest of lawyers in the field of legislation, administration and judiciary

The danger to privacy exists not only from state authorities, private companies, individuals, but also from society in general, and the family itself or its members. The right to privacy enjoys protection regardless of whether it has been violates by state authorities or other legal or natural persons. The state has a dual obligation:

a) negative - to refrain from violating and endangering the right to privacy; *and*

b) positive - to protect the right to privacy by providing an adequate legislative framework and accompanying legal mechanisms.

The scope of protection of the right to private life includes the identity and integrity of the person, its intimacy, communication and sexuality. Intima implies a set of private features of a person, his actions and information about him. The disturbance of privacy is the entry into the intimacy of individuals against his will. However, the question that arises is does the publication of photographs and data of children in social media by parents, relatives and other persons constitute a violation of the right to privacy of children?

2. The right to privacy - the apparent right of children in the hands of parents (adults)?

Due to their age and personality characteristics, children depend on adults and enjoy special protection. Their rights are related to basic human rights, but because of the preconditions for children, the findings must be specifically protected. The content of these rights is adapted to the goals that are need to be achieved, such as social security and the proper development of children (Ponjavić, 2005: 229). The achievement of these goals is most relevant to parents, but the country also plays a major role.

During the 20th century, there was a change in the legal arrangement of parents' and children's relationships. The patriarchal model is abandoned, and parental rights are adopted instead of parental authority (Draškić, 1998: 164). The child is no longer treated as an object of law, as a subject of the protection of his parents, but is given the status of the subject, the right holder and, accordingly, the claimant.

From the perspective of right to privacy and protection of security it is not just about photos and video materials, what parents need to think about before sharing their children's photos with virtual friends. Of course, it needs to be careful with data such as the full name of the child, the date and place of birth, the location and everything that could possibly endanger the child's safety, or can be used to steal the child's identity. Also, the question is who has the right to publish something about someone without his consent? Do parents need to seek consent regarding what the child would like to see in the future about himself online? How many parents have asked their children whether they can say anecdote from kindergarten, from a trip, from a park, to friends on a Facebook, which sometimes has several hundred?

How much, after all, the social network user would allow someone to share photos on which they are, without their knowledge or approval. It is possible to protect against possible abuses by not leaving images on which children are naked or those that would reveal to everyone the place of residence. Internet security experts, however, recall that it is extremely difficult to be anonymous online - passwords, photos and all other information can be easily hacked.

Apart from the expectation that their privacy as children will be protected, there is also a question of their privacy as future adults. What happens when a child grows up? If information is available on social media when a child reaches maturity and adolescence, there is material for potential abusers in school, for potential employers, and for the media, if they become prominent figures. If a child whose every intimate moment is photographed, described and published on the Internet develops a public profile, or acquires a political function, his parents have created a file of "dirty laundry" that will exist forever. In the Republic of Serbia, such acts qualify as offenses. For each personal data processing, it is required the consent of the natural person to whom the data is related. The very concept of processing is defined very widely, both in domestic and EU legislation (Directive 95/46 EU).

However, due to the incomplete and outdated Law on Personal Data Protection, it is extremely difficult in Serbia to achieve adequate protection of the right to privacy. Besides that, the question is how would the prosecution handle a situation in which there are no corresponding legal definitions to qualify this act. By posting images of its child on social networks, parents can by negligence cause danger for children security. By publishing photographs or videos on the Internet, the child becomes a potential target of pedophiles, kidnappers or similar criminal profiles. For example, there is a case of attempted kidnapping of a girl in Pancevo Republic of Serbija by a French couple. According to one version from the investigation, the kidnapers chose this girl on the basis of images on Facebook and made a plan to abduct her, and her DNA allegedly planned to go to court in France to prove that the ex-husband of their daughter was not fathers of her daughter because a kidnapping girl looks very much like theirs granddaughter. Of course, this version has not yet been officially confirmed, as there are indications that the kidnappers intended to sell the girl to traffickers. In any case, this scenario is realistic and possible, which is why parents should be aware of the dangers of publishing a picture of children on the Internet with them.

Then next form of abusing of children's privacy on social network is publishing the private information of children's from other adults, relatives, teachers from school or kindergarten, trainers from sport schools. Most parents tolerate such things even though this were done without their explicit permission.

The following way of abuse of the right to privacy of children on the Internet is the disclosure of their data on social networks by peers. In April this year, the media from Serbia, Bosnia and Herzegovina and Croatia published news about the existence of the Facebook page that publishes inexplicable, provocative photos of mostly underage girls. The Facebook page "The Biggest Slut of Elementary and Secondary Schools" was given a lot of popularity every day. In just three days, from April 20 to 23, the site received over 20,500 "likes". At the moment of publication of this text, the site has over 35,000 "likes". Besides the photographs, other personal data such as name, surname, city in which they live are left, and in some cases also the school that the specific person in the picture attends. As the Facebook page became very current in the region, the victims and their parents reported very quickly, presenting the complete dimension of this event. Namely, in most cases, the girls whose photos were on this page themselves have posted them on their Facebook profiles. However, in this way the content was available to a certain user circle (usually their so-called Facebook friends, and in some cases even wider). Persons who had access to photographs took over them and sent them to the administrator of the controversial side. Photos are most often commented on in a sexist, abusive and disparaging way.

And the last way of abuse of the right to privacy of children from the electronic and print media, who, due to the increasing of popularity of its media, publish personal data of children mostly victims of crimes, that is, children who testify to some criminal offense which was happened within the family.

3. Legislative framework and accompanying mechanisms

According to the Law on Personal Data Protection, the Commissioner for Information of Public Importance and Personal Data Protection monitors the implementation of the Law and has the right to point out the detected abuses in the processing of data. Supervision over the implementation and enforcement of this law is carried out by the Commissioner through authorized persons - inspectors. In exercising supervision, an authorized person shall act on the basis of information obtained by him *ex officio*, by the complainant or by a third party. The initiation of a misdemeanor procedure is not the sole authority of the Commissioner. If the administrator of the controversial Facebook party is identified on the territory of the Republic of Serbia, that person shall be obliged to enable the inspector of the Commissioner to conduct the supervision without any problems and to provide him with the necessary documentation and the availability of the necessary documentation. If it is determined during the supervision that the provisions of the laws governing the processing are violated, the Commissioner will warn the operator of irregularities in processing and afterwards may initiate the procedure.

In their report, the Ombudsmen for Children of Southeast Europe expressed deep concern over the frequent occurrence of abuse and abuse of children in the Internet.[4]

[4] http://www.djeca.rs.ba/uploaded/CRONSEEStav.pdf, accessed 14.06.2018.

They warn of the increasing risks that accompany the movement of children to the Internet space and inadequate society's response to them.

They point out that the following measures and recommendations should be adopted, applied and supported at regional, national and local level:

1) Abuse of children in a virtual space is real, therefore the reaction must be adequate;

2) Public authorities should, in cooperation with internet service providers, define strategies and plans for protecting children from violence, abuse and exploitation on the Internet and protecting children from harmful content;

3) Public authorities should, along with the participation of children and young people, devise and implement public campaigns in order to raise public awareness, in particular children and young people, parents and professionals working with children, on the risks of internet violence and on protection and self-protection measures. Campaigns should be focused on raising awareness that children and young people should be sensitive to the confidentiality of personal data and other personal information, and only publish information on the Internet that cannot be misused, nor can they endanger or destroy the child's online reputation and reputation society and peer group;

4) Internet and communication providers and the media should be aware of their significant roles in promoting and educating children's rights and protecting the rights of the child in the information and media space. They need to align their business policies with the principle of best interests of the child and make more efforts to prevent violence against children and their protection against all forms of abuse and neglect;

5) Public authorities should, along with the active participation of children and young people, professionals and providers of Internet and communication services, devise programs for educating children about behavior in the Internet, especially social networks, the importance of online reputation, the way of its preservation and protection, and the mechanisms of protection and self-protection.

4. Right to privacy and modern media

It has never been easier for bullies, sex offenders, traffickers and those who harm children to contact potential victims around the world, share images of their abuse and encourage each other to commit further crimes. Digital connectivity has made children more accessible through unprotected social media profiles and online game forums. It also allows offenders to be anonymous – reducing their risk of identification and prosecution – expand their networks, increase profits and pursue many victims at once. Children's privacy is also at stake. Most children – and many parents – have very limited, if any, awareness of how much personal data they are feeding into the internet, much less how it might one day be used (UNICEF, 2017: 71).

The right to privacy is one of the basic human rights that is violated everyday in domestic media, and especially in the tabloid press. In today's way of life, having a "private life" has become a privilege, it has become an impossible mission**.** From the profile on Facebook to the appearance in the mass media, the media target is not only the privacy of well-known personalities, but also the anonymous citizens. Robberies, fights, traffic accidents, killings are the most common cause for anonymous individuals, including children, to become the subject of newspaper articles and media content. Electronic media most often violate the privacy of ordinary citizens in black chronicle

shows. In programs that deal with crimes, family violence lists the names, addresses, details of their lives, shows the homes in which they live.

Precise analysis of the relationship between the media and the protection of the right to privacy of the child has not been done, but from the insight into a limited number of printed newsletters (daily newspapers) there are spotted individual but significant examples of direct (full name and surname) or indirect (indication of the name of parent/guardian and address) the disclosure of the child's identity in cases where it was the victim of an unlawful act, blamed or involved in some other way. As a good example of the negligent treatment of the media in terms of violating the rights of the child on privacy, we are referring to the publication of photographs of a naked child on the front page of the most circulating daily in the country. The record was made (and most probably directly delivered) by teachers who secretly photographed an awkwardly guided game in one of the activities of the summer camp in which participants (publicly) were dragged into the group (an incident related to activities in one of the summer camps organized by the Ministry education and sports of the Republic of Serbia) (Brkić, et. al., 2003: 73).

The media are obliged to specifically protect the rights and dignity of children. Their identity and privacy must not be compromised by publishing personal data, family photos or footage.

With the development of communication networks, especially the Internet as a global network or "networks of all networks", the notion of "networked society", a virtual world in which everyone communicates with each was created (Dimitrijević, 2009).

The apparent invisibility and distance creates in people feelings of anonymity and security, and sometimes they give personal information or take actions that in the real world would never have been.

Privacy issues have become a hot practical topic in the conditions of use of information and communication technology and electronic communications. It has created unlimited possibilities for concentration of data, their clustering and search on various features, as well as the possibility of using it by a wide circle of users (Dimitrijević, 2011: 202).

On the other hand, children experience more serious threats to their privacy from a greater range of actors than any other group. Children's privacy online is placed at serious risk by those who seek to exploit and abuse them, using the Internet as a means to contact and groom children for abuse or share child sexual abuse material. Yet children's privacy is also at risk from the very measures that have been put in place to protect them from these threats.[5]

There is a question what sort of exploitation is involved when children, the most powerless group in society, are pictured for the pleasure and delight of adults, who potentially have total control over them?[6] With photography and film, there always is a real child with a real life behind this image and this person should not be forgotten. This person has agency, and should have some control over the use of his or her representation (Davies, 2010: 23).

[5] https://www.unicef.org/csr/files/UNICEF_CRB_Digital_World_Series_PRIVACY.pdf, accessed 15.06.2018.

[6] http://www.lse.ac.uk/media@lse/events/pdf/IAMCR16/Davies.pdf, accessed 16.06.2019.

There is an increasing phenomenon that children's photos are published on the Internet or in brochures without the prior consent of the parents. We live in a time when schools and kindergartens have a system of informing parents about what their children do with photos or video content, through the Weber or Facebook group, and the occurrence and publication of famous "selfies" with teachers after competition, or the publication of pictures from the playrooms for the purpose advertisements on Facebook.

Most parents do not know that for the publishing of pictures or videos of their children needs to be given consent, which does not necessarily have to be in writing, but it must undoubtedly exist. Consent must be given by both parents, except in the case when one parent has an independent parental right by a court decision. For the unauthorized publishing of photographs or video material, Criminal Code of Republic of Serbia[7] in Article 145 prescribes the criminal offense of unauthorised publication and presentation of another's texts, portraits and recordings on the way that: „Whoever publishes or publicly presents another's text, portrait, photograph, film or a phonogram of a personal character without consent of a person who has drawn up the text or to whom it is related, or without consent of the person depicted on the portrait, photograph or film or whose voice is recorded on a phonogram, or without consent of the person whose consent is mandatory by law and thereby significantly violates the private life of that person, shall be punished with a fine or imprisonment up to two year (Article 145 Paragraph 1 CC). "If the offence specified in paragraph 1 of this Article is committed by an official in discharge of duty, such person shall be published by imprisonment up to three years (Article 145 Paragraph 2 CC)". Also in Article 146 of Criminal Code of Republic of Serbia is prescribed criminal offence unauthorized collection of personal data on the way that: „Whoever without authorisation obtains, communicates to another or otherwise uses information that is collected, processed and used in accordance with law, for purposes other than those for which they are intended, shall be punished with a fine or imprisonment up to one year. (Article 146 Paragraph 1 CC)". „The penalty specified in paragraph 1 of this Article shall also be imposed on whomever contrary to law collects personal data on citizens and uses data so collected (Article 146 Paragraph 2 CC)". „If the offence specified in paragraph 1 of this Article is committed by an official in discharge of duty, such person shall be punished with imprisonment u to three years (Article 146 Paragraph 3 CC)".

It is important to note that the law allows the use of photographs if they are part of a landscape, a populated place, a street, or if the photograph refers to a concert audience, a set of people or for the purpose of raising funds for humanitarian needs. When it comes to the media, the editor-in-chief who makes recognizable juveniles in a photo that may violate his right or interest may be misdemeanor with a fine of 50,000 to 150,000 dinars.

When it comes to publishing information about children to victims of crime in the media, it should be noted the Juvenile Act of Republic of Serbia[8] in Article 9 stipulates that without the permission of the court, the course of criminal proceedings against juveniles and decisions in this procedure cannot be published, except what is allowed by the Rulebook on anonymity (Pavlović, Pasca, 2017: 355-366). A provision of similar

[7] Crimial Code of Republic of Serbia (Offical Gazett of the Republic of Serbia br. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 i 94/2016).

[8] *Law on Juvenile Offenders and Criminal Protection of Juveniles was published in the Official Gazette of RS no. 85/2005, and came into force on 1st January 2006.*

content is contained in the Criminal Procedure Code of Republic of Serbia.[9] The Law on Public Information and Media of Serbia from 2014, in its Articles 77-78, 101 and 140, refers to the presumption of innocence of minors (Jovašević, 2016: 122), the right to privacy, the protection of the free development of the personality of the minor. Special attention must be paid to the fact that the content of the media and the manner of their distribution does not harm the moral, intellectual, emotional or social development of the juvenile, or that the content of the media should not violate the juvenile's right or interest.

UN Convention on the Rights of the Child, 1989, Article 16. 1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. Article 40. 1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

However, there is a question whether the child's consent for publication is necessary? There is a lack of reference to children's own agency and a lack of attention to the use of images (of children and created by children).

5. Instead of the conclusion

With the aim to addressing question of problem with inherent conflict between a parent's relatives and other adults freedom to publish and a child's right to privacy we can conclude that this issue is pay very low attention in our country, as well as is in neighbour countries. Even if international documents prescribe protection of right of children to privacy, even it is recognized as an criminal act unauthorized publishing of personal data in practice we have situation that such acts exists, that right to privacy of children is abused on internet (mostly social networks) and that there is no adequate reaction nor from parents, nor from the state authorities.

We want to underline special attention to publishing personal data of children on the Internet by parents without their permission. We think that this problem is not paid enough attention, and because of that many parents in the future can face the problem that their children will sue them for the unauthorized disclosure of personal data from their private life.

Also, on the basis of all of the above, we can conclude that because of the huge number of photos, video materials and other personal data of children published on the Internet by their parents or other adults, without any consultation with them, a large number of children will be faced with the fact that in the future time, when they're grown up, they have to use mechanism of the right to be forgotten and demand from administrators of various sites to remove such content.

The emergence of these problems can be prevented by raising the awareness of parents and adults on a higher level of the importance of respecting the privacy of children on the Internet, especially when it comes to sharing their personal information

[9] Criminal Procedural Code of the Republic of Serbia (2011, 2012, 2013, 2014). *Official Gazette of the Republic of Serbia* (72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014).

at social networks. Also, it is necessary to raise awareness of children about their right to privacy. All of this naturally imposes greater responsibility for the state to comply with international standards and ensure its effective implementation of its legislation related to the protection of the right to privacy of children in the digital world.

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The restriction of hate speech in web-based and conventional media

Balázs Elek[1]
Associate professor
Faculty of law
Debrecen University
Hungary

Abstract

Hate speech is any kind of spoken or written expression aimed to humiliating, intimidating, inciting violence, or provoking prejudicial actions against a particular societal group. Hate speech is usually directed at members of minority groups in connection with race, ethnicity, nationality, sexual orientation, gender identification or disability. For texts that are published on the Internet, there is no way to monitor the age of the readers or how they may interpret a given. Interpretations can vary greatly among different age groups.

When hate speech is employed in spoken or written form, the speaker consciously uses linguistic expressions that constitute defamation, label, intimidation or other offenses, for instance Holocaust denial. Such language is often concealed within web-based and social-media texts; the writer deliberately uses expressions that appear entirely acceptable on the surface. Hate speech is already punishable as an independent category of criminal law.

Key words*: media, internet, hate speech, media law, criminal law.*

1. Introduction

Stereotypes are generalisations, the kind that basically everyone uses, that concern themselves with characteristics ascribed to societal groups or classes. These characteristics may be personality traits, physical attributes, societal roles, or personal behavioural patterns. Stereotypes may relate to ethnicities, religions (Christian, Muslim, Jewish), occupations (lawyers, linguists, teachers) or even attributes such as hair colour (blonde women).

Dangers arise when the holder of stereotypical views does not wish to abandon such categorical thinking despite having had experiences that contradict it. At this point, stereotypical views morph into prejudice. Hate speech also is most commonly directed against members of a specific gender, race, ethnicity, nationality, religion or sexual orientation, and its goal is to humiliate, intimidate or incite violent or prejudicial actions against members of a societal group.

[1] Contact: elek.balazs@law.unideb.hu.

2. Hate Speech

It is not possible to provide a precise definition of the term "hate speech" that covers all the acts within its scope. In terms of content, hate speech includes expressions and statements that are capable of fomenting hatred, as well as the description, distribution, declaration, or sharing thereof. The danger of hate speech lies in the fact that it may initiate actions that can incite hatred, producing hatred, or setting in motion a process that will result in such acts.

The "speech" part of "hate speech" might be misunderstood. Indeed, it may obscure the true meaning of term, since the spoken word is not the only type of communication capable of inciting and sustaining hatred.

A spoken or written text's ability to effect hatred also means its ability to incite fear. This is what gives hate speech its constitutional significance.

When it comes to evaluating expressions of hatred, we can examine whether the manifestation qualifies as an expression of opinion or has an aggressive character – that is, whether it qualifies as "fighting words."[2]

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a) Gypsy Lexicon

Typical example of hate speech from the "Gypsy Lexicon" on the Internet[4]:

"Vulgar Gypsy: This is the most common breed of Gypsy. Specimens can be found in many parts of our country. Favorite stomping grounds: sun-exposed trash heaps and ditches. A truly dangerous species whose extermination is highly recommended! They can thrive in any environment, including radioactive-contamination zones and areas that are saturated with poison gas. The species can (unfortunately) endure even the most extreme conditions and can reproduce rapidly, even in captivity. A female can spawn six to 24 offspring at once and can produce 12 to 24 litters in a single year. The young members of the species gather in hordes to make trouble and mess around with both their peers and with people. Extermination tip: A high-caliber machine gun or shoulder-fired rocket."

"Olah Gypsy: The most cunning, trashy, mean-spirited and highly dangerous species. Every negative Gypsy characteristic can be observed here. Nothing is secure unless it is nailed to the ground. Principal weapon is the pocket knife, which it carries everywhere. Is especially active at night. Has an incredibly low IQ and is especially fond of using antisocial, obscene words. Principal source of nutrition is sunflower seeds looted by other species of Gypsy. Favorite stomping grounds: Treetops, especially apple trees that belong to the neighbors. Reproduction is not seasonal. During the rutting season, Gypsy bulls can become rather aggressive, causing severe, bloody fights to break out within a herd. The alpha male has a harem of 35-50 females who are continuously in heat. The Olah Gypsy spends the

[2] Péter Tilk, *A kifejezési szabadság és a gyűlöletbeszéd néhány alkotmányjogi vonzata (Freedom of Expression and Hate Speech in Several Constitutional-Law Cases*, ACTA HUMANA, no. 1 (2005), pp. 5-32.

[3] Bárándy Gergely, *A gyűlöletbeszéd,* Kriminológiai Közlemények no. 60 (2002), pp. 99-102.

[4] http://huligan07.gportal.hu/gindex.php?pg=21100617 (accessed 10.05.2018).

winter hibernating in prison; however, some spend their entire lives here. A truly trashy, thuggish race. They fritter away their free time with games, e.g. sleight of hand. Tips for defense: shotguns, tanks, anti-tank cannon, Katyusha rocket launchers, nuclear missiles, or a gang of at least 280 skinheads. Their extermination is not against the law and is every citizens' God-given right. This is not a protected species and can be freely hunted without a permit."

This hate speech is distinctive by virtue of its sheer repulsiveness, devoid of any feeling. It talks about Gypsies as if they were the subjects of a lexicon about animals. It talks about their habitat, their reproduction cycles and their feeding habits. The text does not contain any obscene, aggressive or ugly words, but rather foments hatred through its emotional detachment. While it is stylistically unobjectionable, it qualifies as hate speech because of its hidden content.

The defining characteristic of hate speech is its effect and its manipulation, not its factual content. The text has a double meaning that gives rise to societal tension. The people described in the text interpret these words in a much different manner than the text's target audience. The primary message is the double and triple entendres.

b) The „so-called Holocaust"

Another example is the politician who referred to the *"so-called Holocaust."* The dictionary meaning of *"so-called"* is *"more precisely"* or *"the official label or designation of a word."* However, its secondary meaning is "of questionable interpretation" or "dubious." (For instance, *"a so-called female artist was present at the event."*)

Member of Parliament: *"Thank you very much. I would like to remind everyone that the both the Hungarian state and various other states on the losing side of World War II have paid out a fortune in compensation to so-called Holocaust victims and survivors."*

Creating "hybrid words" is also a typical form of hate speech. An example of this is the Hungarian *holokamu* – a fusion of *holokauszt* and *kamu*, which means "fake" or "fraudulent." In spoken Hungarian, this hybrid word can easily be confused with "Holocaust."

3. International treaties, conventions and case-law on hate speech and freedom of speech

International law treats hate speech as a type of discriminatory expression based upon intolerance toward a person's race, skin color, national or ethnic origin, or religious affiliation.[5]

1. International Covenant on Civil and Political Rights 1966
2. International Convention on the Elimination of All Forms of Racial Discrimination 1965
3. Model National Legislation for the Guidance of Governments in the Enactment of Further Legislation Against Racial Discrimination (UN) Third Decade to Combat Racism and Racial Discrimination (1993-2003) (Model Law against racial discrimination)
4. Convention for the Protection of Human Rights and Fundamental Freedoms Rome, 4.XI.1950 (articles 10, 14 and 17)
5. European Commission against Racism and Intolerance (ECRI) General Policy Recommendation No. 7 on National Legislation to Combat Racism and racial Discrimination adopted on 13 December 2002.

[5] Bárándy Gergely, Gyimesi Zita, *A gyűlöletbeszédre vonatkozó magyar büntetőjogi szabályozás a nemzetközi jogi és európai jogi kötelezettségeink tükrében*, Európai Jog, (2009) vol. 9. no. pp. 28-36.

4. Human rights Committee practice

4.1. Robert Faurisson v. France[6]

On 13 July 1990, the French legislature passed the so-called *"Gayssot Act"*, which amended the law on the Freedom of the Press of 1881 by adding an article 24. The latter made it an offence to contest the existence of the category of crimes against humanity as defined in the London Charter of 8 August 1945, on the basis of which Nazi leaders were tried and convicted by the International Military Tribunal at Nuremberg in 1945-1946. The author submitted that, in essence, the *"Gayssot Act"* promotes the Nuremberg trial and judgment to the status of dogma, by imposing criminal sanctions on those who dare to challenge its findings and premises. Mr. Faurisson contended that he has ample reason to believe that the records of the Nuremberg trial can indeed be challenged and that the evidence used against Nazi leaders is open to question, as is, according to him, the evidence about the number of victims exterminated at Auschwitz.

Shortly after the enactment of the *"Gayssot Act"*, Mr. Faurisson was interviewed by the French monthly magazine Le Choc du Mois, which published the interview in its Number 32 issue of September 1990. Besides expressing his concern that the new law constituted a threat to freedom of research and freedom of expression, the author reiterated his personal conviction that there were no homicidal gas chambers for the extermination of Jews in Nazi concentration camps. Following the publication of this interview, eleven associations of French resistance fighters and of deportees to German concentration camps filed a private criminal action against Mr. Faurisson and Patrice Boizeau, the editor of the magazine Le Choc du Mois. By judgment of 18 April 1991, the 17th Chambre Correctionnelle du Tribunal de Grande Instance de Paris convicted Messrs. Faurisson and Boizeau of having committed the crime of "contestation de crimes contre l'humanité" and imposed on them fines and costs amounting to FF 326,832. The Court of Appeal of Paris upheld the conviction and fined Messrs. Faurisson and Boizeau a total of FF 374,045.50.

The conviction was based, *inter alia*, on the following Faurisson statements:

"... No one will have me admit that two plus two make five, that the earth is flat, or that the Nuremberg Tribunal was infallible. I have excellent reasons not to believe in this policy of extermination of Jews or in the magic gas chamber..."

"I would wish to see that 100 percent of all French citizens realize that the myth of the gas chambers is a dishonest fabrication ('est une gredinerie'), endorsed by the victorious powers of Nuremberg in 1945-46 and officialized on 14 July 1990 by the current French Government, with the approval of the 'court historians'".

The author contended that the *"Gayssot Act"* curtails his right to freedom of expression and academic freedom in general, and considers that the law targets him personally. He complained that the incriminated provision constitutes unacceptable censorship, obstructing and penalizing historical research.

The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as it is required to do under article 5, paragraph 1, of the Optional Protocol. Any restriction on the right to

[6] Communication No. 550/1993, U.N. Doc. CCPR/C/58/D/550/1993 (1996) (The Human Rights Committee was established under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights).

freedom of expression must cumulatively meet the following conditions: it must be provided by law, it must address one of the aims set out in paragraph 3 (a) and (b) of article 19, and must be necessary to achieve a legitimate purpose. The restriction on the author's freedom of expression was indeed provided by law i.e. the Act of 13 July 1990. It is the constant jurisprudence of the Committee that the restrictive law itself must be in compliance with the provisions of the Covenant. In this regard, the Committee concluded that the finding of the author's guilt was based on the mentioned two statements. His conviction therefore did not encroach upon his right to hold and express an opinion in general, rather the court convicted Mr. Faurisson for having violated the rights and reputation of others. For these reasons the Committee is satisfied that the Gayssot Act, as read, interpreted and applied to the author's case by the French courts, is in compliance with the provisions of the Covenant.[7]

5. European Court of Human Rights Case-Law

5.1. Garaudy v. France[8]

On December 1995 the applicant published a book entitled *The Founding Myths of Israeli Politics*. In five orders made by the investigating judge of the Paris tribunal de grande instance, the applicant was committed to stand trial before that court for five offences.

The applicant complained that the French courts had misunderstood the thrust of his book. He submitted that he had never denied the Nazi crimes against the Jews in his book or claimed that they had not amounted to crimes against humanity. Since, in his submission, his book had centred on a political critique of Zionism devoid of any racist or anti-Semitic thinking, he could not be regarded as a revisionist and should have fully benefited from the freedoms of opinion and expression. He relied on Articles 9 and 10 of the Convention. That line of argument underscored the applicant's entire reasoning.

Regarding the existence of the gas chambers, the applicant submitted that he had merely referred to documents which he had considered reliable. In his submission, he could not be regarded as revisionist for quoting from those documents. In the instant case the Court noted that, according to the Government, the application is inadmissible under Article 17 of the Convention.

„As regards firstly the applicant's convictions for denying crimes against humanity, the Court refers to the purpose of Article 17 of the Convention, which "in so far as it refers to... individuals is to make it impossible for them to derive from the Convention a right to engage in any activity or perform any act aimed at destroying any of the rights and freedoms set forth in the Convention; ...no person may be able to take advantage of the provisions of the Convention to perform acts aimed at destroying the aforesaid rights and freedoms; (...)"[9]*.*

There can be no doubt that denying the reality of clearly established historical facts, such as the Holocaust, as the applicant does in his book, does not constitute historical research akin to a quest for the truth. The aim and the result of that approach are completely different, the real purpose being to rehabilitate the National-Socialist

[7] Bán Tamás, *A holocaust tagadása: a Faurisson-ügy*, Fundamentum 1999. 1. sz., pp. 162-167.
[8] ECHR, decision from 07.07.2007.
[9] See *Lawless v. Ireland*, judgment of 1 July 1961, Series A no. 3, pp. 45-46, § 7.

regime and, as a consequence, accuse the victims themselves of falsifying history. Denying crimes against humanity is therefore one of the most serious forms of racial defamation of Jews and of incitement to hatred of them. The denial or rewriting of this type of historical fact undermines the values on which the fight against racism and anti-Semitism are based and constitutes a serious threat to public order. Such acts are incompatible with democracy and human rights because they infringe the rights of others. Their proponents indisputably have designs that fall into the category of aims prohibited by Article 17 of the Convention.

The Court considered that the interference pursued at least two of the legitimate aims provided for in the Convention: "the prevention of disorder and crime" and "the protection of the reputation and rights of others".[10]

5.2. Lehideux and Isorni v. France[11]

The *Le Monde* newspaper published a one page advertisement bearing the title *"People of France, you have short memories"* in large print, beneath which appeared in small italics, *"Philippe Pétain, 17 June 1941"*. The text ended with an invitation to readers to write to the Association for the Defence of the Memory of Marshal Pétain and the National Pétain-Verdun Association.

The text, which was divided into several sections each beginning with the words *"People of France, you have short memories if you have forgotten..."* in large capitals, recapitulated, in a series of assertions, the main stages of Philippe Pétain's life as a public figure from 1916 to 1945, presenting his actions, first as a soldier and later as French Head of State, in a positive light.

The applicants alleged that their conviction for "public defence of war crimes or the crimes of collaboration" had breached Article 10 of the Convention

The Court further noted that the events referred to in the publication in issue had occurred more than forty years before. Every country must make to debate its own history openly and dispassionately. The Court reiterated in that connection that, subject to paragraph 2 of Article 10, freedom of expression is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb; such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". The court has ruled that the case *"does not belong to the category of clearly established historical facts – such as the Holocaust – whose negation or revision would be removed from the protection of Article 10 by Article 17".*

5.3. Hans-Jürgen WITZSCH against Germany[12]

In an answer to an article the applicant wrote:

„It is actually established that there is no indication in party programs of the National Socialist German Workers' Party, the NSDAP, and Hitler intended to murder the Jews. Anybody who – with all the means at his disposal – fostered the emigration of the Jewish

[10] Koltay András, *Az internetes kapuőrök és az Emberi Jogok Európai Egyezményének 10. cikke – a sajtószabadság új alanyai*, Állam- és Jogtudomány, LVIII. évf. (2017) no. 4., pp. 129-140.

[11] Case no. 55/1997/839/1045, application no. 24662/94, Publication 1998-VII, no. 92), 23 September 1998, ECHR.

[12] European Court of Human Rights Decision, Application no. 7485/03.

minority until late after the beginning of the Second World War can hardly be said to have prepared the murder of the Jews. A long time ago, the historian Irving has publicly proposed to pay a thousand pounds to any person who could prove that Hitler had ordered, for racial reasons, the murder of one single Jew. So far, nobody has produced evidence. After the war, tens of thousands of totally immaculate officials of the NSDAP have attested on oath not to have known until the end of the war about the murder of Jews. None of the dignitaries of the German Government accused in Nuremberg admitted to have known about the mass murder of Jews. Not even in their closing words under the gallows!"

On 27 July 2001 the Fürth District Court convicted the applicant of disparaging the dignity of the deceased pursuant to Section 189 of the German Criminal Code and sentenced him to three months' imprisonment. With reference to the case-law of the Federal Constitutional Court, it recalled that it was historically proven that the mass killing of Jews in concentration camps was planned and organised by Hitler and the NSDAP. Although the applicant had not denied the Holocaust as such, his denial of Hitler's and the NSDAP's responsibility in this respect was tantamount to a negative value judgment.

The applicant complained under Articles 9 and 10 of the Convention of an infringement of his right to freedom of expression, in particular because the German courts had not taken into account that the statements at issue had been made in a private letter.

The Court, on the contrary, noted that, *"nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."*

The Court observed that the general purpose of Article 17 is to make it impossible for individuals to take advantage of a right with the aim of promoting ideas contrary to the text and the spirit of the Convention.

6. Restrictions on Hate Speech in Hungary

On Hungarian law, the hate speech is a crime on certain cases: Incitement Against a Community is committed by any person who before the public at large incites hatred against:

a) the Hungarian nation;

b) any national, ethnic, racial or religious group; or

c) certain societal groups, in particular on the grounds of disability, gender identity or sexual orientation; is guilty of a felony punishable by imprisonment not exceeding three years.[13]

The Open Denial of Nazi Crimes and Communist Crimes is also a crime in the Criminal Code

Any person who denies before the public large the crime of genocide and other crimes committed against humanity by nazi and communist regimes, or expresses any doubt or implies that it is insignificant, or attempts to justify them is guilty of felony punishable by imprisonment not exceeding three years.[14]

[13] Act C of 2012 of the Hungarian Criminal Code, Section 332.

[14] *Ibidem*, Section 333.

On other cases the hate speech may fall under the restrictions of administration law or media law.

6.1. The Media Council Practice in Hungary[15]

Echo TV, a privately held news channel, on 18 July 2009 broadcast a program called *Képtelenségek* ("Absurdities") in which an author discussed the historic impact of the French Revolution and one of its key achievements, the *Declaration of the Rights of Man and of the Citizen* (1789). He argued that these ideas led to a "proliferation" of individual behavioral forms, which gave way to the development of "diversity."

"So-called human rights and the forceful imposition of human rights, such as the imposition of gay rights, clearly was always one of the liberal forces' basic tools for liquidating... disintegrating and mangling a given society. This can, in a way, serve as the starting point for these people to spread the false mythology that one must be an individual, a free individual, and that the free individual can do whatever he wants. And if he does whatever he wants with a greater sense of freedom and pride, all the better.

But it is worthwhile to think through a little mental exercise about what would be, or what would happen, if, for example, a cell in the human body should decide that, even though I know we exist as a single organism, which means I must behave like this or like that, I am a free individual, and therefore I am going to decide what functions I am going to perform from the standpoint of the organism, so, all other cells, please respect my diversity.

Luckily, evolution has already ensured that if one cell turns out this way, then sure enough, an automatic suicide mechanism exists. So, mechanisms are at work among these cells that ensure, with 99.99% probability, that if one cell crosses a certain critical line in its deviancy, in its freedom, in its freedom of self-actualization, then these mechanisms force the cell to kill itself. If this does not work, it means the beginning of a proliferation of cancer in the organism.

It is also worth pointing out – excuse me – that official power does not confront the destructive parasite, but rather labels the immune system's reactions against the parasite as "extremists" and tries to liquidate them... I believe that this is the last opportunity for white civilization, including Hungary, to come to its senses and see what kind of fate awaits it."

The commentary thusly compared the gay community's role in society to a "cancerous cell" growing in the human body – an idea that is suitable for fomenting hatred against homosexuals. Viewers were given with the impression that "gay civilization" and "white Christian civilization" are mutually exclusive, so one or the other must disappear. People who are gay or support homosexuality are destructive parasites who must be annihilated.

The National Radio and Television Authority (ORTT), Hungary's broadcast regulator at the time, launched an administrative procedure. In its ruling, the authority stressed that opinion makers, news editors and broadcast-show hosts must take special care to present a minority in an objective, unbiased and stereotype-free manner. The broadcast in question did not attempt to do this in the slightest, which further exacerbates exclusionary and hateful behavior toward gays. The commentator made

[15] Török Bernát, *A gyűlöletbeszéd tilalmának mércéi,* Jogtudományi Közlöny, 2013. vol. 68. no. 2, 59-72.

damaging comments about gays and no countervailing points of view were offered. The Media Council, the ORTT's successor, imposed a fine on Echo TV for violating the legal prohibition on incitement of hatred and the mandate to respect human rights. In its justification, the ruling stressed that hate-fomenting pronouncements that violate human rights are capable of causing a breach of societal order and peace.[16]

6.2. Disclosing the Perpetrator's Background in the Media

Proceedings were launched against Hír TV, a private news channel, because the following sentence appeared in the news ticker at the bottom of the screen during a 5 p.m. live news bulletin:

"A funeral will be held tomorrow afternoon for the 30-year-old policeman who was run over by a repeat-offender Roma man last Friday near Budapest's Eastern Railway Station."

The sentence appeared in the news ticker twice before being replaced with the following text:

"A funeral will be held tomorrow for the 30-year-old policeman who was run over last Friday near Budapest's Eastern Railway Station."

In this case, the Media Council found no evidence of wrongdoing and terminated the procedure. While the news ticker did mention the perpetrator's ethnic background, neither its phrasing nor its appearance was appropriate for inciting hatred against Gypsies as an ethnic minority. The reference to the perpetrator's ethnic background may be worrisome from an ethical point of view, but the factual reportage of the news was not capable of fomenting hatred against individuals, genders, peoples, or ethnic, linguistic or other minorities, or any church or religious group.[17]

6.3. Christmas Greetings

On Falu TV, a small community channel, the host of the 2010 "Christmas Greetings" program read out a memo that listed crimes committed by people whom he clearly identified as "Gypsies." The host disparaged the Roma minority using extremely hurtful epithets and generally accused them of habitually committing grave crimes.

The second half of the program featured a closely related segment entitled "*A patkányok honfoglalása*" ("The Occupation of the Rat House"), whose secondary title was *"An Instructive Tale for Young Hungarians."* The story concerns a pack of rats that move in to the house of a hardworking and honest man, steal his hard-earned food, abuse his good nature, grow fat and reproduce; then, when the rightful owner tries to defend himself, the rats rise up and kick him out. But since the rats cannot work, or do not want to, the house sinks into a state of decrepitude and the new inhabitants eventually depart. The man moves back in and, through diligent work, restores his home to a pristine state. However, some of the rats have remained hidden in the house. When the man realizes that they are once again starting to multiply, he considers his options. The commentary ends with a call to action: "You think about it, too, and do what is necessary!"

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[16] András Koltay, *A gyűlöletbeszéd korlátozása Magyarországon (Restrictions on Hate Speech in Hungary)*, Budapest, Wolters Kluwer, p. 308, Media Council ruling 1337/2013 (VIII. 28).

[17] András Koltay, cited, p. 330.

Hungary's Media Council levied a monetary fine, ruling that the broadcaster had violated the legal prohibition on inciting hatred and the mandate to respect human rights. The Council referred to the Hungarian Constitutional Court's ruling 1006/B/2001, which states, "'Incitement to hatred' means laying the emotional groundwork for the denial of the right to diversity and minority protection, as well as the foundation for violent resolution of conflicts. 'Abuse of the freedom of opinion' means qualifying a defined group of people or collectivity in an intolerant manner, such that is characteristic of a dictatorship, not a democracy." The Council also invoked a 2007 Constitutional Court decision that media regulations should have a much lower threshold of tolerance for hate speech than general law does. Hence a violation of media law can be established even if a given set of facts would not otherwise qualify as a crime.

The Media Council established that the show was capable of fomenting hatred through a speculative discussion of hypothetical criminals – a communication that cast the Roma minority as criminally inclined group that rejects the norms of societal coexistence and routinely breaks the laws of Hungary. The content was capable of inciting hatred by bolstering the negative stereotypes of Gypsies that are prevalent in the majority society. Thus incitement of hatred was realized, along with exclusionary practices. The program also portrayed the minority group and all its members as second-class citizens by nature, which is incompatible with the principle of peaceful societal coexistence.[18]

6.4. Report from Jerusalem

The host of "Klub," a program on the ATV channel, introduced a report on Jerusalem with the following words:

"An unexpected, widely ignored tragedy: Thousands of Christians are forced to leave the Middle East because of violence, persecution and economic hardship. Many others are moving out of the Holy Land, the historic homeland of Christianity." In the programme was a discussion of the events covered in the segment, during which one of the commentators said, *"and some people say Islam is the religion of peace."*

Authorities initiated a procedure based on complaints that the statements conflated Islam with violence, which may postulate a link between Muslims and violent behavior.

The Media Council ruled that the TV channel had violated the law on radio and television. It said the commentators had dealt with Islam and its adherents in a stereotypical, intolerant and exclusionary manner in relation to an event that had been triggered not only by deteriorating economic conditions, but also by the permanent conflict between Judaism and Islam. Statements such as *"and some people say Islam is the religion of peace"* conflate Islam with violence. Such a one-sided stereotype may convey the impression that Islam as a religion, and *ergo* Muslims themselves, is linked with violent behavior and religious persecution. The Media Council therefore opined that the ideas expressed in the program might be damaging to the Islamic community and may bolster prejudice against Muslims.[19]

A court of judicial review later overruled this decision.

The court argued that the presenter had expressed an opinion that was qualified as offensive, but the opinion fell within the scope of free expression of opinion. All in all, the

[18] Media Council decision 828/2011 (VI. 22).

[19] András Koltay, cited, p. 370, Media Council decision 138/2011 (I.19).

program did not ignore the facts, did not intend to break the law, and cannot be regarded as providing a mouthpiece for inciting hatred against Islam. The media content that appeared on the screen was not capable of adversely influencing public opinion, not even in light of the objectionable statement on Islam, which had originally been voiced by former U.S. President George W. Bush. Upon viewing the program, the court concluded that the statement made by the commentator, along with the stereotypes to which the Media Council referred, did not meet the criteria for reasonable suspicion of spreading prejudice against Islam, when taking the entire report and its substance into account.[20]

6.5. Offensive Commentator at a Football Match

During a broadcast of a FIFA Confederations Cup Match between Brazil and Japan on Hungarian State Television's M1 channel on 15 June 2013, a sportscaster commented on the Nigerian national team, whose members had gone on strike after receiving only half of their €10,000 bonus for winning a World Cup qualifier match. The walkout cast doubt on whether Nigeria would participate in the FIFA Confederations Cup. The commentator evaluated the situation as follows:

"I would say these are petty, jerkwater African footballers, and I am not using 'African' in a negative or pejorative sense. But basically every player on the Nigerian team is part of a foreign team somewhere, so they clearly do not need this 5,000 euros for bread. They earn much more than that in a month, and now they want to kick up a huge fuss about it here. This is a typical African mentality, and I'm sorry if I'm offending anyone by saying this. Much respect to the exceptions, I want to add that right now. But it is so typical, we always hear this kind of news from Africa, about which team is having a tantrum about something."

The Media Council declined to launch a procedure in response to complaints that the sportscaster had violated the prohibition on discrimination and incitement of hatred. According to the authority, any group that is "distinct," based upon any criterion, may qualify as a "protected community." However, this broad interpretation does not mean that the regulation is boundless in scope. The group's "separation" must be real and tangible in order to receive protection. Generally speaking, "inhabitants of a continent" cannot be interpreted as a "distinct group" based upon any decisive or essential personality characteristics. If no "community" exists, it is therefore not possible to induce prejudice against a nation, a community, a national, ethnic, linguistic or other minority, or members of any majority.[21]

7. Closing remark

Hate speech is a verbal or written statement whose goal is to humiliate, intimidate or incite violent or prejudicial actions against members of a societal group. Hate speech is most commonly directed against members of a specific gender, race, ethnicity, nationality, religion or sexual orientation. When hate speech is employed in spoken or written form, the speaker conscientiously utilizes linguistic expressions that constitute defamation, libel, intimidation or other crimes, for instance Holocaust denial. Such

[20] Fővárosi Bíróság 8.K.31.215/2011/7. sz, Fővárosi Ítélőtábla 4.Kf.27.410/2011/5. szám.
[21] András Koltay, cited, p. 403, 1271/2013. (VII.24.) sz. médiatanácsi határozat.

language is often concealed within web-based and social-media texts; the writer deliberately uses expressions that appear entirely acceptable on the surface. Hate speech is already punishable as an independent category of criminal law.

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Protection of Minor's Rights in the Romanian Criminal Trial

PhD. Laura Stănilă
Senior lecturer
Faculty of Law
West University of Timişoara
Romania

Adrian Stan
Lawyer
Timiş Bar
Romania

Abstract

The legal treatment of juvenile delinquents constitutes an issue raising several difficulties, regarding the age stated by the Romanian legislator for imposing criminal liability and, on the other hand, regarding their special requirements in the criminal trial. The comparative criminal law deals extensively with this issue. As a matter of fact, the legal aspects and difficulties of the criminal trial in case of minors are even more under debate in comparison with the aspects of criminal trial in case of adult perpetrators, the doctrine pointing out the conflict between the two criminal procedure systems: the repressive model and the liberal model1. The best solution is undoubtedly the one of implementing and diversifying alternatives to deprivation of liberty in case of juvenile offenders, the strongest argument being their age and their insufficient awareness of their criminal conduct results.

Key-words: minors, special procedure, liberal model, educational measures, deprivation of liberty, compulsory assistance, participation of the legal representative, procedural guarantees, the right to defense, recognition of the accusation, plea bargaining.

1. Extended procedural guarantees under Romanian Criminal Procedure Code (RCPC). The restorative justice paradigm

The new orientation of the 2010 RCPC is part of the restorative justice paradigm that dominates the current European legal framework. Restorative justice is a rediscovery and refinement of criminal practices specific to "acts of justice", which seeks to provide a viable and effective response to crime and conflict. To this end, restorative justice imposes the need to enable the victim and the offender to play the leading roles in making the decision to resolve the conflict between them. Restorative justice treats offenders with respect, to ensure legal behavior on their part and to reintegrate them into the community[2].

[1] J. Pradel, *Droit penal compare*, 4 eme edition, Dalloz, 2016, pp. 705-714.

[2] United Nations, Office on Drugs and Crime (2006), *Handbook on restorative justice programmes*, New York: Criminal Justice Handbook Series, https://www.unodc.org/pdf/criminal_justice/Handbook_on_Restorative_Justice_Programmes.pdf, accessed 10.05.2018.

The purpose of restorative justice within a legal relationship of criminal nature is to analyze and bring balance, in order to solve all the problems generated by it, namely problems specific to the victim and the need to assist him/her in the recovery process, problems of the community related to the need for public order and security, problems related to the restoration of the losses caused, by imposing the direct responsibility of the offender, as well as the problems in relation with the offender, such as his/her need for social reintegration[3]. Restorative justice is based on three fundamental principles: responsibility, restoration and reintegration. Based on these three principles, restorative justice has as its main objectives, among others, the need of increasing the responsibility of offenders towards the person and the community they have victimized; the need of increasing the responsibility of the community in engaging liability of the offender and of identifying solutions to the needs of the victim and offender; preventing recidivism by reintegrating offenders into the community. In almost all countries, as the case may be, three ways to deal with juvenile delinquency are followed, namely: social assistance; punitive-criminal nature justice; a mixed path that aims to achieve a compromise between the previous two paths[4].

As regards the sanctioning aspects, from the perspective of substantive criminal law, the Romanian Criminal Code entered into force on February 1st, 2014, brought a series of innovations with beneficial effects on the social reintegration of minors with criminal conduct. From the perspective of criminal procedural law, the Romanian Criminal Procedure Code in force on the same date, provides many novelties in comparison with the former regulation. Their role is evident in enhancing the procedural rights and guarantees of perpetrators the state has considered that it is not necessary to be judged entirely in accordance with the common procedural rules applicable to the majority.

At European Union level, the ratification by the Member States of several important European conventions - the European Convention of Human Rights (ECHR), the International Covenant on Civil and Political Rights and the UN Convention of Lanzarote - was considered not sufficient for the effective protection of minors. Thus, in 2016, the Directive 2016/800 on procedural safeguards for children who are suspected or accused in criminal proceedings was adopted[5]. In short, the directive lays down additional rights for juveniles and increased correlative obligations for the judiciary.

Thus, the content of the information communicated to the accused, the obligation to inform the person who exercises parental authority, the right to privacy, the right to an individual evaluation, the right to limit the deprivation of liberty duration, the obligation of the states to provide legal assistance to the minor, were all extended.

First of all, as regards the judiciary organization and the *rationae personae* jurisdiction, it is important to point out that in the Romanian criminal procedural system, although the Law no. 304/2004 on the organization of the courts provides for this possibility in art. 37, there are no specialized tribunals established to deal with

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[3] Niță, N., (2017) Considerații privind justiția restaurativă pentru minori din România, *Acta Universitatis George Bacovia. Juridica* - Volume 6, Issue 2/2017, http://juridica.ugb.ro/, accessed 10.05.2018.

[4] Laura Stănilă, Darian Rakitovan, The Sanctioning System Applicable to Juvenile Offenders: The Child Friendly Vision of the Romanian Legislator, in Ivana Stevanovic (editor), Institut za KriminoloŠca i SocioloŠka Istrazivanja, Beograd 2018, pp. 147-148.

[5] Published in the Official Journal of EU, L 132 /21 mai 2016, transposition term on 11th of June 2019.

cases concerning indicted minors, and there are only special chambers or designated judges to whom such cases are assigned, but they also take decisions in other cases. So, we can affirm that there are no specialized judges dealing exclusively with cases involving minors. The aforementioned organizational law also provides the possibility of setting up specialized chambers for minors and family to deal with cases involving both juvenile offenders and minor victims, but the provision is not in fact fully applied. However, in Romania there is only one specialized court for minors set up in 2004, the Brasov Tribunal for Minors and Families. This court was established under a pilot program through the Order of the Minister of Justice[6], while in the other counties only specialized sections for minors and families were set up in the courts.

According to the new RCPC, the detention and pre-trial detention of the juvenile offender is an exceptional measure and it is executed under a special detention regime, taking into account the particularities of the age so that the deprivation of liberty does not prejudice the physical, mental or moral development of these persons[7].

According to Law no. 272/2004[8] on promoting the rights of the child, art. 2 par. (4), the principle of the best interest of the child shall prevail in all approaches and decisions concerning children undertaken by public authorities and authorized private bodies, as well as in the cases dealt with by the courts. In addition, in the process of individualization of criminal sanctions against juvenile offenders, the courts should focus on the re-education and reintegration function, the responsibility of the minor regarding his/her future conduct, the promotion of the minor's cohesion with the society[9].

2. Special provisions regarding juvenile offenders in RCPC

RCPC has opted for the principle of general provisions application in case of juvenile offenders on trial, with the regulation in a separate chapter of the derogatory rules, which applies only to juvenile criminal justice. That is why the Romanian legislator had not considered necessary to lay down general principles for the cases with this specificity, general rules of criminal procedure provided by art. 4-12 RCPC being fully applicable (we refer here to the presumption of innocence, the principle of finding the truth, *ne bis in idem*, Purpose and use of criminal action, the fairness and reasonable duration of the criminal trial, the right to freedom and security, the right to defense, the respect for dignity, privacy and the right to have an interpreter).

Therefore, art. 504-520 RCPC regulates the issues that distinguish the judgment in case of minors from the other trials, even Art. 504 stating that the criminal investigation and prosecution of juvenile offenders, as well as the enforcement of the sentences concerning him, are following the usual procedure, with some additions and derogations. The provisions shall apply only if at the date of committing the offense for which he/she is investigated, respectively at the date of the court hearing, the person who committed the offense was a minor between 14 and 18 years old.

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[6] Order no. 3142/C/22.11.2004 of the Romanian Ministry of Justice.

[7] Neagu, I., Damaschin, M., (2014) *Tratat de procedură penală. Partea generală. În lumina noului Cod de procedură penală*, Bucureşti: Editura Universul Juridic, p. 646.

[8] Republished in Official Monitor, part I, no. 159/5.03.2014.

[9] Laura Stănilă, Darian Rakitovan, *cited*, pp. 148-149.

The National Probation Directorate, a structure organized within the Romanian Ministry of Justice, and its 42 territorial structures, called probation services, play an important role in the criminal trial. The National Probation Directorate is a structure established and organized by Law no. 252/2013[10] on the organization and functioning of the probation system, and by Government Decision no. 1079/2013[11] for the approval of the Regulation for the application of the provisions of Law no. 252/2013 regarding the organization and functioning of the probation system.

Thus, according to art. 6 RCPC, in cases with underage defendants the criminal investigation bodies can, when they deem it necessary, require an evaluation report from the Probation Service attached to the Tribunal in whose territorial jurisdiction the underage person lives, as under the law. In cases with underage defendants the court is under an obligation to order the evaluation report from the Probation Service attached to the Tribunal in whose territorial jurisdiction the underage person lives, as under the law. In the situation where the report has already been required during the criminal investigation, as under par. (1), the court's ordering an evaluation report is optional.

The evaluation report is prepared by the Probation Service and represents an act through which the specialized institution, after the hearing the juvenile accompanied by a legal representative, draws up an evaluation on his/her general, personal family situation, on the impact of the committed deed on his/her personality, the benefits of avoiding reiteration of criminal offenses and the risks involved. The Probation Service makes proposals for the court on the educational measure provided by the RCC that suits the juvenile offender the best.

Regarding the persons called to the criminal investigating body during the hearing of the suspects or defendants, very recently, the Constitutional Court of Romania ruled on the extension of their right to be assisted by the legal representatives. According to the provisions of art. 505 Criminal Procedure Code, subject to the criticism of unconstitutionality, *"when the suspect or defendant is an underage person who has not turned 16, for any hearing or confrontation of the juvenile the criminal investigation body shall summon their parents or, as the case may be, their legal guardian, custodian or person in whose care or under whose supervision the juvenile was placed temporarily, as well as the General Department for Social Assistance and Child Protection in the locality where the hearing is to take place."* The law also stipulated that *"when the suspect or defendant is an underage person who has turned 16, summoning the individuals described in par. (1) shall only be ordered if the criminal investigation body deems it necessary. Failure by the legally summoned individuals to attend the hearing or confrontation of the juvenile does not preclude those procedures from taking place."*

By decision no. 102/2018[12], the Romanian Constitutional Court upheld the objection of unconstitutionality and found that "the provisions of art. 505 par. 2 of the RCPC, as well as the phrase "who has not reached the age of 16" in art. 505 par. (1) of the RCPC are unconstitutional. Therefore, in case of all minors, and not just of those under the age of 18, will be required, from the publication of the Mandatory Decision, to summon the legal representatives in front of the judicial body.

The Constitutional Court has stated that there has been a discrimination between suspects and defendants who have reached the age of 16 and suspects and defendants

[10] Published in the Official Monitor, Part I no. 512 /14.08.2013.
[11] Published in the Official Monitor, Part I no. 5/7.01.2014.
[12] Published in the Official Monitor, Part I no. 400/10.05.2018.

who have not reached that age yet. Considering the nature of the procedural measure in question, the Court stated that the legislator mistakenly appealed to the distinction made in art. 505 par. 2 of the Criminal Procedure Code, by applying a criterion related to the age from which the juvenile is held criminally liable, according to art. 113 par. 3 of the Criminal Code. On the contrary, in this normative hypothesis subjected to constitutional control, it is stated that the main issue is the specificity of "being a minor" of the suspect/indicted person, while the age criterion is a secondary one, which can not prevail in relation to the obligation of protection of the State under art. 49 of the Romanian Constitution. Therefore, the legislator must grant to minors, irrespective of the age they have, the same procedural guarantees as to the hearing or confrontation carried out by the criminal prosecution bodies. Therefore, the Court stated that the legal provisions criticized discriminated against the child aged over 16 years, being excluded from the right to be assisted in any hearing or confrontation by the persons referred to in art. 505 paragraph 1 RCPC.

As emphasized above, the central element of the criminal trial around all the rights of suspects and defendants are gravitating, is the right to defense. Considering the increased vulnerability of minors, aspect generated by their age, the Romanian procedural law established the obligation to ensure legal assistance, according to art. 90 al. 1 RCPC. In cases of mandatory assistance (including the situation of the arrested indicted person or detained in an educational center), it is presumed that the juvenile defendants in these situations could not provide their own defense.

Obviously, the juvenile's lawyer enjoys all the rights granted to the defense, generally those guaranteed by the provisions of art. 92 and 94 RCPC, such as the right to assist in any criminal procedure act other than that involving the hearing of his client, the right to study the case file, to copy data and information from the case file necessary for the defense, and to obtain photocopies of acts of prosecution.

As regards *the preventive measures,* they can be taken against minors at the same duration and under the same procedures as for the adults, with some nuances. Thus, at the end of the Title V RCPC governing the preventive measures, the legislator has placed a distinct chapter laying down the derogatory rules on preventive measures applicable to minors. Taking in custody and pre-trial arrest may be ordered exceptionally against an underage defendant, only if the effects of their deprivation of freedom on their personality and development are not disproportionate to the objective pursued by such measure. In determining the duration of a pre-trial arrest measure, the defendant's age at the date of ordering, extending or maintaining such measure shall be considered.[13]

The legislator does not speak here of home arrest, although this is also a measure of deprivation of liberty, probably considering that only the closed detention environment would have serious consequences on the juvenile's psyche, without further safeguards against home deprivation of liberty. The law also imposed an obligation to notify the juvenile's legal representative on his/her deprivation of liberty.

3. Plea bargaining and guilty plea in case of minors

The procedural rights of the minor had followed an interesting evolution in the recent criminal procedural law regarding some abbreviated procedures in which the accused acknowledges his guilt. The Romanian legislator introduced in 2014 (in the

[13] Art. 243 par. 2-3 RCPC.

same time with the restructuring of the institution of plea bargaining, already in force since 2010) the procedure of the guilty plea concluded with the prosecutor and the waiver of the criminal prosecution. It has been appreciated that these are elements of adversial justice, elements of *common law*, grafted on the continental model in which the Romanian criminal proceedings are traditionally placed, the aim of these procedures being the efficiency of the criminal process, to the detriment of the truth, the defendant actually giving up on a certain defense, while the prosecution drops in return the full investigation of the case. The doctrine[14], in attempting to argue the legislator's choice to stop access to these procedures, considered that the lack of experience of the minor would pose a particular disadvantage in the negotiation procedures and would call into question the requirements of recognition guilt, even under the conditions of mandatory assistance. The minor would not fully understand, in these cases, the consequences of renouncing a trial in its natural form, with the elements of contradictoriality and fairness guaranteed by the law.

Thus, initially, as of February 1st, 2014, RCPC omitted, willfully or by mistake, to provide the possibility for minor defendants to plead guilty before the court, with the consequence of alleviating the severity of criminal liability. We tend to believe, joining other scholars, that the omission was, however, caused by the fact that, from the point of view of criminal law sanctions against juveniles, in the new system, there are no longer punishments but educational measures, even in the case of the deprivation of liberty, the courts having no means of sentencing *stricto sensu*, but one of establishing an educational measure with deprivation of liberty. So it was quite difficult to establish, at least in the case of non-positive measures, what and how it would be reduced when the trial runned under the simplified procedure.

Even the Romanian case-law faced difficulties in assessing the solution to be followed, although the legal text did not expressly provide the possibility of applying the plea procedure in case of minors. Thus, at the meeting of the representatives[15] of the Superior Council of Magistracy with the presidents of the criminal sections of the High Court of Cassation and Justice and the Courts of Appeal held on 24-25 September 2015, there were several opinions. We present them as follows:

In an opinion, it was thus considered that plea bargaining leading to the simplified procedure is also applicable to juvenile offenders, since the provisions of the law relating to this institution did not contain any exception to exclude them, an exception found in other such institutions be, for example, that of the guilty plea, art. 478 par. 6 RCPC, stipulating that juvenile offenders can not conclude agreements on the guilt plea. So it was oppinated that when the law wanted to exclude a category from the application of a procedural institution, it expressly provided it.

In another opinion it was considered that plea bargaining is not applicable to the juvenile defendants, since art. 396 par. 10 RCPC stipulates that if this procedure is applied, the penalty of imprisonment or fine is to be reduced by a third or a quarter, but only educational measures can be applied to minors according to art. 114 and art. 115 RCPC, conditions in which the application of the procedure remains without legal effects.

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[14] G. Bodoroncea, in M. Udroiu (coord), *Codul de procedură penală, Comentariu pe articole*, Ed. CH Beck, Bucharest, 2017, p. 1908.

[15] http://www.inm-lex.ro/fisiere/d_1164/Minuta%20intalnire%20sectii%20penale,%20Sibiu,%2024-25%20septembrie%202015.pdf, accessed 1.05.2018.

The opinion proposed by the National Institute of Magistracy was that in spite of the fact that the minors are not expressly excluded by the legislator from the application of the plea bargaining, as in the case of the guilt plea, its effects, as a legal cause of reducing punishment, in terms of substantial criminal law, entitle us to conclude that juveniles can not opt for abbreviated court proceedings; it is also said that the opinion of the broad interpretation of the law can not be supported, meaning that, in the case of minors, the plea bargaining may lead to a re-individualization of the educational measure, by establishing an additional criterion, so that a mitigating educational measure be applied.

The unanimous opinion expressed by the participants in the meeting was that, by law, it is not possible to apply the institution of plea bargaining regulated by art. 349 par. (2) RCPC., art. 374 par. (4) RCPC and art. 396 par. (10) RCPC; we can not give effect to the provisions of art. 396 par. (10) RCPC concerning the reduction of penalty limits. Plea bargaining can only be taken as a general criterion of individualization when considering and applying the educational measure, without changing its limits.

Government Ordinance no. 18/2016[16], however, regulated the situation and placed it, in our opinion, on the path of normality. Thus, the legal norm regarding the plea bargaining was completed in the sense that "if the defendant is minor, the consent of the legal representative is mandatory." The text thus expressly provides the admissibility of the special proceedings in case of minors, but also introduces an additional guarantee (in addition to the already existing obligation of being assisted by a lawyer), the consent of the person who legally represents the minor.

The normative act also explained, through a substantive provision introduced in art. 396 al. 10 RCPC, the way in which the plea bargaining will materialize in case of the minor, showing that "for minor offenders, the court will consider these aspects when choosing the educational measure; in the case of custodial educational measures, the limits of the period for which these measures are ordered are reduced by one third. The concept is therefore a mixed one, the reducing of time duration in case of non-custodial educational measures being banned. The actual reduction of time duration only operates in case of custodial educational measures provided by the text of the Criminal Code.

By the same Ordinance no. 18/2016, the legislator, intending to maintain the line of provisions above, to extend the access of minors to negotiated adversarial procedures, has abrogated the rule of express prohibition, and stipulated that "minor offenders may enter into agreements on guilt plea with the consent the legal representative, under the terms of the law. It has been appreciated by some authors that the approval of the representative would not be necessary if, at the time of signing the recognition agreement, the minor would be 18 years old, even if he committed the offense as a minor. At this time, the juvenile has acquired the full capacity of exercise and can conclude by himself any legal act, without the need for the consent of the legal representative.

4. Conclusion

In conclusion, without claiming to carry out a complete analysis of the additional safeguards for the rights of minors facing a criminal charge, we believe that it is

[16] Published in the Official Monitor, part I, no. 389/23.05.2016.

important to point out that the Romanian criminal procedural system has brought some welcome novelties, some originating and others as a result of legislative amendments or of the Constitutional Court decision, with the result in increasing the rights of minors in the criminal trial.

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Juvenile Prison Sentence in the Juvenile Law of the Republic of Serbia

Dragan Jovašević LLD.
Professor
Faculty of Law, Niš
Republic of Serbia

Abstract

The idea, legal sources and major characteristics of contemporary juvenile criminal legislation of the Republic of Serbia are the issues that have been analysed within this paper. Particularly, following the tendencies expressed in numerous international legal documents adopted lately beneath and within the United Nations Organization (The Convention on the Rights of the Child), as well as acts adopted by regional organizations (Council of Europe), The Republic of Serbia has adopted in 2005 specialized Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles. That way, one single legal document in a comprehensive way entirely regulates legal position (substantive, procedural and executive) of juveniles as offenders or victims of the crime. For that purpose, Republic of Serbia has been codified juvenile criminal legislation in a way that this has been done by other European countries lately: France, Italy, Swiss, Germany, Montenegro, Germany, Croatia, Macedonia, Bosnia and Herzegovina and many others.

The new juvenile criminal law anticipates two basic types of the juvenile criminal sanctions. These are: a) the educational measures and b) the juvenile prison. They are legally anticipated measures of the social reaction towards the juvenile committers of the crime activities that are sentenced the legally determined organs (the district court – the judge for the juveniles and the tribunal for the juveniles) in aim to protect the society from the criminality trough the education, reeducation and proper development of the juvenile. Beside and instead of sanctions, the new criminal legislature recognizes also the special type of measures – the educational dictates (orders) as the alternative measures that have the aim the deflecting of the criminal proceeding towards the juveniles (la diversion) to the other measures application. In this paper the author has analysed the juvenile prison sentence in the new criminal law of Republic of Serbia with theoretical, practical and comparative law aspects.

Key words*: law, juvenile, crime, criminal liability, sanctions, prison.*

1. Introduction

Juvenile criminal legislation (substantial, procedural and executive) entered into force in the Republic of Serbia at the beginning of 2006[1]. That opened an entire new chapter in the development of our country's criminal law and represented a radical twist when it comes to the establishment and functioning of a modern legal state and

[1] D. Jovašević, *Maloletničko krivično pravo,* Niš, 2011, pp. 12-18.

rule of law. Juvenile criminal law[2] is a part i.e. a segment of criminal law that has lately gained a status of an independent legal and scientific discipline in a series of European countries due to a multitude of its specific solutions. It represents a special, coherent and autonomous entity comprised of a number of solutions that differ from those referring to adult offenders.

Juvenile criminal law represents a set of legal provisions that determine the criminal-legal status of juveniles (as offenders but also as the victims of criminal offences)[3]. This term (that legal theory often refers to as a postulate of criminal policy), stands for a branch of law comprised of criminal legal provisions that are applied to juvenile offenders and that depict its particular and specific character. This field of law is focused on the personality of the offender (*Taterstrafrecht*), rather than on the offence itself (*Tatstraftrecht*). In other words, it is a set of legal provisions that determine the system of sentences for juvenile offenders[4], but, under specific circumstances, for adult offenders as well, and the procedure for imposing and executing these sentences by competent state authorities. Therefore, it can be said that juvenile criminal law goes beyond the frames of criminal law because it does not include only substantial criminal legal provisions but the provisions of procedural and executive criminal law as well, in the extent in which they deal with juvenile perpetrators.

Juvenile criminal law[5] represents a set (a system) of legal provisions that regulate the position (i.e. rights and obligations) of a juvenile in criminal legal system. These provisions primarily refer to : a) the definition and the types of juveniles as subjects of criminal law (active and passive), b) types, conditions, purpose and methods for prescribing and imposing sentences on juvenile offenders, c) the procedure for imposing sentences on juveniles (that represents a specific type of criminal procedure because of the authorities that are competent for its initiation and conduct as well as for the enforcement and execution of sentences) and, finally, d) the procedure of the execution of imposed juvenile sentences[6].

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[2] The term "juvenile criminal law" is common in legal theory (G.Marjanovik, *Makedonsko krivično pravo*, Opšt del, Skoplje, 1998., p. 361.; Lj.Bavcon, A. Šelih, *Kazensko pravo*, Splošnij del, Ljubljana, 1999, p. 230; M. Simović *et al.*, *Maloljetničko krivično pravo*, Istočno Sarajevo, 2015., pp. 21-28.). However, the term "criminal law for juveniles" is also used in legal theory for this branch of law. Both terms imply that there is a criminal law of "juvenile character" as a contrast to criminal law that refers to adults. It is worth mentioning that there are standpoints in a part of German legal theory claiming that juvenile criminal law includes the cases of offenders who are under 25.

[3] In Germany (Jugendgerichsgesetz of 1974, with addition of 1990), France (Ordonnance No. 45-174 du 2. fev. 1945, with addition of Law No. 2002-1138 of 2002.), Croatia (Zakon o sudovima za mladež – Official gazette of Republic of Croatia No. 111 of 1997), Macedonia (Zakon za maloletničku pravdu – Official gazette of Republic of Macedonia No. 87 of 2007) and Serbia (Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica – Official gazette of Republic of serbia No. 85 of 2005), this branch of law has been officially separated from their Criminal Laws (Codes).

[4] There are standpoints in the history of criminal law according to which the first penitentiary institution for juvenile offenders was established in Rome in 1703 upon the initiative of the Roman Pope Clement IX. Later on, other similar institutions were established in other countries as well, such as Germany, France, Switzerland and United Kingdom.

[5] B. Đukić, D. Jovašević, *Kriminalitet maloljetnika i mjere društvene reakcije u Republici Srpskoj*, Banja Luka, 2010. pp. 34-45.

[6] D.Jovašević, *The System of Criminal sanctions for Juvenile Offenders in the New Criminal law of the Republic of Serbia*, Journal of eastern European Criminal law, Timisoara, No. 2/2016, pp. 182-188.

Juvenile criminal law can be singled out from the criminal law that is generally applied to adult offenders because of the character of its numerous provisions. However, it can, by way of exception, be applied to adult offenders as well, if specific conditions determined by the law are met.

2. The Juvenile Criminal Law System

The definition of juvenile criminal law[7] indicates that this branch of law includes several parts, each of them representing an independent and autonomous field of law. Still, due to their contents, their form and the aim they are intended to accomplish, all these provisions constitute an integral branch of positive criminal law. Accordingly, the system of juvenile criminal law is comprised of[8]:

1) substantial criminal law-the system of legal provisions that determine the criminal legal status and the position (rights and obligations) of a juvenile offender and the system of sentences (educational measures, juvenile prison sentence and security measures) and alternative measures (educational orders, as a means of a diversion model in juvenile criminal law);

2) procedural criminal law-the system of legal provisions arranging the definition, the organization and the competence of juvenile criminal jurisdiction authorities, the initiation and the conduct of criminal procedure against juveniles, the course and the structure of the criminal procedure against juveniles in the 1st degree and after legal remedies; *and*

3) executive criminal law-the system of laws and subordinate legislation dealing with the organization and the jurisdiction of state authorities and the procedure of execution of criminal sentences and other alternative measures (educational orders) imposed on juvenile offenders.

Finally, legal provisions dedicated to the protection of children and juveniles as victims in criminal procedure can also be singled out within the frames of the system of juvenile criminal law.

Following the tendencies that have been present for the past decades in some European countries (Germany, France, Italy, Swiss, Montenegro, Macedonia, Croatia, and Bosnia and Herzegovina), Serbia also adopted a special (*lex specialis*) Law on Juvenile Criminal Offenders and Criminal Justice Protection of Juveniles (ZOMUKD)[9] in 2005, which represented the codification of its juvenile criminal law. In that manner, juvenile criminal law was formally separated from the Criminal Code, the Criminal Procedure Code and the Law on Execution of Criminal Sentences. Nowadays, the above mentioned law represents a fundamental and a direct source of juvenile criminal law, which is the primary law to be applied to juvenile offenders and, in some cases, on adults as well.

However, The Criminal Code of the Republic of Serbia[10] and "subsidiary" or "auxiliary" criminal legal provisions can also appear as sources of juvenile criminal law, especially when it comes to the definition, the elements and the characteristics of

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[7] D.Jovašević, *Leksikon krivičnog prava*, Beograd, 2011, p. 270.

[8] D.Jovašević, *Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica sa uvodnim komentarom*, Beograd, 2005, pp. 3-29.

[9] Official gazette of the Republic of Serbia No. 85/2005.

[10] Official gazette of the Republic of Serbia No.: 85/2005, 88/2005, 115/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016.

criminal offences committed by juveniles (either as direct perpetrators or co-perpetrators or accomplices). Other legal sources (international treaties, judicial practice, subordinate legislation, legal theory and customary law) can also appear as indirect sources of this branch of law, in the way and in the extent in which they represent supplements of criminal legal provisions (of substantial, procedural and executive criminal law).

3. The basic characteristics of juvenile criminal law

When it comes to national criminal law, the Law on Amendments and Changes of the Criminal Code of FNRJ from 1959 was the first to single out the provisions dealing with juvenile criminal sentences in a separate chapter. Furthermore, The Criminal Procedure Code included special provisions dedicated to the criminal procedure against juveniles, whereas the Law on the Execution of Criminal Sentences regulated the procedure, the manner and the conditions of the execution of criminal sentences imposed on juveniles. That was the beginning of the establishment of juvenile criminal law, which nowadays has the following characteristics[11]:

1) Criminal legal provisions do not refer to a person who was under the age of fourteen[12] at the time of commission of an unlawful act provided under law as a criminal offence. (Paragraph 2, ZOMUKD). Such persons are referred to as children (infants) and are not treated as active subjects of criminal law. Criminal legal provisions cannot be applied to them, but provisions of other branches of law (such as Family Law and Social Welfare Law) can;

2) According to linguistic and grammatical interpretation, the term "juvenile perpetrator of a criminal offence" is not valid, since there is no criminal offence without perpetrator's guilt (according to the objective-subjective theory of criminal offence from paragraph 14 of the Criminal Code of the Republic of Serbia). Also, the term "guilt" is not in accordance with the expressions such as "infant" and "juvenile". That is the reason why the Criminal Code itself uses a rather vague formulation: "a juvenile who has committed an illegal act that is prescribed as a criminal offence by the law". Moreover, the presence and the assessment of guilt during a criminal procedure are excluded in the case of juvenile offenders;

3) Juvenile criminal law, as a consistent system of criminal legal provisions that are applied to juvenile offenders, is unfamiliar with numerous terms and institutions that are commonly present in the "classical i.e. standard" criminal law that is applicable to adult offenders, such as: guilt, punishment, penal and retributive system, the proportion between the punishment and the grade of offender's hazard and the determination of punishment for joinder of criminal offences;

4) The system of juvenile criminal law[13] is supposed to be ruled by the goals of criminal policy such as juvenile offender's education and re-education, emphasizing the principle of education instead of the principle of punishing. This has highlighted the preventive character of this branch of law and led to the abandonment of its previous "therapeutic" concept. In theory, it is pointed out that juvenile criminal sentences

[11] D.Jovašević, *Krivično pravo*, Opšti deo, Beograd, 2016, pp. 287-296.

[12] It is worth mentioning that there are standpoints in a part of German legal theory claiming that juvenile criminal law includes the cases of offenders who are under 25.

[13] B.Petrović, D.Jovašević, A.Ferhatović, *Krivično pravo 2*, Sarajevo, 2016, pp. 167-186.

primarily represent measures of help and socialization containing a smaller amount of coercion, repression and limitations of rights and freedoms and a greater amount of help, guardianship, supervision, prevention of disturbances and establishment of preconditions for juvenile's normal and uninterrupted development and maturation. This is in accordance with the so-called "Havana Rules", adopted by the OUN in 1990 that insist on exclusion or at least minimization of any form of deprivation of liberty when it comes to juvenile offenders. (Paragraph 11, Point 6);

5) Among criminal sentences applied to juvenile offenders, educational measures are more preferable in comparison to punishment[14] (i.e. juvenile prison sentence) that represents an exception. The Law is familiar with nine educational measures divided into three groups: a) the measures of admonition and guidance (that have replaced former disciplinary measures), b) the measures of intense supervision and c) institutional measures;

6) Juvenile prison sentence can be imposed solely by way of exception on an elder juvenile who has committed a serious criminal offence, for which a penalty of imprisonment exceeding five years is prescribed by the Law. Educational measures are the most common form of society's reaction to juvenile offenders. Yet, the enforcement of educational measures should be conducted gradually. That is the reason why the priority is given to milder educational measures (such as measures of admonition and guidance), whereas more severe ones such as measures of intense supervision and, finally, institutional measures are imposed as subsidiary. Moreover, the priority is not even given to criminal sentences but to their substitutes (informal sentences) whose enforcement is also reduced to the smallest possible amount[15];

7) Contemporary criminal legislations (such as Germany, France, Macedonia, Croatia and Bosnia and Herzegovina) are familiar with various measures of alternative character (substitutes of criminal sentences) that can be imposed either along with or instead of criminal sentences. According to the non-intervention theory, their enforcement is recommended, whenever it is possible to avoid the criminal justice system through the diversion of a criminal procedure[16], especially in the case of petty, sporadic, primary, occasional or accidental crime. They include various *sui generis* measures such as educational orders, instructions, prohibitions or recommendations for juvenile offenders. Actually, the aim of the enforcement of these measures is the diversion of a criminal procedure against a juvenile offender from the field of Criminal

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[14] According to official statistics, institutional educational measures represent 1-2,7% and juvenile prison sentence represents 0,6-1,7% of the total amount of criminal sentences imposed on juvenile offenders in the Republic of Serbia between 1997 and 2002.

[15] Although imposing punishments on juvenile offenders represents an exceptional legal possibility, there are criminal legislations prescribing a wide range of punishments that can be imposed on juvenile offenders. For example, Paragraph 87 of Russian Criminal Code prescribes that either a punishment or educational measures can be imposed on juveniles who committed a criminal offence. Several punishments that can be imposed on juveniles are enumerated in its Paragraph 88: a fine, prohibition from practicing a profession, compulsory labor, correctional labor, isolation and deprivation of liberty up to 10 years.

[16] Legal theory disapproves the use of the term "diversion model" of criminal procedure against juveniles, especially when taking into consideration the practical significance of the principle of opportunity in criminal procedure against juveniles that is referred to as "diversion" in German legal theory. Diversion represents a form of turning from a general, common and regular criminal procedure. A diversion model means solely that the procedure ends in a way that differs from the one that is common according to general rules.

Law to other branches of law such as Family Law and Social Welfare Law. Such solution is in accordance with Paragraph 40 Subpart 3 Point 6 of ht OUN Convention on the Rights of the Child that requires the member states to implement all the possible measures in order to deal with children and minors in conflict with the law without initiating a criminal procedure;

8) New legal provisions prescribe judicial protection of juveniles in the process of execution of imposed juvenile criminal sentences instead of former administrative protection;

9) The provisions dealing with the supervision of the execution of educational measures also represent an innovation. The judge for juveniles (who has imposed an educational measure) and the public prosecutor for juveniles supervise the enforcement of the imposed educational measure. They are obliged to: a) keep up with the results of the enforcement of the imposed educational measure, b) visit the juvenile in the institution he is placed into, c) conduct direct inspection and d) review reports on the course of execution of the imposed educational measure. The competent social welfare centre is also obliged to send his report on the course of execution of other educational measures (special obligations and measures of intense supervision) to the court and to the public prosecutor for juveniles every 6 months. The judge for juveniles can require the social welfare centre to deliver these reports in shorter periods of time, but he can also demand similar reports to be written by other competent persons such as a social worker, a psychologist, a pedagogue or a special pedagogue, if some of them are employed in the court. Finally, the administration of the institution a juvenile is placed into is also obliged to send the report on the results of the execution of the imposed educational measure to the court and the public prosecutor every 6 months. However, the court can require this report to be delivered in a shorter period of time;

10) The assistance offered to the juvenile after an institutional educational measure or juvenile prison sentence has been executed, is now arranged in a different way. Post-institutional treatment and acceptance of the juvenile are also set differently by emphasizing the significance of the role and the activities of the competent social welfare centre. During the entire period of the enforcement of the imposed juvenile criminal sentences, social welfare centre maintains continuous cooperation and contact not only with the institution the juvenile is placed into but also with his family in order to prepare and enable them to reintegrate the juvenile in his previous social surroundings as well as to infiltrate him in the course of normal and socially acceptable life and activities.

4. Criminal sentences for juvenile offenders

4.1. The definition and the purpose of juvenile criminal sentences

Juvenile criminal law in the Republic of Serbia from 2006. is familiar with two basic types of juvenile criminal sentences[17]: a) educational measures *and* b) juvenile prison sentence. They are defined as measures of social reaction to juvenile offenders that are prescribed by the law and imposed by the authorities determined by the law (superior court-judge for juveniles and council for juveniles) in order to protect the society from

[17] D.Jovašević, *Maloletničko krivično pravo*, Niš, 2011, pp. 145-159.

crime through education, re-education and regular development of juveniles. Educational measures represent the most common type of juvenile criminal sentences. They are imposed regularly i.e. most frequently. They can be imposed on all juvenile offenders, younger as well as elder[18].

Only subsidiary and by way of exception, when the conditions prescribed by the law are fulfilled and when the court comes to the conclusion that the purpose of juvenile criminal sentences cannot be accomplished by the enforcement of educational measures, can the court impose on an elder juvenile a penalty of a special kind-juvenile prison sentence. Such sentence can be imposed solely on an elder juvenile who has committed a serious criminal offence. Therefore, the sentence of juvenile prison is not compulsory; it can neither be imposed on any juvenile offender nor for any criminal offence. The purpose of juvenile criminal sentences is determined in two ways. Their primary purpose is equal to the purpose of all the other criminal sentences, defined by paragraph 4 of the Criminal Code of the Republic of Serbia and includes suppressing the acts that violate and threaten the values protected by criminal legislation.

Therefore, the general purpose of juvenile criminal sentences is the suppression of all types, varieties and forms of crime. Within this general purpose of all criminal sentences (including juvenile criminal sentences), paragraph 10 of ZOMUKD separately defines the purpose of juvenile criminal sentences as: a) influencing juveniles' development and the establishment of their personal responsibility; b) influencing their education[19]; c) regular development of their personality in order to enable them to reintegrate in the community. Such purpose can be accomplished in three ways[20]: a) through supervision, b) through offering protection and assistance and c) through providing general and professional education. When determining the aim of these sentences, the law highlights education, re-education[21] and regular development[22] of juveniles, particularly through special preventive measures[23].

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[18] D.Jovašević, *Krivično pravo*, Opšti deo, Beograd, 2016, pp. 234-239.

[19] It is process that includes juvenile's training to build his own attitude towards various social values through gaining knowledge in various fields.

[20] The purpose of educational measures prescribed by the law can be accomplished in different ways such as: separating a juvenile from his social surroundings or family because of the negative impact they have on his development and education; guidance and assistance in education or particular medical treatments; supervision conducted by a parent, by an adopter, by a custodian or by a representative of state authority in order to keep up with his activities and notice and attempt to prevent negative influences and causes of his unacceptable behavior; juvenile's professional training that includes obtaining socially useful skills and abilities through various forms of education; the development of juvenile's personal responsibility through a diversity of tasks and duties making the juvenile personally responsible for the quality and the efficiency of their fulfillment.

[21] Such process includes the elimination of harmful consequences of the fact that a juvenile has been educationally neglected. It is conducted through a particular individual or group treatment including various methods and procedures.

[22] It is the creation of an appropriate social ambient in which the juvenile might accept and respect certain rules of behavior.

[23] Croatian criminal law determines the purpose of educational measures in a similar way: to influence juvenile's education, the development of his entire personality and strengthen his personal responsibility through protection, custody, assistance and supervision. Besides, the purpose of these sentences, as well as of the criminal sentences in general, is to provide that the citizens respect the legal system of the state, that nobody commits a criminal offence and that those who have committed such offence do not repeat it (Ž.Horvatić, Kazneno pravo, Opći dio, Zagreb, 2003, p. 247).

The Law on Juvenile Justice of Former Yugoslav Republic of Macedonia[24] determines the purpose of juvenile criminal sentences in a similar way-the enforcement of these measures is subordinate to the aims of protection, education, re-education and regular development of juveniles. Namely, Paragraph 29 of this Law defines the purpose of educational measures as providing protection and assistance in order to facilitate juvenile's education and re-education.

Finally, Paragraph 5 of the Law on Courts for Juveniles of the Republic of Croatia determines the purpose of juvenile criminal sentences within the general purpose of criminal sentences as "influencing juvenile's education, development of his entire personality and strengthening his personal responsibility through protection, care, assistance and supervision as well as through providing general and professional education"[25].

No matter how preventive the character of these sentences is[26], their coercive and retributive features are not completely excluded because the enforcement of these sentences does not depend on juvenile offender's consent and they do contain certain limitations, prohibitions, conditions and obligations for the juvenile to act in accordance with specific instructions and orders. Besides, the purpose of juvenile prison sentence is to influence a juvenile offender more intensely not to commit criminal offences in the future as well as on other juveniles not to commit criminal offences. This means that the purpose of juvenile prison sentence is determined in two ways[27]: a) as special prevention-influencing the perpetrator not to repeat criminal offences *and* b) as general prevention-influencing other juveniles not to commit criminal offences. That is how the protective model[28] and the justice model[29] (i.e. special preventive purpose of juvenile criminal sentences) have been implemented in new juvenile criminal legislation instead of the previously supported therapeutic conception.

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[24] More: Lj.Arnaudovski, L.Nenev, *Juvenile Penal Code*, Kavadarci, 2001.

[25] Ž.Horvatić, *Kazneno pravo*, Opći dio, Zagreb, 2003, p. 247.

[26] In order to accomplish the purpose of educational measures prescribed by the law, juveniles are supposed to be treated in a special manner that is adjusted to their age, personal characteristics and the type and the gravity of the criminal offence they have committed. Such treatment is based upon contemporary principles of pedagogy, psychology and andragogy. Through the course of diverse treatments for juveniles, it is especially taken into account that a juvenile should be enhanced (encouraged) to participate actively in his education and upbringing, changing his attitudes and habits and developing the sense of responsibility for his own acts.

[27] B.Petrović, D.Jovašević, *Krivično (kazneno) pravo Bosne i Hercegovine*, Opći dio, Sarajevo, 2005, pp. 189-213.

[28] The protective model emphasizes juvenile's personality, his condition and needs. Namely, it is based upon the standpoint that a criminal offence solely causes the initiation of a criminal procedure against a juvenile, whereas his personality and interests have vital impact on the court's decision. The victim or the injured party is of secondary significance. The duration of criminal sentences in this model is not strictly determined and their effective duration depends upon the results achieved in juvenile's re-education, with the option to replace or suspend the imposed educational measures, which significantly increases court's active role in the process of execution of the imposed juvenile criminal sentences.

[29] The justice model accentuates the victim of the committed criminal offence as well as the interest of the society. Juvenile, his personality and interests have some but not predominant significance for the course of criminal procedure. This model requires the enforcement of alternative measures that lead to the diversion of criminal procedure against a juvenile offender; it rejects the indeterminate duration of the imposed criminal sentences; juvenile's deprivation of liberty is of exceptional character and the purpose of the measures consists of victims' restitution and compensation.

4.2. Types of juvenile criminal sentences

Basic types of juvenile criminal sentences[30] prescribed by our criminal legislation include nine educational measures divided into three groups. These are the following: a) measures of admonition and guidance; b) measures of intense supervision; *and* c) institutional measures.

Although the law does not draw such distinction between them, there are standpoints in legal theory suggesting that educational measures can be divided into milder and more severe measures. Accordingly, measures of admonition and guidance are considered as milder, whereas institutional measures are considered as the most severe ones. Such division of educational measures is in accordance with the principle of their gradual enforcement, which means that a milder measure will be applied whenever it is considered as sufficient to accomplish the purpose of educational measures, whereas more severe measures will be imposed as subsidiary. This differentiation among educational measures is based upon their contents, conditions and criteria for their implementation as well as upon their duration and means of enforcement.

A special form of punishment known as juvenile prison sentence can be imposed on an elder juvenile in particular cases. However, all security measures apart from the prohibition from practicing a profession, activity or duty can be imposed on juveniles under circumstances prescribed by the law (Paragraph 39 ZOMUKD). Security measures can be imposed on a juvenile offender solely as subsidiary or supplementary sentences along with an educational measure or a juvenile prison sentence. In some cases, security measure of compulsory psychiatric treatment and confinement in a medical institution can be imposed on a juvenile as an autonomous sentence provided that conditions prescribed by the law are fulfilled (Paragraph 81, KZRS).

The law has also limited the use of security measure of compulsory alcohol addiction treatment and of security measure of compulsory drug addiction treatment, so these measures cannot be imposed along with an educational measure of admonition and guidance. New juvenile criminal law is also familiar with a particular type of measures-educational orders that can be imposed either along with criminal sentences or instead of them, as alternative measures intended to enable the diversion (*la diversion*) of criminal procedure and its replacement with other non-penal measures[31].

Among all the criminal sentences prescribed by our criminal law, the following cannot be imposed on juvenile offenders: a) punishments, b) judicial caution and c) suspended sentence. The precondition for the enforcement of a punishment is perpetrator's guilt. Since juvenile's age excludes the presence of guilt as the subjective element of a criminal offence, it is logical that punishments cannot be imposed on juveniles. Within the system of juvenile criminal sentences, the law is familiar with a specific measure of admonition and guidance known as "judicial reprimand", whose contents, manner of enforcement and purpose completely correspond to judicial caution as a criminal sentence for adult offenders. But, it has remained unclear why the legislator excluded the possibility of imposing a suspended sentence on a juvenile offender in spite of the reasons of criminal policy for it to be applied (especially to elder juveniles when it could intensify the exceptional character of juvenile prison sentence).

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[30] D.Jovašević, Lj.Mitrović, V.Ikanović, *Krivično pravo Republike Srpske*, Opšti deo, Banja Luka, 2017, pp.312-322.

[31] D.Jovašević, *Krivično pravo*, Opšti deo, Beograd, 2016, pp. 302-308.

5. Juvenile prison sentence

5.1. Definition and characteristics of juvenile prison sentence

Juvenile prison sentence is the only type of punishments in the system of juvenile criminal sentences in the Republic of Serbia (Paragraphs 28-38 of ZOMUKD). It is a particular type of punishment that includes deprivation of liberty of an elder juvenile, who committed a more serious criminal offence, for a certain period of time determined by a court decision[32].

The form of this punishment is comprised of the deprivation of liberty, which is similar to the prison sentence that the court imposes on adult offenders[33]. However, its purpose makes it seem closer to educational measures. Fundamental characteristics of juvenile prison sentence are the following[34]:

1) It is the most severe kind of juvenile criminal sentences and the only punishment that can be imposed on a juvenile offender. Nevertheless, this punishment cannot be imposed on any juvenile (but solely on an elder juvenile) and cannot be imposed for any criminal offence (but only for a more serious criminal offence for which the law prescribes more than five years' imprisonment);

2) This sentence is intended to accomplish preventive purposes (special as well as general), since its enforcement makes a more intense impact on a juvenile offender not to commit criminal offences in the future as well as on other juveniles not to commit criminal offences;

3) The enforcement of juvenile prison sentence requires two preconditions to be fulfilled: a) a committed criminal offence and b) a high degree of offender's guilt. This is the only juvenile criminal sentence that obliges the court to estimate the presence and the degree of offender's culpability when imposing it;

4) Juvenile prison sentence is determined according to particular rules. Among them, subjective circumstances related to offender's personality and objective circumstances related to the nature and the gravity of the criminal offence he committed are of special significance;

5) Juvenile prison sentence can be imposed in the period ranging from 6 months to 5 years. It is always determined in full years and months. Apart from this general maximum, the law is familiar with another maximum of 10 years' imprisonment. Juvenile prison sentence lasting up to 10 years can be imposed in two cases: a) when a criminal offence is committed, for which the law prescribes 20 years' imprisonment or a more severe punishment and b) when there is a joinder of at least two criminal offences, for which the punishment prescribed by the law exceeds 10 years' imprisonment. The duration of juvenile prison sentence is limited by the law and cannot exceed the punishment prescribed for the committed criminal offence;

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[32] D.Jovašević, *Maloletničko krivično pravo*, Niš, 2011, pp. 173-186.

[33] The most serious punishment that can be imposed on juvenile offenders with identical characteristics and conditions of enforcement is present in numerous contemporary criminal laws: Paragraph 101. of the Criminal Code of the Republic of Montenegro, Paragraph 88 of the Criminal Code of the Russian Federation, Paragraph 63 of the Criminal Code of the Republic of Bulgaria.

[34] D.Jovašević, *New juvenile criminal law in the Republic of Serbia*, Free Law Journal, Budapest, No. 3/2006, pp. 181-198.

6) In the case of joinder of criminal offences, juvenile prison sentence is determined in line with the following special rules:

a) If an elder juvenile has, by one act or several acts, committed several criminal offences for which he is tried concurrently, and the court finds that for each of the criminal offences a juvenile prison sentence should be imposed, the court shall, by its free judgment, determine a single juvenile prison sentence for all committed offences within the limits determined by the law;

b) If the court finds that an educational measure should be imposed for some of the criminal offences committed by an elder juvenile, whereas a juvenile prison sentence should be imposed for the others, the court shall impose a single juvenile prison sentence for all the criminal offences in joinder;

c) If the court determines a punishment of imprisonment and a juvenile prison sentence for criminal offences in joinder, the court shall impose a single punishment of imprisonment in line with the rules for the determination of punishment in the case of joinder of criminal offences committed by adult offenders (the "asperation" system-Paragraph 60, subpart 4 KZRS);

d) If the court estimates that for one of the criminal offences in joinder an educational measure should be imposed, while for the other a punishment of imprisonment should be imposed, the court shall impose a single punishment of imprisonment. The court shall act in the same way when determining a sentence for a previously sentenced person (if after the sentence is pronounced the court finds out that the convict has committed another criminal offence before or after his sentence is pronounced);

7) Juvenile prison sentence does not cause legal consequences of conviction that include the prohibition to acquire particular rights;

8) Under the following conditions, the court may release on parole the person on whom juvenile prison sentence has been imposed[35]: a) if he has served one third of the imposed sentence, but not before a six months' period has expired and b) if the achieved results suggest that he can be expected to behave well while at liberty and that he will refrain from committing criminal offences. Along with the parole, the court can determine some of the measures of intense supervision with the possibility to apply one or more particular obligations. Such parole can be revoked in the manner and under the conditions prescribed for adult offenders;

9) Limitation on enforcement of juvenile prison sentence takes effect after expiry of: a) 10 years since juvenile prison sentence exceeding 5 years' period has been imposed, b) 5 years since juvenile prison sentence exceeding 3 years' period has been imposed and c) 3 years since juvenile prison sentence up to 3 years' period has been imposed;

10) Data on the conviction to juvenile prison sentence can be disclosed only to the following authorities enumerated by the law: a) the court, the state prosecutor and the authority of internal affairs in respect of criminal proceedings conducted against a person with prior convictions, b) the body involved in the procedure of granting amnesty, pardon, rehabilitation or deciding on termination of legal consequences of conviction and c) social welfare authorities, when they need such data to discharge duties under their competence[36];

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[35] D.Jovašević, *Krivično pravo*, Opšti deo, Beograd, 2016, pp. 320-323.

[36] D.Jovašević, *Maloletničko krivično pravo*, Beograd, 2008, pp. 173-175.

11) If the court imposes a juvenile prison sentence on an elder juvenile in the course of execution of an educational measure, the educational measure shall be suspended as soon as the execution of the imposed punishment commences. If the court imposes a juvenile prison sentence or a prison from 1 year on an adult offender in the course of educational measure's execution, the educational measure shall be suspended as soon as the execution of the punishment commences. But, if the court imposes a juvenile prison sentence or a prison up to 1 year, the court shall decide whether the execution of the educational measure should be continued after the punishment has been served or completely suspended;

12) The person on whom a juvenile prison sentence is imposed cannot in the course of serving perform electoral functions in state bodies, bodies of territorial autonomy, bodies of local self-government, administrative bodies, executive bodies or other bodies in companies and other organizations legally entrusted to carry out particular public functions;

13) Records on imposed juvenile prison sentences are kept by the Superior court that made the decision in the first degree; *and*

14) Rehabilitation may be granted to a juvenile sentenced to juvenile prison sentence in the same way, under the same conditions and under the identical procedure as those prescribed for adults.

5.2. Conditions for imposing juvenile prison sentence

Juvenile prison sentence is a "hybrid" criminal sentence. Its form corresponds to penal measures with emphasized repressive elements, whereas its contents, essence and aim make it more similar to educational measures. This criminal sentence was introduced to our criminal law in 1959 with the Amendments of Criminal Code of FNRJ (although imposing punishments on even younger juveniles under particular conditions was possible prior to these amendments)[37].

This punishment can be imposed if the following conditions prescribed by the law (Paragraph 28 ZOMUKD) are cumulatively fulfilled[38]:

1) the perpetrator is an elder juvenile, *i.e.* a person who was between 16 and 18 years old at the time of commission;

2) the juvenile committed a criminal offence for which the law prescribes more than 5 years' imprisonment;

3) the juvenile committed a criminal offence with a high degree of guilt. Such grade of guilt stands above the common, ordinary or average degree of perpetrator's conscious and willing determination towards the committed criminal offence. Whether there is a high degree of guilt of an elder juvenile or not, represents a factual question solved by the judicial council in each individual case. The degree of guilt of such high level is not accomplished if there appear to be some of the subjective grounds for mitigation of punishment (such as substantially impaired mental capacity); *and*

4) the court is convinced that, due to the nature and the graveness of the committed criminal offence and the high degree of guilt, imposing an educational measure would be inappropriate. The graveness of the criminal offence signifies a

[37] B.Đukić, D.Jovašević, *Kriminalitet maloljetnika i mjere društvene reakcije u Republici Srpskoj*, Banja Luka, 2010, pp. 105-109.

[38] M.Đorđević, Đ.Đorđević, *Krivično pravo*, Beograd, 2014, pp. 98-102.

greater extent and a stronger intensity of injury or, by way of exception, threat of the protected value. This condition indicates the extent and the intensity of the consequences of the criminal offence. However, this circumstance should also be assessed in the scope of the type of the attacked value and society's need to provide its efficient protection, which indicates the nature of the criminal offence[39].

This condition[40] implies that juvenile prison sentence is imposed only as an exception even if the conditions prescribed by the law are fulfilled. Imposing a juvenile prison sentence requires court's assessment based upon personal and material sources of evidence, according to which the enforcement of an educational measure would not be appropriate in that particular case. Therefore, juvenile prison sentence is a subsidiary punishment and its enforcement is always optional. When the conditions prescribed by the law are fulfilled, the court shall determine juvenile prison sentence for an elder juvenile within the limits prescribed by the law for the committed criminal offence, taking into consideration all the circumstances (extenuating as well as aggravating) and especially: a) the degree of juvenile's maturity *and* b) the time that is necessary for his education and professional training (Paragraph 30 of ZOMUKD).

Juvenile prison sentence imposed by the court cannot last longer than the punishment prescribed for the committed criminal offence, but the court is not limited by the minimal measure of the prescribed punishment.

6. Conclusion

Following the standards proclaimed by a series of universal and regional international documents that have been adopted lately (created under the auspices of The Child's Rights Convention), The Republic of Serbia adopted a special Law on Juvenile Offenders and Criminal Legal Protection of Juveniles in 2005. In that manner, substantial, procedural and executive aspects of the legal position of juveniles as offenders and victims of criminal offences were arranged in a single legal document.

That is the reason why our country conducted the codification of juvenile criminal law in a way similar to the one that other European countries such as: France, Germany, Croatia, Macedonia, Bosnia and Herzegovina and others have been applying in the past couple of years. That initiated an entire new chapter in the development of our country's criminal law in general and represented a radical twist in the establishment and the functioning of a modern legal state and rule of law. Juvenile criminal law is a part, i.e. a segment of criminal law that has lately been gaining the character of an autonomous legal branch and scientific discipline in numerous European countries due to a multitude of its specific solutions. It represents a particular, consistent and autonomous system of legal provisions containing a series of specific solutions that differ from those referring to adult offenders.

Juvenile criminal law is a system of legal provisions that determine the criminal legal status of juveniles (as offenders and as victims of criminal offences). So, this term, that legal theory often refers to as a criminal-legal postulate, represents a branch of law comprised of criminal legal provisions that can be applied to juvenile offenders and that depict its particular and specific character. It is a set of legal provisions that determine

[39] I.Simić, M.Petrović, *Krivični zakon Republike Srbije – praktična primena*, Beograd, 2004, pp. 23-25.

[40] B.Čejović, *Krivično pravo*, Opšti deo, Beograd, 2002, pp. 559-562.

the system of criminal sentences for juvenile offenders (that can also be applied to adult offenders under particular conditions) as well as the procedure for the imposing and the execution of these sentences by competent state authorities.

Juvenile criminal law is familiar with two fundamental types of juvenile criminal sentences: a) educational measures and b) juvenile prison sentence. They are defined as measures of social reaction to juvenile offenders that are prescribed by the law and imposed by state authorities determined by the law (superior court-judge for juveniles and council for juveniles) with the aim to protect the society from crime through education, re-education and regular development of juveniles. Educational measures are the most common type of juvenile criminal sentences. They are most regularly and commonly imposed juvenile criminal sentences. They can be imposed on all juvenile offenders (younger as well as elder juveniles). Subsidiary, and only if the conditions prescribed by the law are fulfilled and when the court estimates that the aim of juvenile criminal sentences cannot be accomplished by the enforcement of educational measures, the court can impose a special type of punishment on an elder juvenile-juvenile prison sentence.

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Serbian Media on Peer Violence

PhD. Zorica Mršević[1]
Senior Research Fellow,
Institute of Social Science, Belgrade
Republic of Serbia

Abstract

This paper contributes to a better perception of the phenomenology of peer violence, but also to the perception of the role, scope, significance and characteristics of media reporting on peer violence. Presented are the most recent cases of peer violence from the last two months of 2017 – November and December – and the first five months of 2018. Attitudes, analyses, comments and interviews with experts are also used from previous years – 2010 to 2018. The main characteristics of the multi-annual media approach to this topic are the regularity of case reporting, as well as the research for causes, and consequently, possible solutions to the challenges. The media draws attention to the dangers of this social phenomena, which must not go unnoticed, such as the phenomenon of peer group violence, the similarities and analogies with adult violence, the minimization of violence by schools, and the oftenly supporting role of the violent children's parents. Despite changes that may indicate the increased complexity and seriousness of the phenomenon of peer violence, we believe that these are not of such a nature that they should be met by more severe sanctions, largely due to the fact that the existing preventive possibilities have not yet been exhausted.

Key words: *peer violence, media reporting, school violence, group violence, parents of abusers, analogy with adult violence, anti-school culture.*

1. Introduction

The phenomenon of peer violence is analysed in this paper through the lens of media reportages, especially on school violence. Due to the limited dimension of this paper, only the latest examples of peer violence from the last two months of 2017 (November and December) are presented in detail, along with those from the first five months of 2018. Attitudes, analyses, comments and interviews with experts are also used, although these are from previous years, from 2010 to 2018. The methodological approach also comprises criminological, sociological and legal literature, but, wherever possible, theoretical sources are deliberately replaced by media reports. This not only outlines the phenomenology of peer violence, but also the depiction of the role, scope, significance and characteristics of media reporting on peer violence.

Characterized by a multi-year media approach to this topic is the regularity of case monitoring, the permanent media efforts in searching for causes, and consequently, the possible solutions to the challenges. The media also acts as a "whistle blower", because it draws attention to negative and dangerous social phenomena that cannot go unnoticed,

[1] E-mail: *zmrsevic@idn.org.rs.*

such as, for example, the phenomenon of peer group violence, its similarities and analogies with adult violence, the minimization of violence by schools, and the oftenly violent role of the parents of violent children.

2. Definition and frequency

Peer violence is a form of physical or psychological violence involving minors, as offenders and as victims, and belongs to the domain of what is called "the violence of everyday life". It is becoming more and more present in today's society, with the media reporting that violence against children is becoming more ruthless, being almost impossible to avoid in schools, sports events, playgrounds, computer game shops. This raises the first open question: Is there really a general increase of peer violence, or is it just more frequent reporting of violent incidents due to an increase in awareness of the need to combat violence? (Tanjug, 2012)

The latest information, evidenced by responses presented in the media, is corroborated by the research data. A media survey found, in a sample of 600 students in five Belgrade schools in 2017, one in four primary school pupils do not feel secure at school, one-fifth of students undergo daily insults or ridiculing, and one-third want revenge on those who hurt them (Đurić, 2017). Perhaps the required response to the frequency of peer violence is still somewhere between the view that conflicts between and among children, in the struggle for their place under the sun, have always existed, but today, under the influence of the overall atmosphere of society, these have progressed both in quantity and in brutality; for example, today, instead of fists, bottles, chains and baseball bats are used (Vuković, 2012).

3. School violence

It is important to point out that it was only after the media reports on various cases of maltreatment of students that the public in Serbia came to realize that some schools are overwhelmed by threats and violence, as if some minor perpetrators cannot be stopped by anything in their undertaking of violent acts. According to media reports, peer violence is on the rise in some schools, while in others peer violence has reduced in the near past compared to recent years, but, as the media recounts, the excesses are increasingly brutal:

> *An example of a juvenile perpetrator known earlier from his violent behaviour:* Nova Varos, seventeen-year-old Đ.M., a pupil of the third grade of "Pivo Karamatijevic" grammar school in Nova Varoš, was badly injured after a fight with the graduate of this school, A.A., December 14 (Rovčanin, 2017).
>
> Seventeen-year old Đ.M., was badly injured after a fight with the graduate of this school, A.A. The violent act occurred during a long break in the afternoon shift. On that occasion, Đ.M. received a brain injury, and after first aid, he was initially transported to the local health centre, and, later on, accompanied by a doctor, to the hospital in Užice for further treatment. The students clashed during a break between the classes. A.A. hit Đ.M. with his fists in the head several times. After this, he fell to the concrete. The entire case was reported to the police. A.A. was previously known to the police in the city under Zlatar mountain, who filed several misdemeanour charges for violating public order and peace against him.

The media also acts as a “whistle blower”, that is, it has a social role as an informer to the public. In recent years, media has established a system of reporting on all serious cases of peer violence from across Serbia. From the media, we find that frequent cases of continuous violence of a group of children over one child are frequent (Talović, 2012: 14). Stronger ones abuse the weaker, students of senior classes often take away personal items, snacks, and so on, from the younger pupils, while mistreating them, verbally and physically.

> *An example of abuse carried out by a group of elderly pupils over younger ones:* Ivanjica, Older students tortured first grade pupils in elementary school "Milinko Kušić", December 6 (Bojović, 2017).
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> One case of peer violence was reported in the elementary school “Milinko Kušić” in Ivanjica, where the older students tortured several first-grade students and is currently being investigated. Both the school and the police have taken all the necessary actions. One parent, who wished to remain anonymous, claimed that a group of older pupils from the seventh and eighth grades tortured several seven-year-old boys in various ways. They brought them into the toilet, turned off the lights so that they could not be recorded by the camera, held them by their arms and tied them up, sticking tape over their mouths, or holding their fists on their mouths so they would not scream. Then they stripped their trousers and pants, and took photos of them naked, demanding money, and threatening them. The children kept silent for days, and only when one of them complained to their parents did the whole story begin to unravel. One parent added that the children were in fear for days and were unable to go to the toilet or leave the classrooms during a break.

In similar situations, the school climate has a prevailing feeling of insecurity. The greater the feeling of insecurity, the greater the chances of the occurrence of violence. Repeated violence and multi-victimization have an impact on the victim's attitude toward school. The media highlights the fact (Tanjug, 2011) that 60 percent of students believe that their school has not taken preventive activities, or measures aimed at reducing, fighting against and eradicating violence, or at least, they have not been informed about them. About 70 percent of respondents say their school does not have a team to protect against violence, abuse and neglect, or do not to know if such a team exists. When asked who, and how, children, in the event of violence, can address for protection, almost half of the respondents gave answers “no-one, no way, no one will listen, the school has nothing to do with it.” The measures taken are assessed as untimely, inadequate, only with the purpose of minimizing and covering up violence rather than protecting pupils against it.

With an increasing number of victims, the feeling of insecurity is intensified, violence is perceived more frequently, and the general attitude of students towards school worsens. Individual repulsion spreads in some school environments, transforming over time into an antisocial culture. It is therefore important that recent, severe cases of peer violence, such as the murder of a sixteen-year-old in Pančevo and the group rape of a fourteen-year-old girl at the Institute for the Education of Children and Youth in Belgrade are nevertheless pursued independently of the school environment.

> *An example of the worst form of peer violence - murder:* Pančevo, Boy stabbed with a knife in Pančevo, and although emergency aid arrived on the scene in a timely manner, he died, December 7 (Tanjug, 2017).

In the settlement Nova Misa in Pančevo, a boy passed away as a result of injuries sustained from a knife, the Belgrade media reported. A representative of the first aid service told media that they had received a call from the clinic in Pančevo on Tuesday, that help was needed for a boy lying in front of a sports centre. According to unofficial information, the boy was killed after a fight near the Mladost sports centre in the Pančevo neighbourhood, reports media. Ivan Adamov (16) was brutally killed in a contracted fight in Pančevo. He was murdered by N. S. (17). The motive for the fight was allegedly a debt of 1,000 dinars (less than a 9 Euros) that the victim owed. Both participants were previously known to Pančevo police.

An example of the worst form of peer violence - rape: Belgrade, two of the residents of the Institute for the Education of Children and Youth in Belgrade were arrested after they heavily injured the colon and genitals of the 14-year old M.C., also a resident of the institution, (Blic, 2017).

The juvenile J.M. (17) and his adult friend Bosko A. (18) were arrested. They are suspected of, on 26th November, entering the room in which M.C. slept, with J. M. taking a broom that stood next to the door and pushing the broomstick into the girl's genital area, over her underwear, in the vagina and anal opening. The pain woke the girl, who tried to resist them and told them to stop and leave the room. The attacking boys became angered, and pushed broomstick harder, and the girl cried and begged them to stop. Finally, they left the room. The girl immediately complained to her friends and educators, and she was helped and transported to the hospital, where the doctors concluded that she had severe colon and genital injuries. Miodrag Tasić, Director of the Institute for the Education of Children and Youth briefly informed the media: "We took measures prescribed by law, informed the ministry, the police, the prosecution".

4. The role of media

In reporting on peer violence, the media also have the role of breaking the wall of silence, built on fear and mistrust. Both the children who suffer violence and their parents are reluctant to report incidents to teachers or inspectors, because they fear worse consequences in the form of continuing victimization and because they do not have confidence in institutional solutions to the problem. Schools, as a practice, cover up incidents with an intention of ignoring or minimizing them, thereby avoiding their own responsibility. For this purpose, it is most often stated that the incident occurred outside the school's premises and/or hours, so that the school cannot be held accountable. Violent incidents are often minimalized (injuries are due to rough play, jostling on the stairways or sports injuries), school fights have 'always existed' and are just a 'normal' part of growing up, finding one's place in a pecking order, and gaining the popularity and respect of peers. It's not uncommon to blame the victims for teasing or hurting other students. One such case is the media report on the injuries inflicted with a metal rod by students in Sopot, indicating that the victim is the one who caused it. It is also visible that the school did not report the event and attempted to minimize the problem.

Example of blaming the victim and minimizing the incident: Sopot, Boy received minor injuries with a metal rod, in an incident at the Kosmaj Mechanical Engineering School, February 28 (B.B., 2017).

A pupil of the first grade of the Kosmaj Mechanical Engineering School in Sopot, was injured by a metal rod, Director of the school Živorad Oketić confirmed to "Novosti". He pointed out that in the coming days he will determine what actually happened, because there are multiple versions of events. According to the director, the incident occurred in the afternoon shift. It is unclear whether the conflict between the students occurred during the sport class, as pupils reported, or whether the incident occurred in the gym after school hours, according to the teachers. The Director said that one pupil hit another with a metal rod, which they had taken off the heating grids. He immediately drove the injured child to the doctor, where the doctors found minor injuries. After the injured boy said that he was fine, he went to the bus station and he and his friend went home. According to one story, the boy who was injured had waved a bar and teased others, but it remains to be understood exactly what happened. According to the Director, it is understood that he is a boy who attended a special elementary school program because of his behavioural problems. The director added that the injured boy knows how to tease other children, but that certainly does not justify what happened, and what could have led to more serious consequences. This incident, as the media learned unofficially, was not reported to the Secretariat for Education and Child Care, nor to the relevant school administration.

Only the other, the victimized side, as well as the opinion of the experts, are heard from the media. A lack of reports, and attempts to conceal violence, result in repetitions and escalations of violence. Violence is most often concealed in its initial stage, which is problematic, because it is at this stage that prevention is generally most successful (Mršević, 2017). Thus, it is learned that school fights, even those that arose spontaneously, and especially scheduled fights, should in no way be considered a regular and normal part of growing up.

An example of a previously scheduled fight: Belgrade, P.K. (14), a pupil of the eighth grade, was wounded not far from the "Vladimir Rolovic" elementary school in Petlovo Brdo. The identified attacker N.P. (14), was also from the eighth grade, December 15 (Novaković, 2017).

One in a series of peer violence events occurred in December 2017, in the immediate vicinity of the Elementary School "Vladimir Rolovic" at Petlovo Brdo in Rakovica. A pupil of the eighth grade, N.P. (14), was stabbed in the back by P.K., the same age, after the previously scheduled fight. The injured boy was transferred to medical care at the Military Medical Academy and he is in a stable condition. According to the first information, the fight between the two minors took place around 13:00 in the forest, known locally as “Borići”, approximately 1500 meters from the school grounds. Apparently, the boys had a fight earlier, in order to measure strength, and had been provoked by one of the students. N.P. constantly teased P.K. – who is a quiet and good boy – another teenager told reporters. The two of them did not associate with one another after school hours, and they are not even from the same school department. As was unofficially revealed, the boys were in opposite shifts, and at the agreed time, one of them left school, while the other came from home. At that moment they started a fight. The provoked P.K. turned to N.P. and without mercy he began to strike him. When he saw that he had proven his

strength, he decided to stop the fight. He turned away from N.P., but at that moment, N.P. jumped on him, pulled out a knife and stabbed him two times in his back.

5. Analogies with violence between adults

It is interesting that the media perceive a similarity to adult violence in peer violence. For example, one of the characteristics of peer violence is the disproportionate power seen in almost all cases, similar to most cases of adult violence. In order to have a violent perpetrator, a victim, and bullying, it is necessary that the perpetrator is stronger than the victim, for example, he is a little, but sufficiently, older, physically stronger, richer, more popular, from a larger social group. Forming a violent group is a special way of achieving social and physical supremacy over victims of peer violence, who are, as a rule, individuals, most often isolated from others.

Example of peer group violence: Arandjelovac, Physical violence against a girl from the Technical School Mile Nikolić from Arandjelovac by peers, November 8 (Ljutić & Caranović, 2017).

A female pupil of the Technical School "Mile Nikolić" in Arandjelovac was attacked by school friends of both sexes. Horrifying footage has been shared on social media, showing boys hitting the girl in the classroom. When she tried to protect herself with her hands, she was ordered to drop them. None of the students, who, judging by the noise, were in a full classroom, reacted. Disturbing footage posted on Facebook shows that boys hit, with all their force, a girl sitting in a classroom. The High Court in Kragujevac ended two proceedings against juveniles who participated in these peer violence incidents, which occurred in two high schools in Arandjelovac in 2015 and 2017 and sentenced them to measures of intensified supervision. The higher court issued an educational measure of increased supervision for all juvenile persons who participated in this peer violence incident against a school friend of B.N. in the Technical School "Mile Nikolić" in Arandjelovac. Svetlana Simovic, spokeswoman for the High Court, told Beta agency that the measure of intensified supervision was imposed to minors V.S., V.K. and R.D. This measure will last for at least six months, and for a maximum of two years. A juvenile judge will periodically obtain reports from the guardianship authority or the Centre for Social Work, and only a judge can decide to terminate the educational supervision measure.

Example of a group attack: Niš, a pupil of the third grade of the high school "9th of May", P.R., received head injuries when he was beaten by two pupils of the Technical High School, L.D. and A.J., 14 December during a chemistry class in the afternoon shift at about 18:00. (Janačković, 2017).

According to the director of the gymnasium Nebojša Lekic, the attackers were restrained by a chemistry teacher, a janitor and a parent of a first-grade pupil, an off-duty military officer who had come to look at his child's grades. The beaten pupil was transported by an ambulance to the Clinical Centre in Niš, where his wound was sewn on his head and two scratches on the face and neck were treated. Two pupils of the Technical High School came to the chemistry cabinet during the fifth class and looked for, it would appear, a

> friend from football. Neither the victim nor the other pupils knew them. However, when the chemistry professor told them that there was a class in progress, they should not disturb it, and should leave immediately, they obeyed. But the later-attacked pupil also told them the same thing. The director of the school told 'Blic' that presumably, they were upset by the support of the professor, and they returned after a few minutes with bats found in the vicinity of the school, entered the chemistry cabinet and started hitting pupils. The director added that during the incident, glass was broken, and other school equipment was damaged. These were big, strong boys who, according to professors, were also drunk. The police were commended for their quick reaction, arriving in just two minutes, and video surveillance recorded everything. Most likely, this school, even though one of the most peaceful, still has to be additionally protected, possibly by a private security agency. The director has been against this, because it is an extra burden and an expense for the parents' pocket, but protection against such bullies from the street is necessary. In the opinion of the director of the grammar school, video surveillance and a teacher acting as a porter were insufficient.

The threat of violence is constantly present in peer violence, and as a rule, it is not a one-off. The repeated violation of the victim is certain, and violence is not limited to a single event, which makes it similar to domestic violence. Also, similar to domestic violence, peer violence rarely stops by itself, for example, because the abuser themselves decide to stop. Violence ceases when it is confronted by an obstacle, when a person or something opposes the abuser, and when this obstacle is strong enough to prevent further violence.

Anxiety, as a type of long-lasting, deep-seated, ever-present fear has been observed among victims of peer violence, as well as victims of domestic violence, violence in penitentiary institutions and street violence. Violent children, as well as the adult abusers, are 'fed' by the fear of the victims, their ego 'grows' as more people become fearful, and such instilled fear is long-lasting. Both minor and the adult abusers calculate that the victim of violence, who is terrified, will not dare tell others about it. Due to the existence of such a situation, the abuser believes that they can continue to commit violence against the same victim, without fear that they will be detected and punished. The increase of fear in the victims of abuse is also contributed to by the belief that they are alone. The problem is often that nobody really believes the children who are victims (as well as the many adult victims of violence of adult abusers), and when everybody pretends to not notice anything, nobody is guilty when a problem arises (Vuković, 2012: 20.10).

6. Victims of violence

Violence often occurs in front of a school, in the school yard, dressing room or sports ground. About 20 percent of these attacks occur in classrooms and the same proportion in school halls, as a survey conducted in Novi Sad showed. Apart from the place of violent acts, victims of peer violence become victimized because of their weakness and/or 'otherness' (Galović, 2012: 10). These are the two basic categories of victim, and some others a mixture, i.e. some victims, according to some of their characteristics, fall victim due to their weaknesses, but some others are victims due to

their otherness. Accordingly, the peer violence of juvenile offenders against underage victims does not differ from almost all types of adult violence toward adult victims. A similar statement also could be read in the regular annual report of the Protector of Citizens, where it is stated that particularly vulnerable groups of children are those children who are sick, children who are victims of violence and sexual abuse, and children who live and work in the street. Otherwise, out of the total number of complaints received by the Protector of Citizens from the field of child rights, one third refers to violence against children, including peer violence. The problem of peer violence is not recognized in time, because it is ignored in spite of the first signals of violence, and only reacted to when the problem escalates. All actors within the system must be involved and react properly at the first instance of manifestation of any form of violence. Only if everyone responds in time can we expect that we will reduce the incidence of violence among children (Tanjug, 2015).

The weakness of the victim can arise from their physical constitution, but also from their social circumstances. Typical casualties, due to their weakness arising from social circumstances, for example, are children who enter a new school environment, where friendly groups and allegiances have already been formed, where the roles are already divided, in short, where relations of hierarchy, solidarity and support are already established. Shy and under-developed children are often targeted by the perpetrator, and the perpetrators who are prone to committing acts of violence consider them "weak and cowardly". Victims of peer violence, who become victims due to their weakness, are children who have previous or present traumas, meaning these children are more vulnerable, withdrawn, and avoid associating with other pupils. These traumas include, for example, a traumatic traffic accident, a serious illness, the loss of a family member, or the transfer of a child from one family unit to another (for example, to a grandmother due to parental divorce). Contemporary problems might be, for example, domestic violence against a child or a mother, situations of social vulnerability and social risks (housing and material problems of parents), criminality, drug addiction, alcoholism, prostitution of one or both parents. Contrary to the wrong, yet widespread, belief that (mostly male) children who are exposed to domestic violence will most likely become violent towards their peers, the situation is just the opposite. Namely, traumatization by violence disarms them, destroys dignity and awareness of the right to protection and against violence, which in turn undermines the normal defence capabilities. Exposure to any form of previous violence, including incidents of family and peer violence, in fact leads to long-term and polyvalent victimization, or, in short, “once a victim, always a victim” (Mršević, 2013).

A different child, who does not behave like other peers, and falls short of the standard of behaviour established within the peer group, also tends to frequently become a victim of violence. There are also very frequent cases of children with some physical disability (unusually small, tall, thin, or overweight). Belonging to a different religion from the majority school environment, especially a religious affiliation that the perpetrators perceive as inferior, may also be the cause of maltreatment, assault and physical violence. The children of certain minority ethnicities are also exposed to peer violence, *e.g.* the attackers commonly target Roma children. The reason for the violence against them is mainly prejudice. Children who have special abilities, who are different to their surroundings, are exposed to violence because they are talented or gifted for something their average peers are not, for example, for sports, music, mathematics. Children of real or presumed minority sexual orientation (masculine girls and effeminate boys) are also targeted

Besides 'otherness', yet another cause of peer violence is above-average wealth or poverty. Children who do not fit into the environment, by the criterion of the small amount of material goods they have at their disposal, are those that, for example, obviously wear hand-me-down clothes of older brothers and sisters, last year's shoes, do not have mobile phones (or own a type of phone that is obsolete), cannot pay for excursions, and the like. In the case of wealthy children, the cause of bullying is mainly jealousy. This is why children are often warned not to carry expensive things, such jewellery, so as not to become a target (Preradović, Ristović, 2012).

Children who in various ways irritate others also fall into this category of those who, due to their otherness, become possible targets of peer violence. This is sometimes only a slight difference, *e.g.* only the way some children talk, for example. Especially exposed to peer violence are the so-called hyperactive children, who also irritate their peers and teaching staff, who are usually inclined to claim that the victims are actually the real perpetrators, as they themselves initiate conflicts in which they 'get what they deserved'. Examples of such an irritating behaviour include bothering others, making noise, lack of self-control, frequent provocation of disorder, disturbing others, fierce bursts of over-exuberance and impulsiveness (Čimburović, 2011: 135).

7. Responsability of the parents

Parents are largely responsible for the abusive behaviour of their children; they educate children in violence, and often the children learn from them to be abusers, and commonly the problem is they are, in fact, both spoiled and overprotected children (Milivojević, 2011). Analysis of violence through social networks provides evidence that the abusers are usually seemingly good and obedient children who do not usually make trouble (Galović, 2012: 10).

> *Example of abuse on social networks:* Zrenjanin, A girl, S.F., and her twin brother abused ten-year Isidora, physically and mentally, March 24 (Đokić & Stanić, 2018).
>
> Abuse on social networks, death threats and physical attacks are only a part of the torture that 10-year-old Isidora survived from her peers from the school section, and besides her, two more girls left the school. The girl formed a group on Viber called "We hate Isidora Z", in which they called her a fool and threatened to make her play Blue Whale (a suicide game) until she died. Viber violence grew into physical violence. Shortly thereafter, during a school short break, four boys beat one pupil, when one of those who were beating up the boy, separated from the group, jumped up and struck Isidora in the stomach and the lungs with all his strength. The beaten boy and Isidora reported everything to the teacher, but she failed to even inform their parents. Concerned, Isidora's parents wanted to meet the twins' parents and asked the school to arrange a meeting for them to solve the problem that arose among children. The director advised Isidora's mother "to stop over-mothering" and did not organize a meeting. They asked for help from the Team for Fighting Violence within the school, and reported incidents to the police, but Isidora only got a school psychologist's justification, allowing her to miss school for two weeks because of a fear that someone would hurt her, said the mother of the abused girl. Conclusion: The school minimized the problem. Last year, at

> the beginning of December, representatives of the Provincial Education Inspection found that the parent of I.Ž., on the occasion of their complaints and appeals, was often met with misunderstanding and minimization of problems from the authorities in the school. The Inspection found that the school did not apply all the available resources to resolve the conflict situation in the section.

This case opens the next question about the parents of violent children. Parents actually contribute to the creation of violent children when they uncritically observe their behaviour, or even encourage it (Vlahović, 2011), so that abusers develop a tendency toward such behaviour in the lowest grades. There are parents who even openly oppose school rules and teachers' decisions, but only when their child is concerned, while expecting those rules to apply when it comes to another child. The answer to the question as to how it is impossible to stop the children who bully and maltreat their peers is mostly found in the support of their parents, who are powerful enough to force the school not to apply sanctions against their violent children. As psychologists, pedagogues and sociologists explain, when the school attempts to react and prevent violence in time, some parents "do not want to allow anybody to confront their children" and are ready to blame everyone except their children. Juvenile abusers thus 'practice' their future violent model of behaviour, which they will continue when they grow up. That's why it must be suppressed in time, to prevent later, long-lasting, and much more difficult consequences.

8. Media analysis

One of the positive characteristics of media reporting on peer violence is the investment of significant efforts to find answers to the causes, often with the help of interviewed experts. For example, although it is noted that violent behaviour has always existed, now this answer is no longer adequate, says N1 television's psychologist and psychotherapist, Nevena Čalovska Hercog (Đurić, 2017). She thinks that when we live in continuous violence, society slowly slides towards normalizing it, even that which happens among children. "Young people, as we know, always mirror something that happens on a broader scale in society and they are especially quick to easily adopt bad behaviour patterns, especially if on the other hand they are not motivated toward better and functional, socially desirable forms of behaviour. Although it is observed as part of a current trend, it is also something that has continuously existed as a problem", says Čalovska Hercog. Psychotherapist Marko Brakovic says that the social values practically no longer exist. "Because the old ones are no longer functioning, while there are no new ones, in this situation the family loses its sense and primacy. And the children are left alone. Nobody teaches them anything. Parents usually have to work two, three jobs to survive, they come home tired, they do not have money to pay for childcare, and children are left to themselves. They do not have boundaries – they are only looking out for themselves. No one determines the boundaries or only determines them in a brutal manner, and therefore we have an increase in violence" (Đurić, 2017).

The causes of peer violence should be sought in the personality of the perpetrators, but also in social situations; problems in families, schools, specific to mainly suburban environments, which leads to a mixture in the causes of peer violence (Gedošević, 2017). Particularly sensitive environments are those that hover between rural and urban areas,

such as suburban settlements, edge-of-city apartment blocks, pseudo-settlements, etc. These are forms of spaces or urban disorder with (dis)functional characteristics. In these new, often unfinished settlements, in the peripheral zones or suburbs, the street culture gains a special significance. The street is an everyday place of information exchange and self-expression, an informal gathering of "societies from corners", which, through violence, attempt to overcome the experience of non-inclusion, loneliness, various states of social helplessness and isolation, but also places to “become faces" (Matijević, 2015).

A set of causes leading to every kind of violence, including peer violence, is always very complicated. Rarely does anyone accept responsibility. Parents shift responsibility to the school, school to parents, and both to the media, or the micro-social environment in which children exist, and even the whole society and the crisis in which it is embroiled (Mićević, 2016). But, for the safety of pupils in schools, it is very important to tightly connect all systems, especially schools and families, said Biljana Lajovic from the Ministry of Education (Tanjug, 2017). On many sides there are indications that aggression occurs at every step, hate speech is ubiquitous, and it is difficult to find any TV show or film where communication is at conducted in a non-violent, tolerant, peaceful manner.

9. Conclusion

We should not accept the belief, usually formed under the influence of the tabloid type of media, that control is insufficient, that institutions are powerless, that the legal system is ineffective, and that the problem of peer violence can be solved only by introduction of stricter sanctions. Increasing repression is never the most effective means of combating socially negative phenomena and it usually does little more than contribute to the intensification of the general repressive, conflicting social climate. Before being issued with sanctions, it should be noted that peer violence is the fruit of learned aggressiveness, rather than a phenomenon in and of itself. Serbia recently received a recommendation from the UN Committee on the Rights of the Child on the prohibition of corporal punishment. In spite of the awareness that beating children violates their human rights and jeopardizes their human dignity, in reality, there is still a large (estimated) proportion of 40 percent of children in Serbia who are subject to such penalties (Jovanović, 2018). And as each stick has another end, the beaten children will return violence and the cycle of aggression will be completed in an endless cycle of violence in the family, school and society.

Despite the changes that may indicate an increased complexity and seriousness in the phenomenon of peer violence, we consider that these are not of such a character that the application of more severe sanctions is required, because the existing preventive possibilities have not yet been exhausted (Mijatović, 2011: 13). Namely, it is necessary to invest much more energy and effort in the implementation of the existing by-laws, the Special Protocol on the Protection of Children against Violence, Abuse and Neglect in Educational Institutions and the Rulebook on the Protocol of 2010. Control cameras, school policemen, and engagement of private security contribute to improved security in schools. Programs such as UNICEF's “School without Violence”, “Be a Man”, “No Excuses”, “and Stop Violence”, although they are conducted occasionally and sporadically, provide visible impacts, and efforts should be intensified to implement them regularly.

The strategy of combating this type, as well as any other type of violence, should not be formed under the influence of some of the most drastic and most difficult individual cases (Djordjevic, 2012). It is dangerous to refer to the demands of "a large number of citizens dissatisfied with too mild criminal policies" when deciding on the legalization of stricter sanctions. Through this text, based on media reports on peer violence, we may provide arguments in support of recommendations for adoption of a new law, the establishment of a child rights ombudsman and a monitoring system that will replace corporal sanctions, as a traditional form of upbringing in Serbia, but with new methods (Jovanović, 2018).

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Getting a clear picture: participative media education as a tool for improving the status of children[1]

Jelena Vranješević[2]
Faculty of Philosophy
Belgrade University

Nada Korać[3]
Faculty of Education
University of Kragujevac

Abstract:

This paper discusses the role of the media image of the children in creating and maintaining their low status in society, as well as participative media education as a way of improving the status of children, potentially benefiting both children and society. Results from the empirical study that was done in Serbia in 2001 were presented, and they indicated low visibility of children in media contents for adults, as well as portraying children mostly as passive, whether as an objects of adults' protection and care or as an actual victims. Besides raising awareness and training of journalists, an important contribution to improving the way children are presented in the media would be made by their own participation.

The effect of participatory media education is twofold: a) it supports cognitive and social development and affects the way children perceive themselves and b) it affects the way adults perceive children – the image of an active, capable and responsible child makes the solid ground for changing the relevant policies in order to improve the status of children in the society.

Key words*: media, image of the child, participatory media education*

1. Introduction

The unsatisfactory images of children in the media can be improved by media education, but above all by media education that succeeds in bridging the gap to the media, that is, media education that also involves children's participation in the media and in the society. With that, some progress towards more worthy media representations of children, as well as to increased democracy, could be made (Cecilia Von Feilitzen, 1999).

The quoted words of Cecilia Von Felitzen highlight three very important points concerning the status of children: a) children have a low status in society; b) media play

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[2] Contact: Jelena.vranjesevic@f.bg.ac.rs.

[3] Contact: koracn@eunet.rs.

an important role in creating and maintaining such status; *and* c) participative media education can become a very important way of improving the status of children, potentially benefiting both children and society.

Low status of children is a product of the oppression that is reflected in attitudes/relations adults have toward children, which are characterized by paternalism, control and marginalisation (Qvortrup, 1998). Children are marginalised and almost invisible group all over the world, with little or no power at all, completely dependent on adults' care and protection. A very important role in maintaining the system of oppression is played by the media, which portray children as marginalised and hardly visible. The media, and especially television, are a very powerful tool by which a dominant group (adults) can project its particular way of seeing reality. Indeed, this projection is so successful that it is accepted as common sense (internalized domination), so much so that even those who are in fact disempowered by it (children) accept it as a part of natural order (internalized oppression). Media reflect basic social and cultural guidelines, such as philosophies of life, definitions of the good, normal, health, deviance, that are embedded in the networks of social and political control that Foucault (1977) called "*regimes of truth"*. Regimes of truth operate to legitimize what can be said, who has the authority to speak, and what is sanctioned as true, often serving the primary function of providing individuals and institutions with the justification for social oppression. Oppression operates through everyday practices that do not question those underlying assumptions but take them for granted as the only possible truths. Those oppressive practices supported by the media can sometimes be very visible and explicit (such as explicit violation of the right of the child to express his/her opinion freely) and supported by explicit oppressive attitudes ("children are not mature enough to have their opinions expressed in public"). Sometimes they can be manifested through less obvious and very subtle forms (not informing children about some issues that concern them), supported by attitudes that are not explicitly discriminatory since they usually have a form of protection of the best interest of the child ("children should be protected from information that can affect their carefree childhood"). Image of the child presented in media thus becomes a very important part of the *regimes of truth* and serves as justification of different forms of marginalisation of children both on individual and institutional level.

One important mechanism for challenging oppression, according to Freire (1996), is to make visible and vocal the underlying assumptions that produce and reproduce structures of domination so that we can collectively begin to imagine alternative possibilities to organize social life. Participative media education is one important way of deconstructing the image of children that inevitably leads to a change of public opinion/attitude that would include both adults and children themselves, and that has important benefits for child development.

2. The image of the child in the media

The prevalent source of adults' information about children is the image of the child and childhood presented in the media. By finding out how often, and in which way, the child is present in the media contents intended for adults, it is possible to gain insight into perhaps the most important mechanism that shapes the *public opinion on children*. The key issue regarding public opinion is its influence on decision makers – parents and other adults directly dealing with children, as well as the governments and their

institutions. As a rule, the creation and implementation of state policies on children – in the fields of education, health and social care, but also economy, justice and information, and even security, defence and foreign affairs – are carried out in consultation with the relevant experts. Children's perspectives on themselves and the world they live in are hardly ever a part of this process. As setting priorities and putting children on social and political agendas are by no means independent of public opinion, there is no doubt that the media are the single most influential factor affecting it. Therefore, giving the children a voice in the media may well serve a very important function: that of cultivating an image of the child as an active agent in his/her own life, which may lead to gradual re-shaping of public opinion on children. Such a change of public opinion would then contribute to re-shaping the social and political agendas and policies related to children.

Media researchers recognize the importance of the role of the media in shaping the public opinion as well as their influence on setting social priorities concerning children. Dale Kunkel and Stacy Smith emphasize that "How any nation conceptualizes childhood, how it perceives or stereotypes its youth in terms of their patterns of behavior, how it treats its children in terms of laws to protect them and policies to benefit them, all depend upon how children are viewed by the nation's citizens. Certainly all of these factors are influenced by the information that people have about children, and one of the primary sources of such information is the news media" (Kunkel & Smith, 1999, p. 79).

Although recognized as an important issue, the image of the child in the media relatively rarely becomes a research topic. One such empirical study was done in Serbia in 2001 (Korac & Vranjesevic, 2003; 2006). Looking at *how often* and *in which way* the child is presented in the media contents intended for adults provided a basis for analyzing the ways in which this image can guide and shape the public opinion on children. This analysis also aimed to illuminate the mechanism of informing political decisions concerning children.

The best known research of the media image of different social groups, including children, is George Gerbner's Cultural Indicators Project. The most important findings of this 30-year study are those concerning *visibility* of different social groups in the media: those with less power and influence are underrepresented in the media, thus *cultivating* a corresponding public image and contributing to maintaining such social status. In other words – media do not only *reflect*, but also *maintain* the existing structure of social power (Gerbner *et al.*, 1993). The striking consistency of these findings during a period of thirty years clearly indicates that the image of the world shown on television is incomplete and biased, reflecting the social hierarchy as well as the relative importance of different social groups, thus leaving an open door to all sorts of manipulation and abuse.

The scarce empirical research on the image of the child in the media (Gerbner, 1999; Kunkel & Smith, 1999; "Kids these days…", 1999), in spite of the large differences in methodology and focus, indicates the following common features:

- low visibility;
- presenting children in predominantly negative contexts, either as vulnerable and helpless or as problematic and dangerous;
- superficial and sensationalist approach;
- using the child as a means for drawing attention or attaching importance to other themes;
- implicit or explicit judgmental attitude towards children, exclusively based on adult standards;

- stereotyped, often black-and-white portrayal (angels or devils), including prejudice against today's children due to lack of knowledge and fear of novelty;
- insensitivity to children's developmental, individual and other characteristics and needs.

3. Children in the Serbian media: A roughly mapped Terra Incognita

Visibility of children in Serbian media (Korac & Vranjesevic, 2003; 2006) - measured by the percentage of time dedicated to them (for radio and TV programs) and the frequency of child related themes on front pages, as well as the length of texts (for the press) – compared to the percentage of their actual presence in the population – is astoundingly low. With the addition of other indicators of visibility – the rating and scheduling (timing) of radio and TV programs mentioning children, as well as positioning of child related texts on the page, and the function of pictures of children in printed media – the invisibility of children becomes even more conspicuous. Compared to the findings of similar studies in other countries, which themselves found very low visibility of children, in Serbian media it was even lower.

Visibility, according to Gerbner, is an indicator of the importance attached to a given group in a society. The findings that additionally emphasize the disconcertingly small significance attached to children in Serbian society is the fact that the notion of the child tends to be quite generalized and undifferentiated in terms of age, sex and social status. Such generalized and undifferentiated portrayal of children indicates a superficial approach, quite uncommon for themes regarded as important. The single finding in this study that is seemingly encouraging is related to demographic indicators – the presence of boys and girls tends to be equal in all three media. However, the sad truth is that it reveals their *equality in invisibility*, i.e., in insignificance and marginal status. In Serbian media, therefore, the child is hardly visible. When visible, the image is rather blurred. When the picture clears, it reveals a depressing sight. In all three media the child is portrayed as, above all, *passive*, whether as an object of adults' protection and care, or as an actual or potential victim. Within the passive category, the child is most frequently portrayed as *endangered and/or victimized*, or as an *object of adults' protection and care*. In all three media *active* children are much less present and such portrayals are usually associated with the context of play and entertainment – successful children and even children as perpetrators of violence, are rarely seen. Perhaps the most indicative finding related to the active category is that the *proactive* child – a child presented as an autonomous agent of his/her own life and the life of his/her family and community, as someone who, in accordance with his/her developmental level and individual abilities, assumes responsibility and makes decisions, initiates actions and carries them out successfully – is virtually nonexistent. These findings should be supplemented with data showing how often children's voices are heard in the media. In relation to the total number of analyzed units for each medium, children's statements appear most frequently on television – in 16% of cases, in only 3% in the press, and in one single case on the radio. These data show that children are the least likely of all people to be asked about anything – as if it is implied that, exactly because they are portrayed as passive, endangered and helpless, they have nothing to say and therefore cannot be included in decision making on matters concerning them. Even when they are asked about something, it is usually for the sake of mere "decoration".

Finally, the study shows that children's rights are practically not mentioned at all. In this regard, an interesting and indicative paradox was noticed: while the child is presented as a (potentially and actually) endangered member of the society, neither his/her rights nor the document regulating them are mentioned! We believe that this indicates an important feature of adults' attitude towards children: what is not only declaratively recognized, but also legally regulated, is neither perceived as a *right* nor (automatically) recognized as a *responsibility* of adults (from parents to the highest state bodies and institutions), but is rather seen as a matter of their benevolence and kindness. Furthermore, media provide an excellent opportunity for adults to, while allegedly speaking of children, actually speak of themselves: by creating a picture of an endangered and passive child, they are painting an idealized picture of themselves as kind and caring guardians and rescuers.

To sum up, the findings of the Serbian study show that, if an ID of the child were to be based solely on the portrayal in the media, it would look like this:

THE CHILD IS A MEMBER OF A RARE, HELPLESS AND RATHER ENDANGERED SPECIES. THE MEMBERS OF THAT SPECIES ARE MOSTLY OF INDEFINITE AGE, SEX AND SOCIAL STATUS. ALL THEY ARE CAPABLE AND FOND OF DOING IS TO PLAY AND HAVE FUN. APART FROM THAT, THERE IS LITTLE THEY CAN DO OR UNDERSTAND, AND EVEN LESS SAY. WE, ADULTS, ARE THERE TO PROTECT THEM FROM ALL RISKS AND DANGERS. THAT IS EXACTLY WHAT WE ARE DOING, AS FAR AS OTHER RESPONSIBILITIES AND FINANCIAL RESOURCES PERMIT, BECAUSE WE ARE KIND, CONSIDERATE AND CARING.

On the rare occasions when child related themes appear in media, they are essentially an opportunity for adults to boast of their good deeds or to complain of the conditions obstructing them, or both. If a child's picture or statement are accompanying the theme, they are usually there in the function of drawing attention to what adults are doing. This is not to say that it is done on purpose, but rather that it reflects an 'implicit philosophy of childhood' equally based on traditional conceptions and the striking ignorance concerning children.

The study has shown that the media are hardly helping adults to really get to know and understand children. Instead, just as Gerbner says (Gerbner et al, 1993), they are *reflecting* the already existing attitudes (based on the traditional 'implicit philosophy' and ignorance), thus reinforcing them and *maintaining* the existing structure of social power. However, by stressing the potential of the media to become an important *culturally enriching force* Gerbner implies that change in the way the media are used may reinforce the social and political change necessary for getting out of this vicious circle.

4. Participatory media education: a way out of the vicious circle

A way out of this vicious circle is the same as the way out of many other vicious circles and is overlooked with equal ease: it is education. One day, maybe, knowing and understanding children and childhood, which is essential for the vast majority of inhabitants of this planet in their everyday lives, will become a part of regular education programs for adults. Until then, the media not only have the possibility, but also an

enormous responsibility, to undertake such an important task. Not only in strictly educational programs and contents (usually with low ratings), but also through a *systematic shaping of the public opinion on children*, which is mostly carried out through programs and contents reaching the widest audiences – above all, the news programs. In order to handle such an important task competently, the relevant awareness raising and training of journalists are necessary. The basis of this training would include elementary knowledge on children and childhood, as well as on children's rights, analogous to the knowledge required for a journalist to deal with any other theme, *e.g.*, economics, culture, or sport. Such knowledge is necessary in order to ensure adequate journalistic approach in the treatment of children and child related themes.

Besides raising awareness and training of journalists, coordinated with adequate media policy in this field, an important contribution to improving the way children are presented in the media would be made by their own participation. Local media provide good opportunities in this respect, which is the first step towards gaining space/time in national newspapers, radio and TV programs. Child participation in the media is naturally and strongly attached to media education projects. Such projects mainly involve adolescents and youth.

Media education of children and youth through various participatory projects became a trend in a number of countries, including the less developed ones. This kind of education is taking place in and out of schools (various local organizations, centres and clubs, NGOs), and is greatly facilitated by the availability of appropriate technology – especially its constantly becoming less expensive and more user friendly. These projects are often a part of widespread efforts to improve the lives and education to the children of marginalized groups. In teaching media literacy, they are aimed at training children to critically analyse media contents and messages, through active participation in creating them. One of the first such projects, Educational Video Centre (EVC), founded in 1984 in New York City, has been active for decades now. Their method, subsequently incorporated in a number of public schools curricula as well as in local community centres, used the process of documentary video production in teaching the children skills of researching, writing and reporting, in order to reinforce their critical and analytical skills, as well as abilities of creative expression. The quality of such training is documented by over a hundred national and international awards (including the prestigious *Emmy*) for the young authors, as well as by the fact that some of their documentaries were shown on the leading national TV stations (PBS, ABC, NBC & CNN). Outside the schools, a very similar approach has been used by the Downtown Community Television Centre (DCTV) and Global Action Project (GAP), both located in the poor, ethnically mixed areas of lower Manhattan. In all mentioned projects, the videos covered a wide range of issues faced by children and youth in big cities: from drug abuse, family violence, gender and ethnic issues, stereotypes and discrimination, police brutality, unemployment, local social policies and programs, to education, video games, or roller skating. In the more recent phases, the projects often include communicating with children from other parts of the world (South America, Northern Ireland, Russia, Israel and Palestinian territories), in the form of joint documentaries or video-letters.

In Serbia, projects of this kind are still rare and mutually isolated. One such project was initiated in early 2002, by the Child Rights Centre, Belgrade, in cooperation with the Children's Cultural Centre in Belgrade. *Children's Media Centre* was founded in order to teach children media literacy, focussing on (a) critical reception of media messages and

(b) acquiring basic knowledge and skills necessary for competent and effective use of the media to promote visibility and adequate presentation of children. The participants of this project were interested children (adolescents aged 13 to 19) from Belgrade central and suburban areas, the majority being female high school students. Standard group size was 20 children. Following a month (three afternoons per week) of introductory seminar on the social and technological features of different media (press, radio, TV and internet), the children discussed the possible topics for research and media presentation. After choosing the topic, the children formed subgroups according to their preference for the medium of presentation. In this way, subgroups cooperated in the research part and were able to share collected data and discuss the findings. After that, each subgroup dealt with presentation of the results in the chosen medium. It is important to note that after the introductory seminar, adult workshop leaders served as mere facilitators of the process, answering children's questions concerning research methodology and technical aspects of media presentations. The adults never interfered with the brainstorming and decision making process by which the research topics and media presentations were chosen. The first topic children chose to deal with were, at that time newly established, school parliaments. The results had shown that the majority of children found the levels of participation in them rather questionable, rarely transcending the third rung of Hart's (1992) ladder. The media presentations of the findings were quite interesting as well as critical, so that their joint presentation in the Children's Cultural Centre was followed by offers from several prominent media (including the leading national daily newspaper - which is considered to be rather conservative – and a very popular Belgrade city TV station) to publicize them. After this initial success, the next generations of participants (two groups each year) investigated the following topics: attitudes of young people toward gay population, religion, foreigners and the EU; street art, graffiti, music subcultures, street CD and textbook vendors, street violence, children without parental care and street children. These research findings were often quoted in daily and weekly newspapers, and sometimes on local radio and TV stations. It should be noted that what these media focussed and commented on were the research findings, not the researchers ('look at these nice kids doing something nice and useful instead of doing something bad or useless'). As psychologists, we believe that it is this kind of feedback that plays a very important role in bringing about the change of attitude towards children, not only in adults but also in children themselves.

These projects, as well as other numerous participatory media education projects from all over the world (Philippines, Brazil, Canada, China, Austria, Sweden, Greece, Poland, Germany, United Kingdom, Hungary, Czech Republic, Japan, Singapore, Ghana, Burkina Faso, India, Tanzania, Australia – cf. von Feilitzen & Carlsson, 1999) reveal the significance of connecting education to participation: children's participation in the media helps to bridge the gap between acquiring media literacy and participation in the lives of their communities. Enabling the children to critically understand the functioning and the products of the media, such participatory education projects also help them to get acquainted with the life and problems of their communities, stimulate them to effectively use their knowledge and abilities, thus strengthening their self-confidence, as well as their readiness to act in the direction of improving their own status. From a psychological perspective, this approach to media education could be expected to produce improvement in three important developmental areas:

- *Decentration*

Establishing and developing democratic values and institutions in a society requires, as a minimum condition on the part of the individual, what some psychologists termed *decentration*. Decentration basically refers to the ability of representing another point of view, as well as of coordinating it with one's own - something that younger children are typically incapable of. Accordingly, pre-schoolers, but also younger elementary school children, are said to be *egocentric*. Outgrowing/overcoming egocentrism is thus one of the critical processes in an individual's intellectual and social development. Enabling the individual to represent what other people see, think and feel, and to understand that they can have different needs, interests and desires, decentration certainly represents an extremely important factor in all aspects of social life. Decentration allows children to understand different perspectives, to coordinate them in order to be able to cooperate with others during the joint tasks. Decentration provides the ground for being realistic in estimation of one's own capacities/limits, as well as capacities and limits of others, and also for being able to estimate one's own bet interest as well as the best interest of the whole group. Although it has been established that egocentrism is gradually overcome until the period of puberty and adolescence, i.e. that the child is first capable of taking into consideration the other person's perspective, then the perspective of several persons (multiple perspectives) and at finally (app between 12 and 15 years of age) the perspective of the whole group, there is one special kind of egocentrism that is typical for adolescence (Elkind, 1967), provoked by the growing ability of the adolescent to consider different perspectives. Adolescent are incapable of separating other people's preoccupations and interests from their own: they tend to think that each person thinks about the same things as they do and that what is important for them must be of interest for others as well. Elkind uses the term *imaginary audience* to explain the process by which adolescents think that they are the centre of other people attention: since the adolescent is preoccupied with his/her image and public self, he/she feels that these must be the others' main preoccupations as well.

Spontaneous outgrowing/overcoming of egocentrism (between 5 and 10 years age) is by no means sufficient for decentration to fully develop, i.e., to be integrated in the individual's intellectual and social functioning. Reappearance of egocentrism in adolescence illustrates the point that for this natural ability to be fully activated and used in both social and intellectual domain, adequate social stimulation/support is necessary. Participative media education provides opportunity for such social stimulation: by enabling the children to critically understand the functioning and the products of the media, by helping them to get acquainted with the life and problems of their communities, exposing them to different perspectives that might support their understanding of how one problem can look from different perspectives, by supporting cooperation between them and helping them to mutually experience their capacities/limits - such media education significantly supports decentration and critical attitude toward reality, that are the main features of responsible citizens in a democratic society.

- *Un-learning helplessness*

The notion of *learned helplessness* is used in psychology to explain the passive acceptance of all social conditions, without any attempt to do something to change them, even when the possibility of change exists. One of the most common arguments against the idea of child participation is that "young children are not interested in participation, so why impose those rights on them". This argument is reinforced through many

researches and practical examples that show failure of young people to participate, in spite of the given opportunities. When directly asked about their perspectives on participation, adolescents usually respond that they do not see themselves competent enough for decision making process (Brankovic, 1999) and they are willing to take responsibility for some minor decisions (going out, dress rules, friendships), but not for the decisions they consider as crucial for their future since they have long term implications (separation from parents, future career, life partner, political stance, joining different groups for protecting their interests, etc.). They think that they cannot make those decisions before formal maturity (18 years of age). Such results might lead to the conclusion that young people are not ready to make decisions (even when they are allowed to) and take responsibility for the long term and important decisions (Brankovic, 2000).

However, the argument that young people are not interested in participation, although reinforced through many researches, represent one social mechanism that is used (often unconsciously) among the members of the dominant group (adults) to justify discrimination of the marginalized group (children), usually known as "blaming the victim mechanism" (see Adams, Bell & Griffin, 2007). It starts with the *identification of the problem* ("Young people are not interested in participation") and then continues with *placing the cause of the problem into characteristics of the population affected by it* ("Young people are afraid of taking responsibility, they would like to have rights but without responsibility, they are immature, etc."). Blaming young people for the lack of participation neglects the fact that during the process of growing up young people did not have the experience of speaking out, expressing opinions that are listened to and respected by adults and of taking part in decision making processes. The reason why young people claim that they are not interested in participation and that they are too immature for decision making process is that they did not have a chance to experience genuine participation. They did not have the experience of being active agents in the process of change because there was no one to show them and expose them to real participative experience, since neither their parents, nor teachers or other important adults had that experience during their childhood (Vranješević, 2004; 2012). Lack of participative experiences is solid ground for development of learned helplessness and it takes a lot of social effort, reinforcement and positive experiences for the person to realize that his/her actions might produce changes and that are worth trying.

One way of un-learning helplessness is through media education: by actively involving children in the process, by giving them specific tools to deal with problems they find significant (not the problems that adults find interesting from what they see as the perspective of children), by providing them the possibility to see the outcomes of their actions and to realize that they can make a difference and produce change, media education help them feel competent and in control, as well as to perceive themselves as (pro)active agents. Through participatory media education projects, children/young people gain experience of being listened to and respected and have the opportunity to make their own perspectives on themselves and the world they live in visible. This is closely connected to the development in the third area: sense of responsibility, i.e. internal locus of control.

- *Shifting locus of control – from external to internal*

Internal locus of control is very often mentioned as one the crucial competences for involvement of children in decision making process (Hart, 1997; Lansdown, 2005; Mortier, 1998). Persons with internal locus of control perceive their own capacities as

causes of different types of behaviour (failures or successes), rather than assigning it to others, i.e. different external circumstances. The shift from external to internal locus of control occurs gradually during the process of socialization, by learning to take responsibility for one's own feelings, thoughts and actions. This is a very important feature that distinguishes between a mature and immature person when it comes to ability to take part in decision making process. Capacity for cooperation and making decisions depends on the capacity to accept responsibility for one's own actions. Internal locus of control is usually associated with characteristics like high self-esteem and proactive attitude. By giving children the opportunity to own the project in a way that they are responsible for choosing the topics, the research methods, the medium and the way of presentation, participative media education helps them develop and strengthen the internal locus of control. The Child Rights Centre project of participative media education in Serbia is a good example of progress in child participation in terms of who controls the process, since it moves from *offered* to *protagonic* participation: as a result of the initial project, NGO YTA (Youth takes the action) was established. YTA was very active in cooperation with 'adult' media and included new members who were interested to become a part of it.

5. Bridging the gap

The effect of participatory media education is twofold: on one hand it supports cognitive and social development, by fostering development of decentration and critical attitude toward reality, self-esteem, proactive approach, sense of one's own agency, thus changing *children's perceptions of themselves*; on the other hand, it also affects *the way adults perceive children*. These two effects are inseparable and mutually reinforcing, since the way children see themselves is under great influence of how adults see them. The effect of *self-fulfilling prophecies* or *Pygmalion effect* (Rosental & Jacobson, 1968) is well known in psychology and it refers to the way in which the expectations adults have from children (even when they are quite implicit and subtle) make children behave accordingly.

If participatory media education helps children become visible as active, capable agents with specific perspectives on things around them, it might change their traditional public image. By allowing an alternative image to become visible - that of an active, capable and responsible child - media education may become a powerful tool for challenging and gradually deconstructing not only the traditional image of the child, but also the underlying assumptions that are taken for granted. The resulting emergence of the new image of the child should form solid ground for changing the relevant policies in order to allow for improving the status of children in the society.

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Juveniles in Traffic Accidents – An Analysis of the Media in Serbia

PhD. Dragan Obradović[1]
High Court Judge in Valjevo, Serbia,
Assistant Professor
Faculty of Health, Legal and Business Studies
Singidunum University
Research fellow at the Institute of Criminological and Sociological Research

Abstract

Road traffic is increasingly more intense worldwide. With the increase in the quality of life in some countries, the volume of traffic has also increased. Consequently, the risks are increasing for all traffic participants, and especially for the vulnerable categories such as children and minors. The media can play a great role in increasing traffic safety awareness - all kinds of media outlets and on all levels in a wide variety of ways by pointing to specific problems, to black spots on the roads, the importance of the proper use of seat belts, the suitable use of mobile phones, and a number of other situations that can endanger the lives of traffic participants. Nowadays, the media are an integral part of almost every family through various forms of use, and therefore media outlets can contribute to the increased safety of all traffic participants, especially minors.

Key words: *crimes, juveniles, minors, traffic accidents, the media.*

1. Introduction

Throughout the world, juveniles are traffic participants on a daily basis and in the most diverse roles, as pedestrians, passengers, drivers of particular vehicles or different categories of means of transport. In the capacity of traffic participants, when minors breach regulations, it is most commonly a matter of a traffic violation. In fact, their roles are not given much thought as traffic participants until they are involved in traffic accidents in any of the given roles - as drivers or as the injured party (casualty). Traffic accidents are one of five most common causes of juvenile mortality in the world. The consequences of child mortality are unimaginable for any given society, in demographic, social, and economic terms.

In this paper, which is of a limited scope, we tried to present the extent to which minors or children appear as perpetrators of certain criminal offenses from the group against public transport safety, but also as casualties of traffic accidents in Serbia. Also, we wished to present how the media - printed or electronic – reports on traffic accidents involving minors, and to what extent privacy is respected, or in other words, the identity of the minors or casualties from this group of criminal offenses. This is due to the fact that in today's times it is impossible to disregard the influence of the media, especially on young people, children or minors who participate daily in traffic. The impact

[1] Contact: dr.gaga.obrad@gmail.com.

(positive - negative) is particularly noticeable when it concerns well-known public figures.

We are not making a claim that we can construct a comprehensive analysis in a paper with a limited scope, but the most important analyses can be carried out to some extent. We will also briefly look at the provisions of some applicable child-related regulations, under which the age category in focus are considered to be all persons under 18 years of age within the meaning of the provisions of the UN Convention on the Rights of the Child (hereinafter: UNCRC).([2]) When it concerns domestic regulations, these are the provisions of the Law on Juvenile Offenders and Criminal Protection of Juveniles (hereinafter: JL),[3] as well as the regulations regulating the media of importance for this paper.

2. A summary of the issue of juveniles in the criminal law in force

By adopting the JL, the Republic of Serbia has made an important step in harmonizing the national legislation with the UNCRC, as well as with other relevant European and international standards in the field of juvenile justice in conflict with the law, as well as children and minors who are crime victims.

According to the JL provisions, a juvenile is a person who at the time of committing the criminal offense was between the ages of 14 and 18 years old. There is a difference within this age range, and a minor is considered to be a person who reached 14 at the time of committing the criminal offense, but not the age of 16, while an older minor is a person who has reached 16 at the time of committing the criminal offense but was younger than 18.

JL excludes the possibility of pronouncing criminal sanctions against minors who at the time of committing the unlawful act foreseen in the law as a criminal offense were younger than 14. Other measures prescribed by the JL cannot be applied to this category of persons.

Minors do not appear often as perpetrators of criminal offenses from the public transport safety group. However, children and minors appear regularly as victims of criminal offenses against public transport safety.

3. Data on perpetrators against road traffic safety

Police officers are typically the first to arrive at a crime scene after a traffic accident, while public prosecutors do so less often. In the pre-investigative procedure, in accordance with the provisions of the Criminal Procedure Code[4] (hereinafter: CPC), appropriate evidence is collected and a decision is made whether to launch legal proceedings and which kind, misdemeanor or criminal. This is carried out most often

[2] Law on the ratification of the UN Convention on the Rights of the Child, Off. Gazette of the SFRY – International contracts, no. 15/90; Off. Gazette of the SRY – International Contracts, no. 4/96 and 2/97.

[3] Law on Juvenile Offenders and Criminal Protection of Juveniles (Off. Gazette of the RS, no. 85/05 started with its implementation on Jan. 1, 2006).

[4] Criminal Procedure Code, Off. Gazette of the Republic of Serbia, nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014.

against the driver, regardless of whether the perpetrator of the offense is an adult or a minor. Most often, these offenses are criminal offense of endangering road traffic from Art. 289 CC and a grave criminal offense against the safety of road traffic referred to in Art. 297, CC. Another reason for this view is the official data in continuity, both older and newer, whether this involves the basic or qualifying forms of one of these criminal acts in court practice.[5]

In regard to reports for criminal offenses against road traffic safety committed by minors in 2014, 70 criminal reports were filed in total on the territory of the Republic of Serbia, of which 61 for the criminal offense of endangering road traffic (in a basic or qualitative form – Art. 299 or 297, CC) and 9 criminal reports were submitted for the criminal offense of endangering traffic safety by dangerous acts and means (Art. 290, CC). After the preparatory procedure which was conducted in 40 cases, the public prosecutors submitted proposals to the panel for enforcing criminal sanctions against minors, and a total of 33 criminal sanctions were enforced, 31 for the criminal offense of endangering road traffic (in the basic or qualifying form – Art. 289 or 297, CC) and 2 criminal sanctions were enforced for the criminal act for endangering traffic by dangerous acts and means (Art. 290, CC).

The downward trend in the number of criminal charges filed for crimes from the group against road traffic safety committed by minors continued throughout 2016. In the territory of the Republic of Serbia, only 58 criminal reports were filed for certain crimes in this group.[6] Of that number, 56 were for the criminal offense of endangering road traffic (in the basic or qualifying form - Art. 289 or 297, CC), and only 2 criminal reports were filed for the criminal offense of endangering traffic by dangerous acts and means (Article 290, CC). After conducting a preparatory procedure in 18 cases, the competent public prosecutors submitted proposals to the panel for enforcing criminal sanctions against minors, but only for the criminal offense of endangering road traffic.

Whether the criminal offenders were minors or children who are victims of crimes committed by adult drivers, for years the media outlets have quoted the following as the most common causes of traffic accidents for both driver categories: breaking the speed limit (speeding); disregard of traffic regulations in terms of turning, rotating and moving, failure to keep a distance; driving under the influence of alcohol, and for certain categories of victims, a failure to wear a protective helmet, not wearing a seat belt, and

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[5] Statistics of the judiciary, adult offenders no. 194 dated July 1, 2010, Republic Institute for Statistics and Informatics of the Republic of Serbia for the period 2005-2009: of the total of 8,140 criminal reports filed for all criminal offenses in this group – 8,076 criminal reports referred to three criminal offenses - the threat to public transport in a basic or qualified form, endangering traffic by dangerous acts and means and not offering aid to injured persons in a traffic accident. Of a total of 6,552 indictments issued for all criminal offenses in this group, 6,502 indictments were related to these three offenses. Of a total of 6,035 convicted persons during 2009 for all criminal offenses in this group, 5,997 persons were convicted of these three crimes. Statement by the Statistical Office of the Republic of Serbia no. 192 dated July 15, 2015, Judicial Statistics: adult Criminal offenders in the Republic of Serbia, 2014: of 7,439 criminal charges filed for all criminal offenses in this group, 7,330 criminal charges related to the criminal offense of endangering public traffic safety in a basic or qualitative form. Report of the Republic Statistical Office no. 194 dated July 14, 2017, Judicial Statistics: perpetrators of criminal offenses in the Republic of Serbia, 2016: of the total of 7,805 criminal charges filed for all criminal offenses in this group, 7,691 criminal charges related to the criminal offense of endangering public traffic safety in a basic or qualitative form.

[6] *Bulletin: Minor criminal offenders in the Republic of Serbia in 2016 – Reports, accusations and indictments,* the Statistical Office of the Republic of Serbia, no. 630, 2017, p. 13.

not using child safety equipment.[7] In this respect, the situation has not changed significantly to date.

The low number of criminal offenses against road traffic safety carried out by minors is, in our opinion, one of the reasons why these crimes, unlike other offenses from various groups committed by minors, are not a subject of media attention.

4. Data on juvenile casualties of criminal offenses against road traffic safety

The situation regarding children, that is, minors as casualties of traffic accidents, is somewhat different.

In our country, the number of traffic accidents is decreasing. In the period up to 2010, on average, there were more than 60,000 traffic accidents annually in which 800 persons lost their lives, most of them aged 18 to 25, while children were the most vulnerable category and accounted for 10 percent of all traffic casualties. In the period 2006-2010, 151 children were killed in traffic in the Republic of Serbia, and as many as 9,044 were injured. As pedestrians, 62 children were killed and 3,647 children were injured.[8] However, in the 2010-2014 period, the number of children killed in traffic accidents was in a continuous decline (2010 – 25, 2011 – 20, 2012 – 16, 2013 – 11). In 2014, 10 children lost their lives in the roads and lanes of the Republic of Serbia in traffic accidents – the lowest number of deaths from the systematic following of traffic accident statistics.[9]

According to the recommendations of the World Health Organization, children are all persons aged up to 14 years, this being one of the most vulnerable categories of participants in traffic, primarily due to their limited psycho-physical abilities.[10]

The latest official data shows that in the period 2014-2016, 36 children were killed and another 4,575 children were injured in traffic accidents on the roads in the Republic of Serbia (2014-2016). Observed by the features of traffic participation, child passengers make up 58%, child pedestrians 36%, and child cyclists 6% of the total number of child mortalities. In the case of injured children, passengers make up 53%, pedestrians 34%, bikers 12%, and drivers of motor vehicles 1% of the total number of injured children (2014-2016).[11]

Bearing in mind the given data, it is clear that it is incomplete regarding the mortality of children in terms of age in accordance with the UNCRC, or that there is a lack of data on juvenile victims aged 14-18 years but there are other statistics which the Agency for Traffic Safety conducts in regard to casualties in the 15-30 age group.

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[7] Blic, June 22, 2009 godine, Panorama Blic, June 28, 2009.

[8] Agency for Traffic Safety, Bulletin 3-4, Topic no. 4: *Pedestrians, increased mortality, analyses, legal duties, appeals, advice, etc.* and topic no. 3: *Children in traffic*; downloaded from http://www.abs.gov.rs/doc/Bilten_No.3-4. on Oct. 24, 2012.

[9] Agency for Traffic Safety, *Statistical report on the state of traffic safety in the Republic of Serbia in 2014*, downloaded from http://www.abs.gov.rs/doc/, dated Jan. 5, 2016.

[10] *Statistical report on the state of traffic safety in the Republic of Serbia in 2016* dated Dec. 19, 2017; downloaded from http://www.abs.gov.rs/admin/upload/documents/20171219074756-statisticki_izvestaj_2016.pdf dated May 26, 2018.

[11] Agency for Traffic Safety, August 2017 Review, *Analysis of child mortality in the 2014-2016 period on the territory of the RS*, 2016.

However, such incomplete statistics are nevertheless important for the subject of this paper, because the media more often write about children as victims of traffic accidents than about juvenile perpetrators of criminal offenses against road traffic safety.

5. A summary of juveniles in certain valid media regulations

When it comes to minors and the possibility of endangering their development, it is important to mention the Law on Public Information and Media.[12]

For the purposes of this text, the media are construed in terms of Art. 29 of the Law on Public Information and Media: daily and periodical newspapers, news agency services, radio and TV programs and the electronic editions of these media, as well as independent electronic editions (editorial design websites or Internet portals), which are registered in the Media Register, in accordance with this Law. The provision of Art. 77 of the aforementioned Law regulates the Protection of Juveniles: "In order to protect the free development of the personality of minors, particular care must be taken that the content of the media and the manner of media distribution does no harm to the moral, intellectual, emotional or social development of the minor." The provisions of Art. 80, Para. 2 of this Law explicitly state the following: "The juvenile shall not identify him or herself with the information that may violate his or her rights or interests."

One of the by-laws in this field deserves special attention - the Rulebook on the Protection of Juvenile Rights in the Field of Media Services, which was adopted on the basis of the Law on Electronic Media.[13] This ordinance stipulates that a minor is a person younger than 18.

6. Media coverage of juvenile traffic accident participants

When it comes to juvenile participants in traffic accidents, we tried to determine, through media articles, how the media, either printed or electronic, reports on minors and protects their privacy, regardless of whether they appear as perpetrators of crimes or as victims.

We have noticed that the juvenile perpetrators of criminal offenses from the group against road traffic safety are practically not even mentioned in the media, because this is not a topic of interest to the media in contract to the violence that is being written about daily. Violence in the media means references in both the traditional media and in new media outlets such as the Internet, websites, blogs, mobile phones, social networking networks, and video games.[14]

In regard to juveniles as victims of crimes from the group against road traffic safety, the media refers to them much more frequently. Their deaths are reported, as well as the traffic accident-related injuries. However, it is important that the privacy of these categories of minors is for the most part protected by the media, their names or initials not revealed and their faces not shown, as occurs quite often in regards to

[12] The Law on Public Information and Media, Off. Gazette of the Republic of Serbia, nos. 83/2014, 58/2015, 12/2016 – authentic interpretation.

[13] Law on Electronic Media, Off. Gazette of the Republic of Serbia, nos. 83/2014, 6/2016.

[14] Glomazić, H, Pavićević, O., *Media and violence: violence in the media or the violent media*, Collection of the Institute for Criminal and Sociological Research, 2016, 3, pp. 77-93.

various forms of violence in which minors were the casualties. The media must take heed of the protection of the right to the privacy and dignity of minors, and it is the duty of the journalist to respect the code of behavior, as discussed in recent media articles.[15]

We draw attention to some intermittent headlines from the media which mention the initials of deceased minors – traffic accident casualties.[16]

Much more often, the media mentions the minors killed only by mentioning their age, the gender of the deceased and the circumstances under which they were killed.[17]

7. The role of the media in improving the safety of minors in traffic

In the last few decades, the international community has been paying special attention to establishing an effective protection of minors, especially considering the necessity of taking legislative and other measures to prevent all forms of sexual exploitation and abuse of children, as well as the need for their protection, taking into account that the best interests of the minor and the right of the minor for his or her opinion to be heard are the basic principles in the implementing, respect and protection of their rights.[18] We consider that juveniles who participate in various ways, as perpetrators or as victims of criminal offenses against road traffic safety are unjustly neglected in this regard.

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[15]https://www.bebac.com/vesti/deca-i-mediji-pravo-na-privatnost-deteta-se-mora-postovati?tema=aktuelno, *The privacy and dignity of a child must be protected, and the duty of the journalist is to repect the code of behavior*, April 27, 2018/Source: Dnevnik.rs.

[16]http://www.vesti-online.com/Vesti/Hronika/675478/Stravicna-nesreca-u-S-Palanci-Poginuli-tinejdzeri, Saturday, Nov. 18, 2017, A horrible accident in S. Palanka: Deceased teenagers: In a serious traffic accident that occurred on Saturday in the early morning, at around 4 am in Kralja Petra Prvog Street in Smederevska Palanka, two sixteen-year-olds, P. O. and M. Š., lost their lives. The ill-fated young men died on the spot.

http://www.kurir.rs/crna-hronika/2943103/uzasna-tragedija-kod-uba-vracali-se-sa-slave-pa-presli-u-suprotnu-traku-poginula-devojcica-7, A TERRIBLE TRAGEDY NEAR UB: They were returning from a slava celebration and they steered into the wrong lane, girl (7) killed, CRIME CHRONICLE NOV. 18, 2017: Dejan N., the father of the deceased N. N. (7), crashed with his Skoda into an Audi with 6 passengers, among which were 4 children; the daughter did not survive, and the other passengers sustained injuries. VALJEVO – 7-year-old N.N. from the village of Sovljak near Ub passed away yesterday afternoon at the University Children's Clinic in Tiršova Street in Belgrade due to serious injuries sustained in a traffic accident which occurred in the night between Thursday and Friday.

[17]http://pink.rs/crna-hronika/41044/saobracajna-nesreca-u-beogradu-kamion-udario-u-nadvoznjak-povreeno-petoro-dece, TRAFFIC ACCIDENT IN BELGRADE! Van crashes into an overpass. FIVE CHILDREN INJURED. In Dobropoljska Street in Belgrade, this morning around 8 o'clock, there was a traffic accident when a van transporting children with special needs crashed into an overpass. The emergency services reacted quickly and provided aid for the injured.

http://mondo.rs/a1101412/Info/Crna-Hronika/Nesreca-na-putu-Ljig-Preljina-poginulo-dete.html, Tragedy: Child dies! A child dies, and three persons injured in a traffic accident on the Ljig-Preljina freeway, Belgrade media reports, May 3, 2018: The accident happened around 5.30 pm when a car ran off the road and tipped over. Even though the emergency services reacted quickly, an underage passenger in the vehicle died after being taken to the Čačak hospital. The child was 12 years old, according to RTS.

http://mondo.rs/a1106982/Info/Crna-Hronika/Tramvaj-udario-motociklistu-u-Nemanjinoj-ulici.html, Minors sustain serious injuries in the center of Belgrade. Two minors sustained serious injuries when a tram crashed into a motorcyclist in Nemanjina Street in Belgrade, May 26, 2018.

[18] Stevanović, I., *Special protective measures of children in criminal proceedings*, Collection of the Institute for Criminal and Sociological Research, 2017, 3, pp. 77-93.

This is due to the fact that more than 8,500 drivers aged 15-24 years die in traffic accidents every year in only 30 OECD member states. In fact, the mortality rate of young drivers up to 25 years is twice as high as for older drivers. Young drivers, along with the danger they cause and by which they themselves are endangered, also put at risk the passengers in their vehicle as well as other participants in traffic.[19] In the meantime, overall activity of all competent authorities is necessary, above all the family in order to properly instruct children in traffic safety. In particular, the role of the media is very significant, which, in addition to the family and educational institutions, has or should have a very important role in the field of educating children and minors in order to increase their safety in traffic. This is valid for all media - printed, electronic, etc., on the national, regional and local levels!

The responsibility of the media could and should be taken up through various thematic annexes related to the education and upbringing of these categories of traffic participants, in cooperation with educational institutions, the Transport Safety Agency, the State Road Safety Coordination Body, or the local Transport Safety Councils in the territory of each municipality in the Republic of Serbia. In particular, peer education in traffic safety, which is currently absent, should be encouraged.[20]

In addition to this, the media have an extremely important role in changing the attitudes of young people, above all, in different segments of social life, even when it comes to traffic safety. After all, a certain mind-set is developed by the family during childhood, as well as by the environment, the media, education, followed by driving schools.[21]

One of the most important factors for increasing safety is the use of seatbelts in vehicles, not only in the front but also in the back seats. Celebrities in the areas of sports, culture, and politics can certainly contribute to encouraging the use of seat belts by all traffic participants, passengers in vehicles, especially children or minors. After all, it is still common today to hear that children or minors suffered injuries or death due to not using seat belts.

Therefore, the importance of celebrities raising awareness for increasing traffic safety is significant. After all, public figures are those who can positively or negatively affect the behavior of children and minors in traffic with their own examples.[22]

This is also corroborated by recent texts in electronic media that refer to not using a seat belt in the back seat.[23]

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[19] http://ec.europa.eu/transport/road_safety/pdf/statistics, Jan. 25, 2015.

[20] Madžovski, M., Savić, Đ., *The possibility of peer education in traffic safety*, Collection of papers from the Fourth International Conference, "The safety of traffic in the local community", 2015, pp. 407-415.

[21] Milanović, I., Ristić. I., Nešović, B,. The impact of education of youth on the increase of traffic safety, Collection of papers of the Tenth International Conference, "Traffic safety in the local community", 2015, 1, pp. 65-173.

[22] Živojinović, S., *The impact of celebrities highlighting the fact of an increased lack of safety of minors in traffic*. Collection of papers of the Tenth International Conference, "Traffic safety in the local community", 2015, pp. 175-183.

[23] http://www.telegraf.rs/vesti/hronika/2957368-stravicna-saobracajka-na-auto-putu-poginulo-dete-kada-je-automobil-naleteo-na-vozaca-koji-je-zbog-kvara-izasao-iz-kombija, May 10, 2018, "Horrible traffic accident on the highway: Child dies when a car crashed into a driver who left his van due to a mechanical breakdown." This morning, there was a horrible traffic accident on the Niš highway in the direction towards Belgrade in which a child died in a passenger vehicle which had previously run over a van driver who had stopped to check his broken-down vehicle. The driver of the van died on the spot from the force of the impact, as he was standing next to his vehicle. The child

8. Conclusion

Children are among the most vulnerable categories of traffic participants.

Since they participate in traffic on a daily basis in various roles, they are also participants in traffic accidents in the Republic of Serbia, as perpetrators of criminal acts (in a smaller number), and more often as the casualties in traffic accidents.

In addition to family and educational institutions, the media is a very important factor that influences the appropriate behavior of children in traffic, increases their safety, and consequently reduces the number of children killed in road traffic in the Republic of Serbia.

We have used specific examples to point out one of the major problems in road traffic safety when it comes to passengers sitting in the rear seats in vehicles and their obligation to use a seat belt in order to prevent horrible consequences, even the most dire. In this regard, much more cooperation is needed between all types of media outlets and all competent authorities, services and institutions in order to promote a positive influence through the media on the increase of traffic safety in general. This in particular refers to children as the most vulnerable category of traffic participants.

The number of children in the Republic of Serbia is small, and thus, even one child who dies in a traffic accident is an enormous loss.

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3. Agency for Traffic Safety, *Statistical report on the state of traffic safety in the Republic of Serbia in 2014*, downloaded from http://www.abs.gov.rs/doc/, dated Jan. 5, 2016;

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in the back seat of the Seat car also died. Both persons from the passenger car, the driver and the passenger, had their seat belts buckled. One of them sustained serious injuries, the other one sustained light injuries.

minors sustained serious injuries when a tram crashed into a motorcyclist in Nemanjina Street in Belgrade, May 26, 2018;

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18. Law on Public Information and Media, Off. Gazette of the Republic of Serbia, nos. 83/2014, 58/2015, 12/2016 – authentic interpretation;

19. Law on the ratification of the UN Convention on the Rights of the Child, Off. Gazette of the SFRY – International contracts, no. 15/90; Off. Gazette of the SRY – International Contracts, no. 4/96 and 2/97;

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Children as the targets for terrorists in cyber space

Katarina Jonev[1]
PhD candidate
Faculty of Security Studies
University of Belgrade
Republic of Serbia

Abstract

Modern ways of communication have enabled terrorists to successfully increase membership and their ranks without direct, physical contact. Internet is important tool which terrorist groups use to indirectly create an important psychological moment of provoking fear and insecurity through cyber space. Virtual or cyber space is perfect and very safe ground for various activities of terrorist groups, such are secret encrypted communication, file sharing, indoctrination and recruitment of vulnerable individuals, fund raising and promotions of their future actions and accomplishments spreading fear among people. Terrorist groups are using cyberspace to propagate propaganda, to place ideological, political, religious ideas, for mutual communication and organization of activities, planning attacks in the physical world, financing. Social networks such as Facebook, Twitter, Instagram, Telegrams have contributed to radicalization and recruitment, primarily of children and young people who accept the principles of terrorists and join their ranks.

Keywords: *Internet, terrorism, children, children's protection on the Internet, cyber terrorism, social media*

1. Introduction

Over the time, terrorism evolved into different forms. One of the most dangerous forms is cyber terrorism. There are many different motives for terrorists to develop cyber terrorist tactics as a weapon of fighting. Internet and computer networks are a powerful resource on which modern society relies. With different cyber space exploration, terrorist organizations have become more effective and unpredictable. The acts of cyber terrorism can be used as a tool in order to inflict damage, take away human lives, to expand fear and panic. Because cyber is an area without borders, attacks can come from any part of the world and they are not limited by physical boundaries.

Cyber terrorism, like any other form of terrorism, has become a global threat that could be a serious threat to the security of states and citizens. The inhumanity, brutality and cruelty, global action, the abuse of religious feelings and religious affiliation are just some of the features of modern terrorism. At the same time, the use of technological achievements is becoming more and more noticeable. Terrorist groups have adopted new strategies and developed new tactics of their struggles and attacks are unexpected, sudden, targets are public and civilian victims numerous.

[1] Contact: jonev.katarina@gmail.com.

The cyber space has provided many benefits in the functioning of the society, but also opened up space for new threats that are transnational and global in nature. The possibility that terrorists through the use of new technologies through the Internet could violate the sovereignty of the states and the functioning of society is becoming more and more real. The cyber attack carried out by well-trained terrorists could seriously disrupt the functioning of the attacked system, lead to damage, but also endanger the lives of people.

From cyber terrorism as an illegal international act, it is necessary to differentiate between the abuse of the Internet for terrorist purposes, such as propaganda, radicalization and recruitment of people around the world.

When it comes to the issue of children's protection on the Internet, there are many dangers, especially on the social networks. Communication with strangers and different forms of cyber violence that children suffer - from harassing messages of inappropriate content, insulting on a religious, racial, sexual basis, setting false information, groups on social networks that aim to insult... all these are problems. Violent and inappropriate content is placed on a large number of sites and on social media and certainly one of the most serious forms of endangering the safety of children is pedophilia, abuse for sexual purposes, the possibility of kidnapping and various blackouts that have consequences for the physical and mental health of children who have been attacked. There is an increase in the number of video games that have the ultimate goal of self-hurting children and depriving their own lives. Nowadays, children also became targets for different terroristic groups in cyber space. Terrorists have realized that the young generation is spending a huge amount of time online, after all, our children are growing up in the new IT era, so that is why they developed online strategies on social networks in order to attract them and gain support[2].

The most prominent terrorist organization, the Islamic State, recognized the importance of the Internet as a media. Since the outbreak of civil war in Syria and the creation of the Islamic state by a jihadist militant group in the territory of Syria and Iraq, the Internet is increasingly mentioned as one of the weapons in the hands of terrorists. Video footage of war crimes, killing, torture, hanging, burning, destruction of state and private property as well as cultural monuments flooded the "global network". Terrorists gathered around the ISIS propagate the world-wide crime as part of the fear-fearing strategy[3]. In parallel, they use social networking platforms such as Twitter, Facebook in order to recruit future jihadists.

2. Islamic state in the cyber space

The terrorist's presence on the Internet is not new. Over the past two decades, the cyber space became more than attractive to terrorists since it can protect their identity, their actions, the location of the potential cyber attack. They can send their messages and gain popularity over the globe. But one terrorist group made true revolution when it comes to influence on the Internet.

In the short period of time, the Islamic state attracted intense attention and caused the reaction of the international community for brutal actions, large fighting successes,

[2] Jonev, K, *Izloženost dece terorističkom sadržaju na Internetu,* Međunarodna Politika, Institut za međunarodnu politiku i privredu'', decembar 2017, p. 105.

[3] Awan, Imran, *Cyber-Extremism: Isis and the Power of Social Media*, Social Science and Public Police, Springer, March 2016, p. 140.

the establishment of structures of "power" in occupied territories, the proclamation of supranational "caliphate" which has state-like character, and the ability to mobilize a large number of fighters from the Muslim world and from all over the world. What also made Islamic state becoming noticeable is their activities in the cyber space. The use of virtual space by ISIS has helped the organization brand itself globally. The Internet and social networks were the main instrument for disseminating their ideology and political messages, as well as means of recruiting foreign volunteers and financing, and the control the flow of information from the battle areas.

In 2014, the leader of the Islamic State in that period, Abu Bakr al-Baghdadi declared "global jihad" and called on all Muslims to join the fights in Iraq or Syria or to support jihad at the "local level by using new ways of communication[4]''. The call was specifically focused on recruiting technically skilled individuals such as engineers and hackers. Through the influence of social media, the terrorist group has attracted a significant number of followers. Technically literate members have become part of the "cyber caliphate" or hacker extension of the Islamic state[5]. The ISIS has gained a reputation for its sophisticated use of various media and social media platforms that promoted violent jihad[6].

The term "cyber jihad" refers to ''the use of 21st century technological tools and cyberspace (the environment in which communication between computer networks occurs) in order to promote the notion of a violent jihad against those classified by its followers as enemies of Islam''[7]. Cyber jihad plays a key role in ISIS strategy. Currently, the cyber jihad concept refers mainly to the use of the most popular online social networks. The Islamic State effectively used the influence of social networks and the Internet as a global medium in order to promote its principles, its struggle and its ideals. With the active use of social networks, the terrorist group has managed to reach new sympathizers and fans around the globe.

The centrality of cyber jihad as a tool for recruitment, radicalization, and dissemination of propaganda makes the struggle against ISIS's use of cyberspace no less important than the physical engagement with its forces and the prevention of its geographic expansion.

Al-Furqan Institute for Public Relations Production and the "al-Athzam Agency for Media Production, al-Hayat (Life) Media Center, are main creators of ISIS's media and public promotions[8]. These agencies are dealing with contains such are videos, speeches, promo materials, texts, blogs, and distributing them on the social networks. Great deal of material about ISIS, including speeches and video clips has been translated into more than 10 languages.

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[4] Neumann, P., *The New Jihadism A Global Snapshot,* ICSR Department of War Studies King's College London, http://icsr.info/wp-content/uploads/2014/12/ICSR-REPORT-The-New-Jihadism-A-Global-Snapshot.pdf, pp. 2-26.

[5] Scott, John, Spaniel, Drew, *ICIT Briefing: The Anatomy of Cyber-Jihad June,* 2016 Washington D.C., http://icitech.org/event/the-anatomy-of-cyber-jihad-cyberspace-is-thenew- great-equalizer/.

[6] Gartenstein-Ross, Daveed, Barr, Nathaniel, *The Winner's Messaging Strategy of the Islamic State: Wikistrat Report | Wikistrat,* 2015. http://www.wikistrat.com/the-winner-messaging-strategy-of-the-islamic-state-wikistrat-report/.

[7] Hofman, A., Schweitzer, Y., *Cyber Jihad in the Service of the Islamic State (ISIS) Strategic Assessment* | Volume 18 | No. 1 | April 2015, pp. 71-71.

[8] Siboni, G., Cohen, D., Koren, T., *The Islamic State's Strategy in Cyberspace,* Military and Strategic Affairs | Volume 7 No. 1 March 2015, pp. 127-128.

Messaging applications such as Telegram, Viber, WhatsApp and social media, including Facebook, YouTube, Ask.fm and Twitter, were used for video and photo propaganda, among others. As soon as a new platform appears, it is occupied by the ISIS supporters, who often use one application to direct followers to another. The result was the expansion of social media and the spread of influence by the organization. The generation of online support was driven by inactive action, that is, only and exclusively providing support in cyberspace, but through such an impact, young people traveled to Syria and Iraq to join active action on the ground during the military conflict or committed terrorist acts in their home countries.

3. Children as the targets in cyber space

The Islamic State differs from other terrorist organizations in terms of transparency, especially when it comes to training, recruitment and indoctrination of children[9]. In the past, terrorist groups and similar armed formations recruited children by force, by kidnapping or blackmail. The success of the ISIS to persuade young people from all over the world to join the fight against the "unbeliever" shows impressive ability and PR machinery that in the long run generate long-term plans and survival strategies. By using the cyberspace, the Islamic State has found a way to create a historical precedent by creating special sites for recruiting, making groups and profiles on various social networks, sharing blogs and take part in discussions in different chat rooms, by publishing an online magazine and bulletins. These propaganda and used psychological methods were effective[10].

The Islamic State is weaponizing children. ISIS' use of child soldiers appears to be "a multi-layered, complex, dynamic, and emergent systematic practice wherein different players carry out pre-determined assignments and cooperate to achieve the terrorist organization's immediate and transgenerational objectives[11]''. In unprecedented way, the Islamic State has managed to assimilate a large number of children, young people and teenagers in its ranks not only from the war-torn regions of the Middle East, but from all around the world.

The recruiters' behaviours and techniques throughout created trust, friendship, and attachment, and ultimately make the potential recruit feel special. The distinction between fiction and reality can be quite problematic for children, especially when it comes to identifying propaganda content[12].

It is unclear what motivates children and youth to make such an extreme commitment to ISIS. However, the prolonged exposure to a culture of violence, ISIS'

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[9] Carter Centar (2017), *The Children in Daesh: 'Future Flag Bearers' of the 'Caliphate'* https://www.cartercenter.org/resources/pdfs/peace/conflict_resolution/countering-isis/children-in-daesh.pdf, pp. 3-6.

[10] Weimann G.(2014), "Social Media's Appeal to Terrorists," Insite Blog on Terrorism and Extremism, 2014, http://news.siteintelgroup.com/blog/index.php/entry/295-social-media's-appeal-to-terrorists.

[11] Almohammad, A., *ISIS Child Soldiers in Syria: The Structural and Predatory Recruitment, Enlistment, Pre-Training Indoctrination, Training, and Deployment,* ICCT Research paper February 2018 DOI: 10.19165/2018.1.14 ISSN: 2468-0656 https://icct.nl/wp-content/uploads/2018/02/ICCT-Almohammad-ISIS-Child-Soldiers-In-Syria-Feb2018.pdf.

[12] Pavlovic, Z., *Protection of privacy and dignity of children in media space,* Thematic conference proceedings of international significance, Institute of Criminological and Sociological Research, Palic, 2018, p. 93.

structural indoctrination campaign, and the increased probability of experiencing predatory forms of recruitment may influence or elicit such decisions.

Increasing evidences show that the goal of Islamic State is to, by intentionally indoctrinating, radicalizing, and recruiting young people, make a transgenerational "long game." The active indoctrination represents ''the weaponization of children and includes at least three lines of effort: intentional exposure to violence, active incorporation of the Islamic State narrative in educational materials, and Cubs of the Caliphate[13]''. It is important to consider ISIS' ambitions: children are viewed as the next generation of stronger, better fighters, fighters that will continue to fight in the name of Islam and in the name of caliphate. In order to achieve this transgenerational objective, the training to deployment time period has dramatically decreased. The shortening of this process also seems to stem, at least to some degree, from ISIS' increased adaptability and efficiency in training child soldiers.

Worldwide, research to give precise results on how accurate the number of children and youth from all parts of the world has left homes and joined the fighting in Syria after communicating with recruits through social platforms has not been carried out. We can only speculate about numbers. But the fact is this is a global problem and needs global attention and finding effective results in order to stop this trend.

4. Online recruiting and propaganda

Members of the Islamic State are the first extremist group to use the Internet and social networks as the most important part of the recruitment strategy that has come to an obvious echo across the globe[14]. This is precisely why the ISIS differs from other radical Islamic groups when it comes to the use of Internet. Their ability to use the Internet and social networks to present themselves in a way that can seem like an attractive option for many young people has never been practiced in such a successful way[15].

The children, youth, teenagers are most at risk. At the same time, they present the largest group of users of social media. Because of this, the Internet have become an important resource for the spread of terrorist propaganda, but also a way to get in touch with young people who would otherwise not have direct contact with the group. Weimann suggests that those who recruit for terrorist groups can use interactive Internet technology to search for individuals, primarily young people[16].

It can be assumed that the Internet and social media can play an active role in the process of violent radicalization, mainly through the dissemination of information and propaganda. Until recently, real, violent radicalization that seeks to be effective has been considered to involve more complex social-psychological processes and face-to-face communication with group members as well as other offline factors. The question arises as to whether this has changed with the advancement of technology?

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[13] McCue, C., Massengill, J., Milbrandt, D., Gaughan, J., Cumpston, M., *The Islamic State Long Game: A Tripartite Analysis of Youth Radicalization and Indoctrination*, CTC Sentinel 10, no. 8 (2017), pp. 21-26.

[14] Ristori Ch, ''Online Jihad: ISIS's Foreign Recruitment Strategies—Who, What, and How?"Advanced Seminar in Global Studies Carnegie Mellon University, 2016, p. 5, http://www.cmu.edu/hss/globalstudies/images/cristina-martin-79-400-paper-s16.pdf.

[15] *Ibidem*, p. 6.

[16] Weimann G. ''How Modern Terrorism Uses the Internet'', Washington, Dc: United States Institute of peace, 2004, p. 8.

Social networks like Facebook, Twitter, YouTube, Instagram, Telegrams have contributed to radicalization and recruitment, primarily young people. Modern ways of communication have enabled terrorists the ability to successfully increase membership and their ranks without direct, physical contact.

Some groups have made their own online platforms specifically for attracting children and young people, creating content that is popular and appealing to them. The content is reflected in specially designed propaganda material such as texts on blogs for young people, songs, books, photographs, as well as films, documentaries.

The profiles of young people joining the Islamic state are different and differ in their affiliation, religion, family heritage, age, social status, education[17].

How far propaganda machine goes is the fact that terrorist cyber manipulators use computer games to radicalize children and young people. Video games are a tactical strategy to target the generation that is "computer-wise, media-heavy and video games dependent[18]".

One of the earliest jihadist video games that attracted worldwide attention came in 2006, called ''Quest for Bush'' in which players fight against the Americans[19]. The game was created by the Islamic propaganda organization Global Islamic Media Front, close to Al Qaeda. Terrorists have developed games such as ''The Stone Thrower'', ''Ummah Defense I, II'','' Maze of Destiny'','' The Resistance''[20].

The Islamic State has exploited one of the most popular video game "Grand Theft Auto 5", or GTA 5 as an inspiration, and made clips of different lengths of embedded modifications. Game-related changes are that players as ISIS soldiers on the battlefield kill and shoot at US soldiers and attack convoys, with lots of explosions. One of the images says that "what's happening in the game, they (ISIS) work in real life, on the battlefield[21]". Videos are distributed via channel on social networks as well as on the Youtube channel and quickly become viral, ie accessible and visible to a large number of people.

Instead of activities on the dark net or dark web which is not accessible to everyone, ISIS has chosen to operate openly on the social media channels, including Youtube, Twitter, Facebook, and other less well-known social networks that appeal to a Western target audience and in Muslim communities in the West. ISIS is flooding social networks with especially savage and graphic materials of torture, mass execution, beheading, and crucifixion.

The use of the social networks serves a number of purposes, such as psychological warfare and creating a deterrent effect on both a specific target audience in the battle

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[17] Vidino L, Hughes S., *ISIS in America: from retweet to Raqqa*, Program on Extremisms, George Washington University, December 2015, p. 11.

[18] Hoffman B (2006), *The Use of the Internet by Islamic Extremists,* Testimony before the House Permanent Select Committee on Intelligence, RAND, www.rand.org/content/dam/rand/pubs/testimonies/2006/RAND_CT262-1.pdf.

[19] Vargas A. (2006), *Way Radical, Dude,* Washington Post, www.washingtonpost.com/wp-dyn/content/article/2006/10/08/AR2006100800931.html.

[20] Okaj M. (2012), *Computer Games and War on Terror,* Institute of Information and Media Studies University of Aarhus, Denmark.

[21] Clauson J. (2014) *INQUISITR*, *ISIS Uses 'Grand Theft Auto' Mock Up to Recruit and Boost Morale,* Sept. 19, 2014, www.inquisitr.com/1486558/isis-uses-grand-theft-auto-mock-up-to-recruit-and-boost-morale/.

zones and on Western public opinion, creating a presence and image of size in order to give the impression that the organization is larger than it actually is, disseminating ideology, obtaining financing, and calling for volunteers to join jihad.

One of the main goals of the use of the Internet by terrorists is the spread of propaganda in the form of multimedia communication and provides ideological or practical instruction, explanation, justification or promotion of terrorist activities. Propaganda contains virtual messages, presentations, magazines, discussions, audio and video materials. According to some research, operatives and supporters of the organization produce up to ''90,000 tweets every day, there was at least 46,000 independent Twitter accounts, with 200-500 of these accounts active all day, thereby helping to disseminate the organization's propaganda[22]''.

The propaganda machinery of the Islamic state on social networks made a real revolution in terms of terrorist groups and their "existence" on the Internet. Using the most popular social networks, they have attracted the attention of various target groups, as well as mass media, who place every message of terror on the public. However, when it comes to children and young people, active propaganda on social networks, the ISIS has created a myth, and the coming to the territory of Syria and Iraq and joining combat as a "one-in-one adventure".

The viral campaigns featuring beheading, crucifixions, burnings, and mass executions distributed through the various media are conducted with unprecedented brutality and cruelty. Moreover, research suggests that once the developmental trajectory has been influenced, there is very little that can be done to de-radicalize this group given current understanding of child development and behavior change. Therefore, primary prevention that disrupts the recruiting, radicalizing, and training pipeline is likely to offer the best outcomes[23].

Although their content is constantly removed from social media, the Islamic state remains very active online. In the first half of 2016, the social network Twitter has removed more than 200,000 accounts that had touch points with the group, Youtube removed several million videos, while Facebook has established a department with hundreds of people working on the removal of the content set by this terrorist group[24].

At the European Union level, the Europol Unit - the Europe Internet Referral Unit (IRU) was established. The IRU mission is to support EU member states in marking, referring and removing extremist content, in particular from the Islamic State and Al Qaeda. The unit has close cooperation with Internet service providers. The effectiveness of removing content from terrorists on the Internet is 91.4% and more than 11,000 messages related to extremist content on different social networks[25].

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[22] Berger J.M, Morgan J, "The ISIS Twitter Census: Defining and Describing the Population of ISIS Supporters on Twitter," Brookings Project on U.S. Relations with the Islamic World, Analysis Paper No. 20, March 2015, http://www.brookings.edu/~/media/research/files/papers/2015/03/isis-twitter-census-berger-morgan/isis_twitter_census_berger_morgan.pdf.

[23] Colleen McCue, Joseph T., Massengill, Dorothy Milbrandt, John Gaughan, and Meghan Cumpston, *The Islamic State Long Game: A Tripartite Analysis of Youth Radicalization and Indoctrination,* CTC Sentinel 10, no. 8 (2017), pp. 21-26.

[24] Scott J, Spaniel D., *ICIT Briefing: The Anatomy of Cyber-Jihad*, 2016, Washington D.C., pp. 6-8.

[25] Europol, 2016, https://www.europol.europa.eu/newsroom/news/europol-internet-referral-unit-one-year/.

The countries of Europe work on mutual cooperation, as well as in strengthening cooperation with the international community and all relevant actors in order to join efforts to prevent radicalization of youth and the fight against violence in all its forms. An increasing number of countries, through national action plans, plan and implement comprehensive, effective measures to prevent the radicalization of young people leading to violence.

One of the means of a successful fight against the Islamic state, and any other terrorist organization that is present on the Internet and social networks is certainly education. In the UNESCO recommendation in the fight against terrorist content on the Internet, as well as recruitment and indoctrination, the education system of the state, schools and professors, educators must be included much more.

5. Conclusion

Children are getting recruited in different forms – from direct contact, from propaganda on social media from which they get inspiration and even by playing computer games, which is more than worrying and extremely dangerous.

Popular social networks have contributed to radicalization and recruitment, primarily of young people. Modern ways of communication have enabled the ability for terrorist to successfully increase membership and without direct, physical contact. Some terroristic groups have made their own online platforms specifically for attracting children and young people, creating content that is popular and appealing to them. The content is reflected in specially designed propaganda material like texts on blogs for young people, songs, books, photographs, as well as films, documentaries.

The success of IS to persuade young people from all over the world to join the fight against "unbelievers" shows impressive ability and PR machinery that in the long run generate long-term plans and survival strategies. By using cyberspace, the Islamic State has found a way to create a historical precedent by creating special sites for recruitment, just by creating groups and profiles on various social networks, blogs and chat rooms, by publishing an online magazine and manuals. These propaganda and psychological methods have proven to be more then successful.

Successful and effective fight against terrorists must include action on the land, on the sea, from the air but also online. Cyber space allowed terrorist groups to spread fear and panic among society but what worries is their success and influence they gain among children and youth above the globe. Although there is no global research on how many children and teenagers went to territory of Syria and Iraq to join the fight, and about the number we can only speculate, what also represent big potential security problem is – how many children accepted the idea of jihad, got radicalized by themselves and what can they potentially do with this ''knowledge''. Should there be more cases that youth performed terrorist attacks in the cities by building a bomb and instructions they got on the internet, simply by downloading materials? Or if the ''big terrorist guy'' from Middle East send message that is time to make suicide attack on the crowded places?

In order to decrease the influence on the children of the criminals and terrorist groups online, it is must that international community, states and private sector, IT

companies work together. Eliminating, removing, deleting terrorist content and at the same time education children about cyber security and how to be safe online are first steps.

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Satisfying the Communication Needs of Elementary School Students from Vojvodina[1]

PhD. Dubravka Valić Nedeljković
Professor Faculty of Philosophy, Novi Sad
Serbia

Stefan Janjić
PhD candidate
Faculty of Philosophy, Novi Sad
Serbia

Abstract

The aim of the long-term project called "Children and Media", lasting for eight years now, is to notice the trends in the development of communication needs both in the public and private communication of elementary school students at the end of their early childhood (fourth grade, approximately 10 years old) and at the end of the elementary education (eighth grade, approximately 14 years old) in the cities of the Autonomous Province of Vojvodina in the Republic of Serbia. The basic instrument is a questionnaire that contains 35 questions distributed in four thematic groups (media, way of communication, informing on the Internet, ways to spend free time). The questions are semi-open or closed and, based on the answers, it can be concluded with high degree of certainty that children meet the communication needs. So far, more than 3,000 students have been interviewed in a total of 67 elementary schools from Vojvodina, and the survey was anonymous. The students have task to select one or more answers out of those offered, or to offer their own answers in the provided area. The results indicate that children and teenagers meet their information needs more often and more intensely with digital than traditional media, and that the field of interest for information in this population group is narrowed down to entertainment.

Keywords: *media literacy, elementary school students, communication needs, Vojvodina, media, internet*

1. Theoretical framework

New digital media technologies have already largely led to socio-educational changes, although it has been no more than a quarter of a century since they have

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become part of everyday life of the millennials and their parents. Therefore, those who, at the end of the twentieth century (1997), entered the virtual space-time are already parents today, whose descendants also spend a large part of their free time in cyberspace as "digital natives", which "are used to receiving information really fast. They like to parallel process and multi-task. They prefer their graphics before their text rather than the opposite. They prefer random access (like hypertext). They function best when networked. They thrive on instant gratification and frequent rewards. They prefer games to 'serious' work" (Prensky 2001: 2).

Understanding their communication needs and the way in which they receive and send information in the private sphere (family, friends), as well the public one (school, extracurricular activities) can greatly help in creating modern, appropriate to their needs, curriculums at all levels of education, from pre-school to higher education.

The new communication culture – cyberculture – has been marked by still unexplored opportunities provided by digitization. Conversion of consumers (all ages) from the analog world to prosumers (millennials and rarely their parents) in digital space-time is a new way of meeting communication needs unknown to the world of traditional media. From the passive towards the active use of media, historically, there has been very little time in which today we have parallel worlds of digital natives (millennials, the so-called Z generation), digital migrants (parents of millennials) and analogue consumers (elderly members of the family), where the first ones use digital media (primarily social networks and video games) and analogue (most often television), and the last ones almost exclusively meet their communication needs by watching television and reading printed newspapers out of habit.

In recent decades, the world has paid great attention to research on how children use the media. It was noticed that uncritical media consumption in the long run affects not only the psychophysical development of children, but also the cognitive development, the formation of their opinion and attitudes about the world in which they live. Only the most basic review of the available literature, which we recommend to the academic community, indicates the field of interest of the scientific public at the beginning of the third millennium when this topic is at question. Television is still a favorite form of children's media around the world, so Dafna Lemisch (2008) offered to the expert and scientific auditorium an outstanding list of relevant papers dealing with children's attitude towards television. Katalin Lystik (2010) dealt with global television for children, and Michael Z. Newman (2010) with new digital media and already a historical series for children "Sesame Street" that changed the perspective of television production for youth. Bill Oskerby (2004) questioned the issue of youth media in the context of the third millennium. We also refer to an outstanding thematic collection of papers devoted to children, young people and media from various aspects of media use by Strasburger C. Victor, Barbara J. Wilson, Amy B. Jordan (2009). Valkenburg, P. M., and Van der Voort, T.H.A., were looking into positive influence of television on creativity. (1994). Mary Jane Kehily focused on the crisis of childhood and the influence of the media. The Internet, social networks and new media have been the focus of many authors since the beginning of the third millennium (Elias, Nelly and Dafna Lemish 2009). At the end of this reduced list pointing to different research areas that fall into the scientific field devoted to children and the media, it is worth mentioning that, precisely because of the results that the researchers achieved, the first serious work on the necessity of the media literacy of children emerged in the early nineties of the twentieth century (Glashoff 1992).

There is not much research in Serbian scientific literature that deals with children and media from different perspectives. We can highlight a few very relevant authors: from a communication viewpoint of children and the media, more precisely from the viewpoint of the presentation of children in the media, we have insight from Nada Korac (1992, 2000, 2002), on children and the advertising of products from Dejan Prnjat, the role of media in the development and fostering of creativity of young people from Vrhovac Pantovic (1998), realization of communication needs of children from Dubravka Valic Nedeljkovic (2001a, 2011b, 2012, 2013a, 2013 b, 2017), the influence of media display of violence on children from Ognjen Radovic. The *Code for Media Workers in Reporting on Children and for Children* was prepared by Prvoslav Plavsic in cooperation with the Friends of Children Association in 1993. Unfortunately, this rulebook did not come to life within the editorial offices as a set of general binding ethical behavior rules for children reporting and content creation for this target group.

2. Goal

The goal of this longitudinal study is primarily continuous monitoring of the development of communication needs of students in Vojvodina (fourth and eighth grade) in the long term (for now, eight years) to the find out the extent to which new media technologies contribute to the socio-educational changes. The aim is also to enable students to master the entire process of media research from the questionnaire preparation, through questioning, data entry into the database, data analysis and writing of scientific research papers, which is also part of functional literacy. The aim of the research is to offer results that will be the basis for advocacy to civil society organizations (such as Novi Sad School of Journalism) and representatives of scientific and professional public for pressure on decision-makers to introduce media literacy as part of the functional literacy in the new digital age. The aim of this very paper is to present research data for 2017 and to put its interpretation into a wider context of public advocacy for introducing media literacy into the educational system in Serbia.

3. Method and corpus

A long-term research on ways of meeting the communication needs of children from Vojvodina, conducted by students of the Department of Media Studies at the Faculty of Philosophy of the University of Novi Sad since 2010, within the elective course *Children and the Media* under the mentorship of prof. PhD Dubravka Valic Nedeljkovic, is unique in its scope, length and continuity in the territory of the Western Balkans.

The research is based on a questionnaire that is conducted by students of the Department of Media Studies with fourth graders and eighth graders in various elementary schools in Vojvodina.

The results of the research are a good basis for understanding the way children collect and send information during the time they spend at school and within their free time, that is, in private and public communication with peers, family and the wider environment, but also as a basis for developing a new strategy in education, i.e. new

media strategy that is planned for 2019. Just a reminder that for the first time in the *Strategy for the Development of the Public Information System in Serbia until 2016* and the *Action Plan*, our practice clearly identifies the need for media literacy of children, teaching staff, media professionals and citizens. Projects of the Novi Sad School of Journalism (NNS) are the basis for achieving this goal.

The questionnaire was identical for every research year, as well as 2017, whose results are presented in this paper. It contains 35 questions distributed into four thematic groups (the media they use, the way of communication, entertainment, spending their free time). Two types of answers were offered:

(a) Closed (select one of the offered options).

Example: How often do you watch TV? Never/rarely, sometimes, often, no answer.

(b) Open

Example: What is your favorite TV channel: _____.

Students have individually entered the data into a common database (online interface for entering data into a common database, an online interface for result searching, an online interface for displaying results), created by the IT team from the Media Studies department for this research. The database contains data for the last six years that students used to while working on their scientific research papers.

The total corpus in the last five years consists of more than 70 primary schools in Vojvodina, 2870 students, of which 1445 were girls and 1425 boys; 1314 eighth graders and 1556 fourth graders. The corpus for 2017 is 708 subjects, out of which 356 are fourth grade students, and 352 are eighth grade students. The surveys were conducted in November and December of 2017 in elementary schools in Novi Sad, Backa Palanka, Becej, Begec, Beska, Kula, Sremska Kamenica, Sremski Karlovci, Srpski Miletic, Turija, Vrbas and Zrenjanin.

The target group (10 and 14 years old) has been selected so that it is cognitively fully capable of understanding media messages and at its own discretion to select the content and the way in which it will be consumed. At the same time, it is also the time of childhood independence building because the end of the early childhood ends and teen age starts (Piaget, 1977).

4. Hypotheses

Within this research we will set up two starting hypotheses.

h1: Children and teenagers meet their information needs more often and more intensely with digital than traditional media.

h2: The field of interest for information is narrowed down to entertainment.

5. Results

When we take into account the differences in media habits of children in the fourth and eighth grade, we must bear in mind several factors: (1) younger children are under the strictest control of their parents, which is reflected in both the control of their spending of free time and access to money; (2) younger children are not accustomed to long texts and feature-length audiovisual content; (3) children's interest, according to

their age, are different at the threshold of the teenage age and at the beginning of the adolescent age.

The results of the questionnaire show that the newspaper attracts the attention of a small number of subjects. Almost 63% of students said that they never read them or read them rarely, and only 8.9% chose answer "often". The causes of such results require a deeper analysis, but it can be assumed that children follow the general trend according to which print media is becoming less popular, in comparison to new, electronic ones.

Unlike digital content that is provided free of charge (chat applications, social networks, content on YouTube) or paid within a larger package (digital television), the newspapers are relatively more expensive and are not "at our fingertips". In addition, there is also a question of quality of the youth media in Serbia, since among the ten newspapers that most subjects usually list as favorites, only four were intended for children.

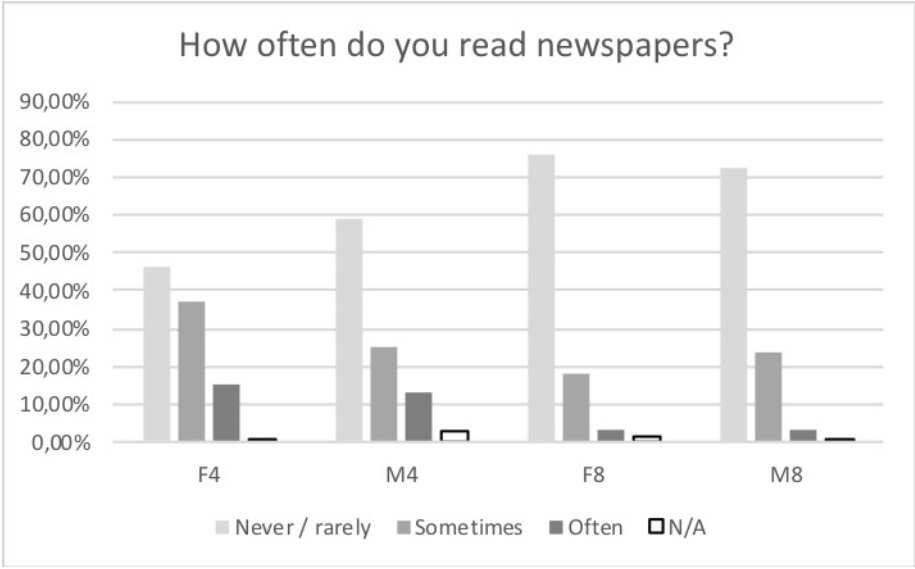

Chart 1. The letter indicates the gender; the number indicates the grade.

Judging by the results, the most read newspaper is "Mali Zabavnik" (109 subjects say it is their favorite), which is a biweekly magazine who has children aged six to twelve as its target group. Followed by daily newspapers of the tabloid type “Blic” (104) and “Kurir” (31), teen magazines "Hey" (27) and "Bravo" (23), infotainment weekly magazine with a long tradition "Zabavnik" (23), tabloids "Vecernje novosti" (21), "Informer" (20) and “Alo" (17), and in the 10th place is the regional daily magazine “Dnevnik” (15).

If we observe only fourth graders, out of 356 subjects, 100 of them read "Mali zabavnik", so that would make the next most popular newspaper - the daily “Blic” magazine, have only a third of that (33). If we observe only eighth graders, 352 subjects confirm that the tabloids are the most interesting ones - in the first place was "Blic" (71), and in the second one "Kurir" (26). The most popular teenage newspaper is "Hey", but even that one had only 5,7% of subjects reading it.

Particularly worrying is the fact that a large number of children read tabloids that violate professional standards daily ("Informer", "Alo", "Blic"). According to the Press Council, as well as according to research by the "Fake News Tragač" (www.fakenews.rs), website for the detection of fake news in Serbia, these media are wide spreading disinformation and hate speech on a daily basis, but sensational content and extremely low prices make them very popular. It can be assumed that children in this case adjust to the media habits of their parents, and read the newspapers they buy every day.

Subjects are more inclined to radio than the press - the radio program is often listened to by 29% of the subjects, while a third has never listened to it or listened to it rarely. However, while in printed media we can notice some thematic and qualitative diversity, the image is quite uniform in results for radio stations, indicating that children are almost exclusively listening to music radio stations. Channels devoted to speech programs, cultural and educational content were selected by less than 20 subjects, which is especially discouraging if we take into account public media services that invest in resources for the production of children's and youth programs, while Radio-Television of Vojvodina even launched an online youth radio called Oradio in 2015. Viewed separately, radio stations are more likely to be listened to by fourth graders: 41% of younger subjects say that they frequently listen to radio, while only 17% of students in the eighth grade gave the same answer.

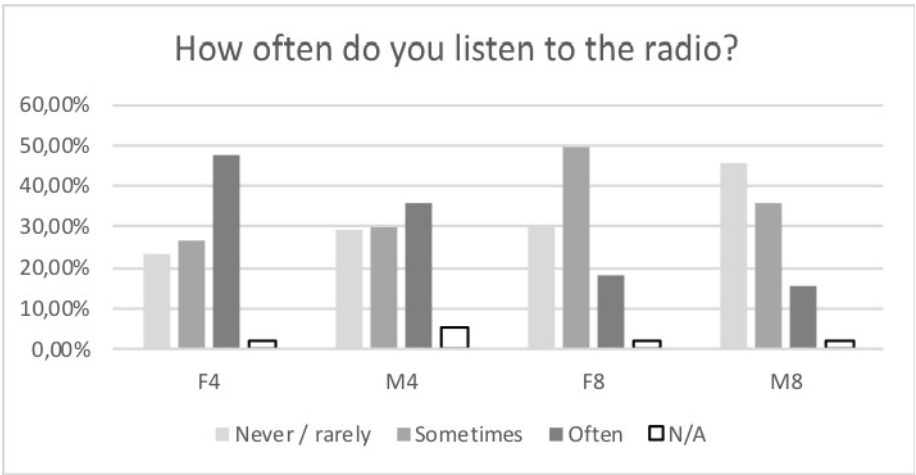

Chart 2. The letter indicates the gender; the number indicates the grade.

Although traditional television today has ubiquitous competition on various digital platforms, it remains popular among the younger population. Less than 6% of subjects state that they do not watch TV or rarely watch, and the answer "often" appears in slightly less than two thirds of cases (63%).

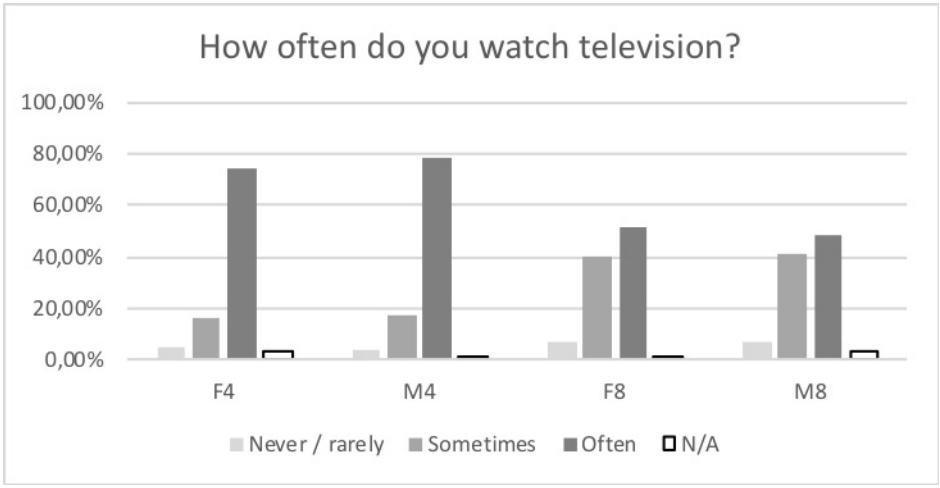

Chart 3. The letter indicates the gender; the number indicates the grade.

Overall, the most popular channels according to subjects' answers are Nickelodeon's children's channel (255 students listed it as their favorite), followed by two commercial television channels with mostly entertaining content "Prva" (117) and "O2" (61), sports channel "Sport Club" 46), TV Pink (37), whose program is largely based on reality shows, and only then the public service Radio-Television of Serbia (36). The list of ten most frequently mentioned TV stations is rounded off by another sports channel "Arena Sport" (30), a channel for children "Minimax" (29) and two satellite television channels - "Discovery" (24) and "Fox" (21). Again, same as in the case of newspapers, only two or three out of these ten media are intended for children and teenagers. Popular commercial stations, and especially Pink, based their content on controversial reality shows that include content which can harm the spiritual and mental development of the child. It is broadcasted late at night, or even throughout the day. Observed separately, students in the fourth grade most often watch "Nickelodeon" (212), and far behind are the commercial stations such as “O2” (29) and “Prva” (26). Eighth graders, who rarely watch television, are likely to replace it with video-content from other digital platforms, listed "Prva" (88), "Nickelodeon" (43) and "O2" (35) as their favorite channels.

A special segment of the analysis is dedicated to the use of social networks and applications for communication. Although the minimum age for registration to these networks is 13 years old (for WhatsApp 16, and for a YouTube channel as much as 18), the results show that fourth graders already have set up accounts on those sites.

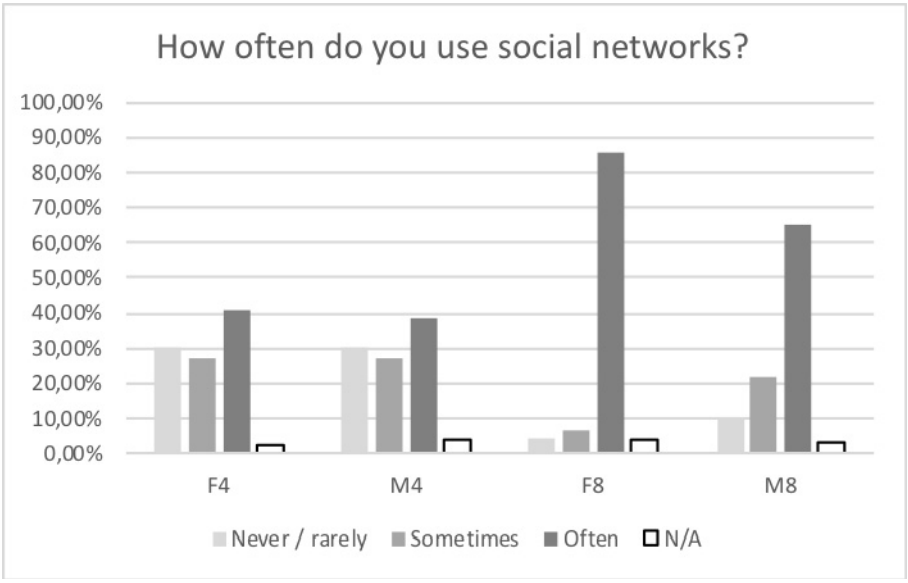

Chart 4. The letter indicates the gender; the number indicates the grade.

In total, 18% of subjects state that they rarely or never visit social networks, but if we focus only on students of the eighth grade, this percentage drops to 6.8%. Until just a few years ago, Facebook was unbeatable in the social networking market, the results of this study show that Instagram is far more interesting to children - it is used by 371 subjects and Facebook by only 102. Twitter, Tumblr and Myspace were selected by less than ten subjects, and among applications for communication, Viber, Facebook Messenger and WhatsApp are most commonly used. Observed individually, despite the age limit, a third of fourth graders and 3/4 of eighth graders have Instagram accounts. Facebook, as the second most popular social network, attracts 9% of students in the fourth and 20% of students in the eighth grade.

YouTube is often visited by as many as 82% of the subjects, with eight graders having a slight advantage, and where less than 2% of the subjects state that they never visit this website or visit it rarely. If we look at the type of channels most frequently visited by children, the most popular channels are musical (listed by 290 of them), then vlogs (232), gaming channels (94), and at the fourth place are educational ones (56). This information tells us to ask ourselves how often do children use the Internet to prepare their homework. That the Internet is primarily used for entertainment is confirmed by the fact that less than ten percent of subjects (9.2%) use the network for learning and homework. The most common online education resources for students in the fourth grade are YouTube (59) and Wikipedia (57), while for the eight grade students we got the same websites, only in the reverse order - Wikipedia (107) and YouTube (29).

6. Conclusion

As "digital natives", children feel more free and more natural in the digital world than in the world of traditional media. This is also reflected in the results of this

research, according to which, print media among children are far less popular than the Internet and television. Adapted to multimedia content, children can perceive newspapers as an anachronistic medium - more readily available and more expensive than digital content, which, in addition, has very limited feedback capabilities. The "letters to the editor" from children and teen magazines can not in any way compete with the speed of communication on the Internet, where messages and comments are sent within seconds. At the same time, children as prosumers want to participate in content creation. Inclusion is one of the basic preconditions of interest for certain media content, so it is therefore quite clear why YouTube vlogs are far more popular than newspapers and radio stations.

At the beginning of the paper, two hypotheses have been made and both could be considered confirmed. The first proposes that children and teenagers meet their information needs more often and more intensely with digital than traditional media, while the second one proposes that the field of interest for information in this population group is narrowed down to entertainment content. Indeed, if we look at the media that the subjects state as their favorite, we can see that there are very few of them to whom children and young people are the primary target group. It can be assumed that students follow the media habits of their parents, so they read newspapers purchased by their fathers or mothers, and watch television channels that were chosen by older people. Such trends can be considered negative for two reasons:

1) Children consume contents that are unsuitable for their age, and in a large number of cases they can be harmful. This particularly applies to tabloids in which fake news and disinformation spread every day, with unhindered discrimination against vulnerable groups and including hate speech. On the other hand, popular reality shows are broadcast throughout the day on national television stations, with uninterrupted transmission of curses, physical conflicts, sex scenes and other vulgarities. Since the Electronic Media Regulatory Authority does not sanction this type of violation of the Law on Public Information and Media (2014), the parents have to be their children's "gatekeepers" and influence the selection of content.

2) Quality media content remains hidden because they are difficult to access, expensive or insufficiently interesting. Public services are investing heavily in content production for children and teenagers, but only a negligible number of members of this target group states that they follow this type of content. A positive exception is the popularity of the byweekly "Mali Zabavnik" magazine, which is mainly read by younger students. The older ones, after they outgrow the "Mali Zabavnik", do not search for some kind of high-quality alternative, but use media with trivial content. Since with younger subjects, the parental control, when there is one, of their free time is more strict, the media that children are spending their free time on is of much better quality.

Considering the historical, socio-political and cultural context in which young people in Serbia are growing up, burdened by the legacy of the '90s, as well as post-transitional everyday life, media literacy is a necessary condition for the development of their identities through the overcoming of the methodology of critical thinking towards all the contents that surround them on a daily basis, whether they come from school, after-school activities, peer groups, families, media spheres, and entertainment world.

In the public advocacy campaign for the introduction of media literacy in the educational process at all levels as well as in the implementation of seminars for educators Media literacy has been especially engaged in the last ten years by the NSSJ

association who uses research data from the mentioned project of the Media Studies Department of the Faculty of Philosophy in Novi Sad as the basis for acting within a complex media literacy campaign in Serbia and the region.

At the same time, decision makers intensified their activities in 2017 contributing to public advocacy and pilot projects for the introduction of media literacy in secondary schools in Serbia. It should be noted that NSSJ is the leading Think Tank Organization in the Western Balkans region, which, besides mentioned, has other, different project activities that focus on media literacy. Of course, this is not enough: we believe that the cooperation of various organizations in the field of governmental and non-governmental sector in the implementation of media literacy at all levels in the educational system of Serbia should be much more extensive and tighter because it is the only effective model for implementing this type of functional literacy.

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Child's Right to privacy, the Best Interest of the Child and the Media

PhD. Ivana Stevanović
Senior Research Fellow
Institute of Criminological and Sociological Research, Belgrade
Serbia

Abstract

In this paper, the author analyses the media normative framework in the Republic of Serbia relevant for the protection of child's privacy and dignity in the context of child's right to privacy in the media space. The author insist on the standpoint that the interest of the child to be protected, including child's right to privacy, is above all other interests and takes precedence over the public interest to receive information that includes personally identifiable information about a child and his/her family, which could damage his/her dignity and psychological integrity.

The paper is also focused on presenting some relevant data from the study: "Media Reporting on Child Labour in the Republic of Serbia"[1]. The selection of keywords and categories for the quantitative and qualitative content analysis of media reports covers the period from 1 October 2015 to 30 September 2016. It was carried out in cooperation with Kliping, a media monitoring and analysis agency in Belgrade. In the analysed period, the mentioned agency's archive contained 703,438 articles from the print media, 223,408 from Internet portals and 146,996 television reports.

Key words: *child, right to privacy, media, research*

1. What the media has to keep in mind when reporting about children: introductory remarks

The primary role of the media is presenting media content through video, photos, audio and text that transmit the editorial design of information, ideas and opinions, as well as other content intended for public dissemination to an unspecified number of users. This information should be placed in the way that applies the rules of the journalistic profession with full respect for the rights of citizens to be informed accurately, fully and in a timely manner about matters of public concern. The development of the new media has largely changed the traditional unidirectional placement of information. The traditional media (TV, radio and print) have experienced radical changes: they have introduced online editions, and also developed a two-way

[1] *Media Reporting on Child Labour in the Republic of Serbia*, unpublished analysis - the study was conducted by researching within the period from 1 October 2015 to 30 September 2016. The funding of this study was provided by the United States Department of Labour (Country Level Engagement and Assistance to Reduce Child Labour [CLEAR] Project) and International Labour Organization (ILO). The author of this paper participated in the study with suggestions and comments and has influenced the formulation of conclusions that observe the principle of professional journalism and are based on respecting the rights of children, their integrity and dignity.

communication with their audience through social networks. On the other hand, citizens have not only become an active factor of public communication, but social networks have also made it possible for every individual to become a "medium" (expressing personal views on social networks, blogging, creating photo and video content and publishing on Instagram, YouTube, etc.). Communication has become much faster, but its control has been significantly disabled.[2]

Bearing in mind the interest of the child, the key question regarding the role of the media is their impact on public opinion, namely, on those who make decisions about children – parents, adults who directly deal with children, decision-makers and institutions. The formulation and realisation of the state policy towards children is usually carried out in consultation with experts. However, priority setting and the way in which children and even the phenomenon of child labour are put on a state's social and political agenda depend on public opinion, which is largely formed under the influence of the media. Therefore, the importance of the role of the media in forming public opinion and their influence on setting social priorities, including the ones related to the issue of child labour, is extremely large. In relation to that, Dale Kunkel and Stacy Smith emphasise: "The way one state conceptualises childhood, how it perceives or stereotypes the behaviour of young people, how it treats its children – in terms of laws that should protect them and the policies that should favour them – depend on how children are seen by its citizens. All this is certainly influenced by the knowledge that people have about children, and one of the main sources of such information is the media"[3]. Protection of children from child labour should be conducted within a integrated system of protection from abuse, neglect and exploitation of children in the Republic of Serbia.[4] But, the normative framework in Serbia is not familiar with a uniform definition of child labour as abuse and exploitation. The worst forms of child labour are incriminated by specific offences contained in the Criminal Code,[5] such as: neglect and abuse of minors, solicitation of prostitution, display of pornographic material and exploitation of minors for pornography, exploitation of computer networks or other means of communication to commit offences against the sexual freedom of a juvenile, trafficking in human beings, etc. The latest amendments to criminal legislation for the first time contain a clear definition of the concept of abuse of children in pornography (child pornography).

The only explicit provision of the Family Law[6] that explicitly prohibits child labour is contained in the following formulation: "If a parent exploits the child by forcing him/her to excessive work, or work that jeopardises the moral, health or education of the child, or work that is prohibited by law", this can be defined as an abuse of rights or

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[2] Stevanović, I., *The Right to Privacy of Children and Media in the Republic of Serbia (in the context of the protection of children labour abuse and exploitation)* in: Pavlović, Z. (ed.), *Freedom, Security: the Right to Privacy*, Novi Sad: Provincial Protector of Citizens - Ombudsman & Institute of Criminological and Sociological Research, 2017, p. 270.

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

[6] Family Law, *Official Gazette of the Republic of Serbia*, No. 18/2005, 72/2011, and other law 6/2015.

hard negligence of duties from the scope of parental rights and could be the basis for the deprivation of parental rights.

The duty of the media is to inform the general public fully, accurately and in a timely manner. However, the interest of the child to be protected, including the right to privacy, is above all other interests and takes precedence over the public interest to receive information[7] that includes personally identifiable information about a child and his/her family, which could damage his/her dignity and psychological integrity.[8] This is a rather disputable issue because the documents pertaining to this matter are not mutually harmonised, which further complicates their implementation in practice. For instance, the *Code of Journalists of Serbia* defines the professional and ethical standards of journalists. In accordance with the Code, the media are bound to place the interest of the public to receive full, timely and truthful information above all other interests. However, the *Law on Public Information and Media* determines that the interest of a minor that his/her privacy is protected outweighs the public interest to receive the information. The problem arises in the situations where parents have already approved the published content, i.e. have already given their consent, which endangers the right to privacy of the child. The presentation of children and minors in electronic media in a way that may jeopardize the best interest of the child, despite the consent of the parent or guardian, does not exclude the responsibility of the media services provider for published content in the context of media ethics.[9]

In this paper, the focus is also on the presentation of some relevant data of the study: "Media Reporting on Child Labour in the Republic of Serbia." The selection of the reports has been made on the basis of the available articles and texts archived by the Kliping agency. In the analysed period, the aforementioned agency's archive contained 703,438 articles from the print media, 223,408 from Internet portals and 146,996 television reports. The main intention of this study was to determine the extent to which the Serbian media report on child labour abuse, taking into account the importance of the role of media in shaping public opinion on children and the occurrence of child labour, as well as the impact of such public opinion on attitudes, decisions and procedures undertaken with regard to children. In order to recognise the phenomenon, as well as to improve the practices in reporting about it, it is necessary to educate editors and journalists to fully respect the parameters of professional journalism and not to threaten the dignity and integrity of the child.

2. Public information, protection of privacy of a child and the media

2.1. The National Legal Framework

The media and their work are defined by a series of relevant laws, but also by the codes of ethics and practice, as well as by the documents adopted by the REM, have a

[7] Law on ratification of the UN Convention on the Rights of the Child, *Official Gazette of the Socialist Federative Republic of Yugoslavia – International Treaties No. 4/96 and 2/97.*

[8] Vujić, N., *Prava dece na privatnost, najbolji interes deteta i porodični odnosi (evropsko pravo i šta mediji moraju da imaju u vidu kada izveštavaju o deci,* in Stevanović, I., Pavićević, O. (ed.), *Judiciary and Media*, Belgrade: Institute of Criminological and Sociological Research, 2016, p. 379.

[9] Pavlović, Z., *Protection of Privacy and Dignity of a Children in Media Space*, Stevanović, I. (ed.), *Child Friendly Justice*, Belgrade: Institute of Criminological and Sociological Research, 2018, pp. 95-97.

very important role in the regulation if this issue. This normative framework is important for the media and their role in informing the public and shaping public opinion in order to protect children. *Law on Public Information and the Media*[10] regulates the manner of exercising the freedom of public information, which particularly refers to: the freedom to collect, publish and receive information; freedom to form and express ideas and opinions; freedom to print and distribute newspapers and freedom of production, delivery and publishing of audio and audio-visual media services; freedom of expansion of information and ideas via Internet and other platforms; as well as freedom of publication of media and performing activities of public informing. This law also regulates the principles of public informing and public interest in public information. In addition, the law regulates the special rights and obligations of public informing, information about a person, the means and methods of legal protection, supervision over the implementation of the law, as well as penal provisions. Thus, the Law on Public Information and the Media introduces mandatory consent for the publication of information related to private life and correspondence. However, the aforementioned law does not contain special provisions for minors, which represents an oversight.

The law stipulates that a minor must not be recognisable when the information that may violate his/her rights or interests is published. The disclosure of information about private life is conditioned by the consent of the person they refer to. In the case of minors, it is the parents' consent, but also the consent of minors of a certain age. This age limit is not defined by the law, so it can be understood as the age of 16 since a child of 16 years of age can give their consent to the publication of information about their parents passed away, and consequently for themselves, unless the publication would be contrary to the best interests of the child.

As an exception, when the information about private life may be published without the consent of the person, the Law envisages a situation where the public interest for the publication outweighs the interest of a person who the information is about. This is the standard that has to be taken into consideration in the context of rules from other relevant laws in order to understand its range. First, we return to the *Code of Criminal Procedure*,[11] which as a rule provides that main hearings have to be public (the interest of the public to have the information outweighs the right to privacy of the persons participating in the criminal procedure). However, this rule is not applied in the cases when the procedure includes a minor as an injured party or as the offender because the law provides for the possibility of excluding the public in order to protect minors.

In the Law on Civil Procedure[12], this procedure is based on the principle of publicity. The public may be excluded only when this is required by the law. One of the reasons given for this option is to protect the privacy and interests of minors. Furthermore, the Family Law[13] completely excludes the public in the disputes regarding family legal relations, which include the procedure for the protection of child's rights. So, the laws in general stipulate that *the interest of the minor to have his/her privacy protected outweighs the interest of the public to be informed*.

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[10] Law on Public Information and Media, *Official Gazette of the Republic of Serbia No. 83/2014 and 58/2015.*

[11] Code of Criminal Procedure, *Official Gazette of the Republic of Serbia* No. 71/2011, 55/2014.

[12] Law on Civil Procedure, *Official Gazette of the Republic of Serbia* No. 72/2011, 55/2014.

[13] Family Law, *Official Gazette of the Republic of Serbia*, No. 18/2005, 72/2011, and other law 6/2015.

All laws governing the provision of services to minors in the domains of health, social issues and education clearly and unambiguously protect the child's right to privacy and determine the age limit whereby this right is protected, even with regard to the right of parents to obtain information about the child.

The conclusion that can clearly be drawn from the abovementioned is that the limits of the public's right to be informed are determined by the law as well as by the interest of minors that certain information about them should not reach the public. The legal system gives *absolute priority* to the rights and interests of minors, thus in the legal system of the Republic of Serbia the right of minors to the protection of privacy represents a stronger right than the right of the public to be informed.

Law on Electronic Media[14] regulates the conditions under which and the manner in which audio and audiovisual media services are provided, the conditions and procedures for issuing the licenses for providing audio and audiovisual media services, and other issues relevant to the field of electronic media. This law defines the organisation and operation of the REM, which is in charge of, *inter alia*, determining the detailed rules for the protection of minors (Art. 22, paragraph 1, item 15).

Rules on the protection of the rights of minors in the field of provision of media services[15] were adopted by the REM and principally governs the protection of minors from the information that may be harmful to them. The rules also regulate the issues "in connection with the participation of minors in the programme and the publication of information that is directly or indirectly related to minors" (Art. 1). Article 3 of the rules obliges the media service provider to act in accordance with the best interests of minors regarding the participation of minors in the content and the publication of information on the minor or his/her family. Article 20 of the Rules defines children's programmes (ages up to 12 years) and programmes designed for minors (ages 12 to 18).

Law on Public Media Services[16] regulates the operation of two public media institutions: Radio-Television of Serbia and Radio-Television of Vojvodina, including their activities and the principles that underpin the performance of activities, the public interest they serve, the publicity of their work, the method of selection of bodies and authority, the drafting of laws, as well as providing the tools for their work and the methods of their financing. The importance of this law lies in the fact that it regulates the work of public media institutions that are of great significance for creating public opinion on the issue of the protection of child rights, including the protection of children from child labour.

Code of Journalists of Serbia[17] defines the ethical and professional standards of journalists. In accordance with the Code, the media are bound to put the public interest to receive full, timely and truthful information above all other interests. However, the *Law on Public Information and Media determines that the interest of the minor that*

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[14] http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2014/2512-14Lat.pdf.

[15] http://rem.rs/uploads/files/Pravilnici/6075-Pravilnik%20o%20zastiti%20maloletnika%20u%20 oblasti%20pruzanja%20medijskih%20usluga%20za%20sajt.pdf.

[16] http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2014/2513-14.pdf.

[17] http://www.savetzastampu.rs/cirilica/kodeks-novinara-srbije. The Code is a joint document of the two journalists' associations. The Code of Journalists of Serbia was adopted in 2006 by the Independent Association of Journalists of Serbia and the Association of Journalists of Serbia. In 2013 the journalist associations amended the code with provisions on the prevention of corruption and conflict of interest.

his/her privacy is protected outweighs the public interest to have the information. In that context, the aforementioned should be underlined once again.

The Code contains special provisions related to the protection of the rights and dignity of children. A journalist is not allowed to use inappropriate, disturbing, pornographic and other content that can have a harmful impact on children. According to the Code, minors, as a rule, may be interviewed only in the presence of or with the consent of parents or guardians. The journalist is obliged to ensure that the child is not endangered or at risk due to the publication of his/her name or photograph or recording with his/her image, the house or the community in which he/she lives, or recognisable surroundings.

The Code also lays out guidelines that closely define the work of journalists in accordance with the code. The guidelines suggest that the representatives of state and public institutions dealing with the protection of children are sometimes unaware of the impact of the media and their way of functioning. Thus, the information they provide to journalists often reveal the identity of minors. A journalist, however, must not abuse their benevolence or ignorance. The information provided by physicians, social workers, educators, etc., that directly or indirectly indicate the identity of the minor should not be published. All decisions on whether the Code of Journalists of Serbia has been violated are delivered by the Appeals Committee of the Press Council. If the Appeals Committee decides that there has been a violation of the Journalistic Code, the media that published the disputable content has to publish the committee's decision.

2.2. The Regulatory Authority of Electronic Media, Self-regulatory bodies, professional and business organisations and associations

a) The Regulatory Authority of Electronic Media

The Regulatory Authority of Electronic Media (REM) is an autonomous independent regulatory organisation with the status of a legal person exercising public authority aiming at: effective implementation of the established policy in the field of providing media services in the Republic of Serbia; improving the quality and diversity of electronic media services; and contribution to the preservation, protection and development of freedom of opinion and expression, in order to protect the public interest in the field of electronic media and the protection of users of electronic media, in accordance with the provisions of the Law on Electronic Media and in the manner befitting a democratic society.

The REM is functionally and financially independent from the state bodies and organisations, media service providers and operators. For carrying out activities within its jurisdiction, the REM is responsible to the National Assembly, and for performing professional or administrative tasks professional REM services are formed, whose basic rules of organisation and operation are regulated by the statute of this organisation.

The authorities of the REM comprise the Council and the President of the Council. It has nine members elected by the National Assembly of the Republic of Serbia from the ranks of distinguished experts from relevant areas to carry out the activities covered by the REM's responsibilities.

b) Press Council

In the Republic of Serbia, the only operating self-regulatory body in this area is the Press Council. The Press Council is an independent self-regulatory body that brings

together publishers, owners of print media and professional journalists. It was founded in early 2010 in accordance with the Law on Associations,[18] in order to monitor the compliance with the Code of Journalists of Serbia in the media and act upon the complaints related to media content submitted either by individuals or by institutions. The jurisdiction of the council also includes the mediation between the harmed individuals or institutions, as well as the issuing of public warnings in the cases of violation of ethical standards established by the Code of Ethics of Journalists of Serbia.

The council is also focused on educating relevant subjects to act in compliance with the Code of Journalists and as well as on strengthening the role of the media in Serbia. Each individual, organisation or institution that is directly affected by the published content can file a complaint to the council. The complaint may be filed on someone's behalf, but the written consent of that person must be provided. An appeal on behalf of a child may be filed either by a legal representative of the child or by a third party with the written consent of the legal representative. Complaints against television and radio programmes do not fall under the scope of the council, but of the REM.

All decisions on whether the Code of Journalists of Serbia has been violated are delivered by the Complaints Commission (consisting of the representatives of the media industry, professional associations of journalists and representatives of the public). If the Appeals Committee decides that there has been a violation of the journalistic code, the media that published the content in question must publish the committee's decision. Joining the membership of the council is on a voluntary basis.

c) Professional and business organisations and associations

In the Republic of Serbia, several professional associations of journalists are established and operating, mostly financed by their own funds (membership fees) and donations. The main function of these associations is to promote free and independent journalism and pluralism, as well as to improve professional and ethical standards in journalism and the media in general, to protect the rights and interests of journalists, to protect the public from media abuse and to promote ethically responsible journalism. Moreover, one of the important roles of these associations is their positive impact on all the important issues in the field of public information, as well as on the process of determining the strategic policy of the state in the field of development of a public information system, as well as the adoption of regulations in this area.

3. Findings on production of child labour abuse and exploitation issues in the media: some results of the research

In the study "Media Reporting on Child Labour in the Republic of Serbia"[19] the technique of content analysis of media reports has been applied in order to determine how and to what extent the Serbian media report on child labour abuse and exploitation.

[18] *Official Gazette of the Republic of Serbia*, No. 51/09.

[19] *Media Reporting on Child Labour in the Republic of Serbia*, unpublished analysis - The study which was conducted as a research within the period from 1 October 2015 to 30 September 2016. The funding for this study was provided by the United States Department of Labour (Country Level Engagement and Assistance to Reduce Child Labour [CLEAR] Project) and International Labour Organization (ILO).

The study is based on the analysis of the media institutional and normative framework in the Republic of Serbia relevant for the protection of children from child labour and conducted quantitative and qualitative content analysis of media reports. In addition, the study includes an analysis of monitored phenomenon in terms of respect of the rights of the child and their adequate conceptual determination. For the purpose of the analysis, a quantitative-qualitative methodological apparatus was developed, according to which an individual press release represents the unit of analysis.

The selection of the reports was made on the basis of the available articles and texts archived by the Kliping agency. In the analysed period, the aforementioned agency's archive contained 703,438 articles from the print media, 223,408 from Internet portals and 146,996 television reports. The main intention of this study was to determine how and to what extent the Serbian media report on child labour abuse, taking into account the importance of the role of the media in shaping public opinion on children and the occurrence of child labour, as well as the impact of such public opinion on attitudes, decisions and procedures undertaken with regard to children.

a) Quantitative and qualitative content analysis of media reports

The quantitative dimension of the research shows the level of representation of the selected media publications – in total, according to type, individually (singly), and according to the authors. The articles from the press are classified according to the frequency of their publication (daily, weekly, biweekly, monthly, periodically), the number of front pages about child labour, and the space they take up. All the announcements about child labour abuse are also classified depending on the number of photographs, as well as on the image content and their link to the text.[20]

In qualitative terms, the thematic focus as the broader context of the analysis of reporting included the following categories: a) gender of the child (male, female, unspecified); b) family status – visible or not visible (visible: the child lives in the biological family; the child lives in a foster family; the child lives in an institution; the child lives on the street; the child is a refugee, asylum seeker, or migrant; the child is in the readmission process; the child has an unresolved parental status; the child is without parents; other); c) nationality visible (Roma, Serbian, other) or nationality not visible; d) age; and e) forms of child labour.

When the category of age is concerned, for the purpose of the analysis it has been classified as follows: preschool children – up to 7 years; school children from 7 to 14 years; school children from 14 to 18 years, and general publications without the age definition of the child/children in them. As the most complex category, forms of child labour abuse were monitored in media reports as: strenuous farm work (referring to hard work in the field and/or work with livestock under difficult conditions, i.e. in high or low temperatures, for a long period of time or at night); child begging – passive solicitation of money; child mendicancy as a form of child labour (children earning for their families, children involved in living and/or working in the street); sexual exploitation – the use, procuring or offering of a child for prostitution, production of pornography or for pornographic performances; forced commission of criminal offenses – involvement in organised (criminal) forms (*e.g.* organised theft or commission of other

[20] Stevanović, I., *The worst forms of Child Labour in Serbia and Media Reporting*, in Stevanović, I., Pavićević, O. (ed.), *Judicary and Media*, Belgrade: Institute of Criminological and Sociological Research, 2016, pp. 215-224.

crimes, trafficking in narcotics and stolen goods); abuse and exploitation of children in sports; collection of recyclable materials (waste); other forms of child labour (including children doing hazardous work, physical work on construction sites, street cleaning, as well as selling in markets and stalls); dual education; and general text (media reports about child labour as a phenomenon, presentation of research and normative regulation).

The most common form of child labour abuse and exploitation mentioned in the media is begging (31%), followed by sexual exploitation (27%), general text (18%), other forms of child labour (10%), forced commission of criminal offenses (5%), strenuous farm labour (3%), abuse and exploitation of children in sport (2%), dual education (2%) and the collection of recyclable materials/waste (2%). Of the total number of releases that report on child begging, in 41% this type of work is referred to as the phenomenon, in 31% of releases child begging is identified as a form of child labour (children earning for the family, children involved in living and/or working in the street), while 28% of releases refer to it as the passive solicitation of money.

The comparison of the age of minors whose work is abused in some form shows that 63% releases are about the persons whose age is unknown (135 media reports). In the second place are school children from 14 to 18 years of age (62 media releases or 23%), followed by children aged 7 to 14 years (27 media releases or 10%) and preschool children up to 7 years (10 media releases or 4%). By crossing these data with the form of abuse of child labour, it can be noticed that begging is almost equally represented in all age categories when they are visible (five, ten and six cases), while sexual exploitation is recognised mostly for children belonging to the age category between 14 and 18 years (20 cases). In the first age category, this form is not recognised, while in the second one it was analysed in four cases when it was possible to determine the age. In 135 media releases, when it was impossible to determine the age by the media content analysis, begging (71 cases) and sexual exploitation (62 cases) were also dominant, with a large number also included in the posts of the general type (42 cases).

The analysis showed that, most often – in over 50% of the coverage – the gender of children whose work is abused is not specified in the media (male children figured in 66 releases and female children in 71 releases, compared with 171 releases where the gender of the child is not specified). In the second place are male children (27%), while in 23% of the releases, girls are mentioned in the context of exploitation of child labour. Instead of specifying the child's gender, the media generally use the terms "minors" or "kids", or mention their initials, which hinders their gender identification.

When this information is crossed with the form of child labour, we see that 66 publications noted that in most cases the children identified as victims of sexual exploitation were male, in 14 instances it is a case of begging, in six cases the boys were forced into criminal activity, and in five cases the boys appear as waste collectors. Other forms of child labour that include boys doing dangerous work, physical work on construction sites, street cleaning, and selling in markets and stalls were identified in eight cases; two of them cite boys involved in strenuous agricultural work, and only in one case abuse in sport. In seven cases of general releases the male gender was recognisable. In 71 releases minors are females. Among them, the most common forms of child labour included sexual exploitation (29 cases) and begging (22 cases), which comprise more than two thirds of all the analysed content in which the female gender is documented. In ten releases "other forms" as the defined category are found; in three

cases girls were forced to participate in criminal activities; in a text about dual education one girl was recognised as a potential victim of child labour, which was also the case in six general releases.

In 171 of the analysed media releases in which gender was specified, begging and sexual exploitation were represented as the most common forms of child labour (in 56 cases and 34 cases, respectively), while seven of the analysed cases referred to detailed involvement of children in heavy farm work, eight cases referred to the forced commission of criminal offenses, five cases were about child abuse in sport, five cases mentioned dual education, and 15 texts analysed "other forms". In 41 cases of the general releases, the text did not specify the gender of the child/children mentioned in them.

When writing about this phenomenon, in more than half of the cases the media neglect the gender of the child as an important information/piece of data, which is, bearing in mind the very phenomenon, the wrong approach. The reason why the media report on gender status in this way is unclear, because very often they cite the initials of the child, which shows that they are familiar with the child's gender, but also that the initials are more important to them than the gender of the child. The expressions "minors" and "little ones" are often used without defining what these terms mean, probably thinking that this is about children – persons under 18 years of age. The term "little ones" is used to elicit compassion.

Comparative analysis of the visibility of family status shows that 162 media reports (69% of the cases) did not clearly indicate the family status of a child whose work is abused. In 31% of the releases, which is 74 media reports, the family status of the child is visible, and sexual exploitation (in 22 cases) and begging (in 20 cases) emerge as the dominant recognised forms of child labour. The number of these two most serious forms of child labour that are recognised – begging and sexual exploitation – given the number of analysed media reports in which the family status is not visible, is even greater: in 72 cases the media analysed begging and in 64 cases sexual exploitation, but failed to mention the data on the family status of the people they wrote about.

The largest number of releases in which the family status is visible shows that the child lives in the biological family (50% of releases), followed by children living in the street (19%) or in an institution (10%); other (8%); child refugees, asylum seekers, and migrants; children from the process of readmission (6%); and children without parents (5%) or in a foster family (2%). Another family status includes reports in which a minor child ran away from home.

b) Semi-structured interviews with the representatives of the media

With the aim of making the final conclusions of the research and pointing out the recommendations for media coverage of child labour in the Republic of Serbia, the researchers also conducted semi-structured interviews with the representatives of the media who were reporting on this topic. In the period between 13 and 20 February 2017, a total of five journalists and one deputy editor were interviewed. Of those, four were from print and two from electronic media.

The purpose of the interview was to obtain the answers to the following questions:

- Why do the media report on child labour abuse and exploitation in the presented manner?
- Do they recognise what the terms child work and child labour mean?

- What do they think is a motive for reporting?
- Are the reports on certain issues a matter of editorial policy or do they show the personal sensibility of a journalist who writes about a particular topic?

The authors of the study have opted for this approach for the reasons of confidentiality of data related to both - the journalists as well as the editorial offices they come from. In the light of the specificity of the topics covered, and for the reasons of their own safety, the representatives of the media particularly emphasised this before the interview.

All interviewed persons agreed that journalists and editors can neither recognise the very concept of child labour, nor make a difference between the terms such as child work and child labour. Hence the headlines of articles such as: "Children must not work!" appear in the media. Therefore, they are of the opinion that the informing and training of media professionals on the meaning of the concept of child labour and the distinction between the terms is a precondition for professional reporting on this topic. Four media professionals asserted that this lack of understanding contributed to the representation of a child who was in fact a victim as a "child hero".

"Probably in the desire to show this as a model of good practice, we actually contribute to misunderstanding. Especially, as you have illustrated in the study, that the responsibility for the deliverance of the child from this situation does not come up."

"Perhaps it would be good to organise some joint events, campaigns, where for example the representatives of the media, civil society, and others would take active part, which would point towards the extent and understanding of the phenomenon."

"The headlines that clearly indicate that children should not work are from this perspective wrong, but..."

"We know how it should look, but someone else makes the decisions..."

Most of the interviewees expressed that the initiation of research on child labour is of great importance and that it would certainly have a greater impact to report on this phenomenon on a larger scale. Also, such research would enable media professionals to have an insight into the situation, the prevalence of the phenomenon and the consequences it has for children.

"I think that the research on this subject is necessary and useful, and that it can certainly result in greater media attention to the problem of child labour."

"It would mean a lot if there were more sources of information and different studies on this subject, which would provide the basis for further engagement in investigative journalism."

The majority of the interviewed persons stated that certain issues are reported only because they are a part of the editorial policy, not because of the personal sensibility of journalists. The motives for reporting are predominantly the events that are attention-grabbing at the given moment. As the comparative analysis of the publicity showed, in a number of cases the initiatives for creating media content that discusses about child labour did not come from journalists themselves, but from the individuals or organisations whose interest the reporting followed.

"Unless it is an issue of violence against children/bullying or some current event, the protection of children is predominantly discussed when reporting about some important dates related to children."

Media professionals confirmed the results that indicate that the media do not sufficiently take into account the protection of the best interest, privacy, reputation and

personal dignity of each child who is the victim of child labour (70 headlines are sensationalistic or of offensive content, whereas almost half of all published texts are accompanied by a photograph of the child). The interviewees agreed with the statement that this is alarming and that such practices clearly show the character and the activities of a child as a means to grab the attention of the public. Therefore, improving media professionals' knowledge of the current normative framework on the protection of children's rights, with special emphasis on the protection of children from all forms of abuse and neglect, stands out as one of the priorities. Continuous training of editorial staff who influence the selection of topics and their final ranking is a necessity if we want to contribute to more professional reporting that respects the dignity and integrity of the person the media report is about. In addition, media professionals have indicated that when it comes to the violations of the law, it is important that the attention of all relevant stakeholders is drawn to this issue.

"For example, it is important to draw attention to all those situations that represent violations of the Code of Journalists of Serbia. The Appeals Committee to the Press Council decides whether a violation of the Journalistic Code has occurred, and the media that posted the disputable content has to publish the decision of the Committee. Bearing in mind that the media are partially project funded and compete for, for example, European Commission projects, it is important to constantly mention this because if they violate the Code, they might have a problem with the application.

"The involvement of journalists of authority in educating regulatory bodies would greatly contribute to reporting in accordance with the law, the Code, regulations ..."

"The Press Council, as well as professional and business associations and organisations should take a clear position when it comes to reporting on this phenomenon."

"The responsibility for the publication of photos next to the text is particularly obvious when it comes to the death of a child, but the responsibility also lies with the family that concedes photos and information."

All interviewees agreed that the media must have a proactive role in order to improve the situation in the field of protection of children in general, including in the area of child labour. They agreed that the power of the media and their importance is reflected not only in reporting but also in initiating social change through the presentation of measures for the protection of children and measures to contribute to the eradication of child labour.

"...However, the media, in addition to writing about the phenomena they discover themselves, write about the social/state functioning related to these phenomena. So I think that it is necessary for the society/state to be present in the sense that they must take action against child labour, and then encourage the media to write about it. This recommendation is the result of discussions that gave rise to the article published in Vreme *No. 1299, 'Children must not work'."*

"One should write about this phenomenon in a critical manner."

"The media should be informed about what the additional institutions and organisations dealing with the protection of children are, besides social welfare centres and UNICEF."

4. Conclusion: challenges and recommendations

When reporting on the child perspective, the journalistic style appears to be full of stereotypes and prejudices, and numerous imprecise expressions (such as "kids"), still

seem to prevail. It can be concluded that a reporting method called "marginalisation of the marginalised" is applied continuously. This was also noted by the Child Rights Centre in its study *Newspaper on Children – "Bread and Games to Children and Juveniles"*, back in 2004.[21] Even then, the study recorded constant media neglect of some social phenomena and/or issues, namely, the right to protection from child labour (common known as the phenomenon of "street children", although the problem is much wider): "If, according to the law, a person is considered a child until the age of 18, why is he/she referred to as 'a little one' (when it should cause pathetic feelings) or a minor (when it should evoke negative connotations) in numerous media releases? In both cases, the reports deal with a child as a person. Therefore, the kind of feelings we have, how we define childhood or which attitudes shape our behaviour in relation to children, should not collapse with our professional standards."

Based on the research results, it can be concluded that the media do not sufficiently take into account the protection of the best interest, privacy, reputation and personal dignity of each child who is the victim. It can also be stated that if the media were more active in overcoming the populist manner of reporting and assumed a more significant educational function in the process of introducing and explaining the phenomenon of child labour, they would have a much stronger impact on the public. In their manner of reporting, the media should point to and contribute to launching the issues of systematic prevention and improvement of child protection. Since their authority, role and power are of paramount significance for the creation of public opinion, the media can have a serious impact on the decision-making process conducted by the responsible authorities and the state.[22]

The gender of the child and his/her family status often cannot be determined from the media reports. The media similarly report on the age of the child. But, regardless of whether these categories are visible or not, begging and sexual exploitation are most commonly recognised as child labour. All other forms of abuse are represented to a much smaller extent. From this it can be concluded that the phenomenon essentially goes unrecognised, which results in its incomprehension. The basic elements of gender and age are necessary to provide some information, and for further analysis the media should report the child's family status and nationality/ethnicity (if the respondent wishes to give these information). These elements, which are crucial for understanding the condition/situation the child is in, and hence the phenomenon of child labour in general, are not given in more than half of media reports. The knowledge about the topic and the presentation of the abovementioned relevant elements would allow the public to perceive the phenomenon in a realistic manner and improve its own behaviour, as well as stimulate the state to work towards the improvement of the situation with targeted measures.

Abuses by the media are also prohibited within the framework and according to the rules contained in media legislation and codes of ethics. It is the duty of the media to inform the general public fully, accurately and in a timely manner. However, the interest of the child to be protected, including the right to privacy, is above all other interests and

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[21] *Newspaper on children – Bread and games to children and juveniles,* Analysis of daily press in 2004, Belgrade: Child Rights Centre, unpublished analysis.

[22] Stevanović, I., *The Right to Privacy of Children and Media in the Republic of Serbia (in the context of the protecrtion of children labour abuse and exploitation)*, in Pavlović, Z. (ed.), *Freedom, Security: the Right to Privacy,* Novi Sad: Provincial Protector of Citizens - Ombudsman & Institute of Criminological and Sociological Research, 2017, p. 286.

takes precedence over the public interest to receive information that includes personally identifiable information about a child and his/her family, which could damage his/her dignity and psychological integrity. This issue is particularly disputable because the documents pertaining to this matter are not mutually harmonised, which further complicates their implementation in practice. For instance, the Code of Journalists of Serbia defines the professional and ethical standards of journalists. In accordance with the Code, the media are bound to put the public interest to be informed in a full, timely and truthful manner above all other interests. However, the Law on Public Information and Media determines that the interest of a minor that his/her privacy is protected outweighs the public interest to have the information.

In order to create future strategic documents relevant to the realisation of child's rights and protection from violence and those that define state policy related to the media, as well as the acts of self-regulation of the media, it is necessary to incorporate the issues pertinent to the protection of children from abuse and responsibilities of the media to report in the way that takes into account the best interests of the child.[23] For instance, the abovementioned questions should be identified in the new National Plan of Action for Children, the Strategy for Preventing and Protecting Children from Violence, the Strategy for the Development of the Public Information System in the Republic of Serbia, the Code of Journalists of Serbia, etc.

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Information about violence against children and violent violence from aspect of media and legal strategic documents in Bosnia and Herzegovina

PhD. Jašarević N. Osman[1]
Prof. dr. sc.
Faculty of Law
University of Travnik
Bosna i Hercegovina

Abstract

Considering that the important topics on children and young people in the media are especially treated, it is of particular importance to consider violence against children and peer violence that is getting more and more important from day to day because of its rudeness and violent popularity. Media editors and investigative journalists, more or less, are aware of the value and weight of such information and their wide-ranging potential to be read, viewed or heard. Therefore daily information about children who are victims of violence arouses strong emotional responses and the need to protect them, while media and police information about juvenile delinquents of violence is condemned and the need to sanction them more appropriately, respecting the principle of "best interest of the child" in order to Re-socialization was more successful. It is widely known that media play a key role in sensitizing the public when it comes to family and peer violence, not neglecting the fact that some media research journalists still do not know or deliberately care about possible negative connotations and the consequences of such reporting.

Everyday formed media images in printed and electronic media that are presented to the public, such as "poor child - victim of violence" and "uneducated, dangerous generation of youth", "computer and telephone mobophobia of young people", not only affect the behavior of adults towards children and an environmental reaction that often involves the isolation and/or stigmatization of a minor, but also of children's self-determination, self-esteem, self-esteem, cognitive processes and the amount of stress they experience. Media information that violates the right to privacy, and which does not adhere to the existing positive legal norms and deontological rules of the profession can become the source of secondary victims victimization, which makes it difficult to recover or "demonize" the perpetrators, thereby reducing the chances of re-socializing the minor. Unfortunately, such harmful media practice as in Bosnia and Herzegovina, Croatia, Serbia and other countries of EX Yugoslavia, countries in transition, is often beneficial both indifference and lack of coordination of competent state bodies, institutions, agencies and not governmental organizations, which is one of the basic tasks.

This paper deals with the situation of good and bad practices in informing violence against and among children and young people, as well as instructions, attitudes and guidelines for the protection of children who are victims of violence and juvenile perpetrators of criminal offenses in the media.

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[1] Contact: dr.osmanjasareic@hotmail.com.

Key words: *violence, children, youth, media, information, deontological rules of the profession.*

1. Introduction

Reading daily media, children and young people achieve some of their fundamental human rights: the right to information, the right to freedom of expression of thoughts on the things and objects for which they are interested. Media within the Law and Code of Conduct are obliged to allow this, taking care not to violate the right to privacy of children and young people. To be noted that all media do not fulfill their legal duty equally well: superficial, misleading or false information is often published; children and young people are not always given the opportunity to express their concerns; unfortunately, violating the right to privacy is quite common, which is not negligible. Many citizens are wondering why it comes to this? In a number of cases, these violations of the rights of children and young people arise from ignorance of these rights and their legal normative regulation in the conventions and applicable laws.

Each journalist researcher and editor of a particular media reporting on children and young people should know that these rights derive from the Convention on the Rights of the Child; that the Convention was ratified by Bosnia and Herzegovina; that the established provisions of this Convention obligate Bosnia and Herzegovina to pass laws and other documents in order for children and young people to exercise the aforementioned and other rights; that these rights are mainly determined by the Family Law, the Criminal Law, the Media Law and the Law on Electronic Media; that the main domestic strategic document contributing to policy development for and towards children National Strategy for Children's Rights and Youth Policy National Youth Program; that both strategic documents are adopted for a specified period of time, 5 or 10 years, with possible frequency-measurable objectives, which are followed by action plans outlining measures, deadlines, enforcement agents and performance indicators, etc. This is why periodic workshops educate research journalists and editors on public policies, within which children and young people exercise their rights, while investigative journalists and editors (electronic media) do their jobs. If we know that children and young people are talking about two complex policies (children's policy and youth policy), and with journalists and editors on a separate, media, and politics - it is clear why we consider that research journalists and editors of certain media are necessary additional periodical education on these issues.

The specificity of electronic media is that children and young people can provide information in them in the most interesting way and allow them to freely express their opinions through the most intelligible platforms they are most often using. While the obligations of electronic media regarding the protection of the right to privacy are similar to those of other media, journalists, researchers and editors of certain media and Internet portals have additional obligations regarding the protection of children and young people from the unwanted consequences of using these media: on the Internet, children and young people are exposed electronic violence, widespread and uncontrolled scope of hate speech and sexual abuse in various ways. Therefore, it is necessary for the Electronic Media Council to draft the Ordinance on the Protection of Children and Juveniles in Electronic Media and certain Recommendations for the Protection of Children and Youth in order to make even safer use of electronic media.

That is why, at workshops, research journalists and media editors are introduced to the way and official approach in reporting on (for) children and youth, combining it with already experienced practical examples, exercises and exchange of experiences. Public policy experts and television and radio experts, both theorists and practitioners, most often familiarize participants with the public policy framework for children and youth policy and media policy, whose knowledge is necessary for quality reporting on children and young people. In the practical part of the periodical workshops, selected practitioners and participants exchanged work experiences and crystallized (un) desirable approaches in reporting through practical examples of good and bad practice; and with numerous ideas have identified relevant topics that are not sufficiently represented in the media space; and at each periodical workshop we mapped key actors; and finally, in all workshops, the participants, with the guidance of experts, (lines) made syllabus shows, which remain a permanent guide to journalists for quality preparation of radio and television shows and online written serials. Internet journalists are included in the final workshops in the Cantonal Centers of Sarajevo, Banja Luka, Mostar and others. According to the interest of the participants, synopsis for thematic or mosaic shows, with different target groups and approaches: children's or children's shows, and youth or youth. Judging by the participants' engagement, presence and feedback, the workshops are extremely well received and visited, because this is a more serious and recent social issue. We hope that interested citizens will equally well accept this thematic unit, which provides a suite of theoretical and expert presentations and practical work through the workshops. We believe that this work will be a guide to many journalists in reporting on (for) children and young people and will inspire them to write quality articles tailored to the needs and understandings of children and youth, as well as society as a whole.

2. Basic strategic documents at the international and national level

The historical and human development of the child as a subject of personal growth has initiated processes that focus on the special protection of the child and his needs. By citing child's needs, a system of child rights and responsibilities has been developed. A child as a subject and a right holder places certain responsibilities and rights in front of adults, as well as duties before the state. Maleš, Milanović and Stričević (2003: 13) state: *"The concept of a child as a right holder for adults is hardly acceptable, because children are traditionally seen as persons who need protection, and less as those who have the rights and can act."* This change in the child's vision through history required changes on several levels, and the processes that seek to strengthen the child rights system continue to persist. The development of political dialogue in the area of children's rights and responsibilities has significantly contributed to the adoption of the UN Convention on the Rights of the Child, which seeks to satisfy all the basic needs of children, acceptable to different cultures, peoples and traditions.

3. The importance of the Convention on the Rights of the Child

The Convention on the Rights of the Child was adopted on November 20, 1989[2] and contains universal standards that the State party to the Convention (*i.e.* the one who

[2] United Nations (1989).

signed and ratified it) must guarantee to each child. The document essentially discusses the obligations of adults in meeting the child's needs and protecting the child, whereby the child has the status of the subject, as the bearer of all rights and responsibilities.[3] The particular importance of the Convention is that it presupposes the shift from the declarative determination of the objectives (Declaration on the Rights of the Child) to binding international legal legislation (Maleš, Milanović and Stričević, 2003).[4] An important feature of the child's rights, and therefore the Convention, is that it is intended for children as their sole owners, that they belong to them without any limitations and cover all areas of the child's life relations (Aliničić i sur., 2007: 224).[5]

UN Committee on the Rights of the Child[6] identified four principles contained in the Convention on the Rights of the Child:

a) Principle of non-discrimination (čl.2.);
b) The principle that every child has the right to life and development, (physical, emotional, psychosocial, cognitive, social and cultural (čl.6.);
c) Principle of the best interest of the child (čl.3.);
d) Principle of freedom of opinion (čl.12.).

The principles seeks to consolidate the requirement for adults to take into account the welfare of the child, the importance of equal access to each child, and the active involvement of the child in addressing these issues in making decisions or carrying out procedures affecting the child, or in children as a group, with the aim of optimal child development. The best interests of the child include several criteria: the needs of the child (which are in their mutual relationship), the will of the parents (element of child's knowledge and child's trust) and standard behavior (the criterion of average, normal and desirable treatment based on ideal premises) (Aliničić et al, 2007). The expression of the welfare of the child reflects *"the overall, optimal status of the child in relation to himself and other subjects"* (Aliničić *et al.*, 2007: 237). Maleš, Milanović and Stričević (2003: 26) state that the Convention on the Rights of the Child is unique because:

- Comprehensive: the only one provides the civic, political, economic, social and cultural rights of the child;
- Universal: applies to all children;
- Unconditional: All Member States are obliged to undertake activities related to the protection of the rights of the child; you
- Holistic: advocates the view that all rights are based, indivisible, mutually dependent and equally important[7].

Aliničić *et al.*, (2007) emphasize the importance of the Convention through several dimensions: the different needs of children in everyday life and, in exceptional situations, have the legal qualification of children's rights; Member States undertake to respect these rights and to take appropriate measures for their protection; and the anticipation of the child protection system and the establishment of a special body with the same goal - the Committee on the Rights of the Child (čl.43.).

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[3] Ilišin, V. and Spajić-Vrkas, V. (2015).
[4] Maleš, D., Milanović, M., Stričević, I. (2003).
[5] Aliničić, M. *et al.* (2007).
[6] UN Committee on the Rights of the Child.
[7] Jašarević, O., Kustura, M., (2013).

4. Content of the Convention on the Rights of the Child (Children's Rights and Rights)

The Convention did not categorize the rights into some special groups, and therefore different approaches have proposed different segregation of rights. Thus, there is a division of children's rights from the Convention according to the "4P" criterion (four rights), depending on the objectives - prevention, protection, provision and participation "4P"[8], implies four aspects of children's rights: prevention of negative impacts on the child, protection of children against discrimination and all other forms of exploitation and torture, providing children with access to and exercising their rights and participation of children in all decisions related to them. Preventive rights include the right to health (art. 24), banning the taking of a child (art. 11), prohibition of discrimination (art. 2). Protective rights prevent torture of children, the use of degrading treatment and punishment, abuse and exploitation of children (art. 37). Right to education (art. 28), social insurance (art. 29), leisure, recreation and recreation (art. 31) and standard of living (art. 27) are some of the rights that imply the acquisition of convenience. The last group of rights relates to the child's active participation and action and includes access to information (art. 17), the right to freedom of expression (art. 13) and the expression of one's own opinion on matters that concern him (art. 12). According to the scope of children's rights, they can be classified into positive (*e.g.* children's right to life) and negative rights (eg the right to protection from the use of narcotics and psychotropic substances). Aliničić *et al.*, (2007) state that the Croatian family-legal theory emphasizes the importance of emphasizing certain rights of the child as its original (basic) rights. They are considered to be: the right of the child to life and health, the right to live with his parents, the right to education and education, the right to strengthen one's own descent, and the right to physical, mental and emotional development. Their authenticity is also a fact of what are the rights whose achievement enables the complete maturation of the child in the mental and physical sense. (Aliničić *et al.*, 2007: 229).

As a country which has signed and ratified the Convention on the Rights of the Child, the State of Bosnia and Herzegovina has assumed all the responsibilities deriving from the Convention and relates to its implementation and the obligation to amend and adjust existing laws and acts in accordance with that international document, The Committee on the Rights of the Child.

5. Strategy for Combating Violence against Children in Bosnia and Herzegovina 2012.-2015[9]

Strategy for Combating Violence against Children in Bosnia and Herzegovina 2012-2015 consists of three parts:

The first part, which makes introductory remarks explaining the difference between the new and the old strategy in terms of the methodology of drafting, explains the brief content of the new strategy, defines the time needed for its realization, explains the methodology of information and outline the institutions in charge of implementing the strategy.

[8] UN Committee on the Rights of the Child.

[9] Strategija za borbu protiv nasilja nad djecom u Bosni i Hercegovini 2012-2015.

The second part contains a shorter analysis of the problem of violence against children in Bosnia and Herzegovina based on the information on the implementation of the Strategy for children of BiH 2007-2010 and the analysis of the current legal framework in BiH, with a special emphasis on the need to access new international instruments in terms of the necessary areas for harmonization bh. laws with the legal framework of the UN and the European Union. In this part, also in operational sense, we identify problems related to functional cooperation between the competent institutions involved in the implementation of this strategy, with an emphasis on informing international obligations.

The third part, which, starting from the basic principles already established in the framework of the First Strategy for Children of BiH 2007-2010, establishes the basic general goal and strategic measures. The main goal and strategic measures emphasize the continuity of activities aimed at improving strategic planning, improving the capacity of BiH to fight against violence against children, especially in the field of law enforcement, introducing better standards for the protection of children, continuing the development of capacities at all levels including state institutions, entity institutions, Brčko District of BiH, Cantons and municipalities through advocacy of innovative activities in the most important sectors of child protection, such as: social, health care, education, police and judiciary, and in particular the strengthening of cooperation with civil society organizations.

5.1. The planned timing of the implementation of strategic measures is the period from 1.01.2012 to 31.12.2015

The following institutions are responsible for implementing this strategy:

Parliamentary Assembly of BiH - to pass laws, ratify agreements, conventions and rights and fundamental freedoms guaranteed by the Constitution of BiH and BiH legislation, from state bodies, public institutions and organizations performing public authorizations, in cases presented by ombudsmen, citizens and entities, and informs thereof House of Representatives and House of Peoples; considers issues relating to the exercise of the rights of the child - in particular, the improvement of the status of a child in Bosnia and Herzegovina; issues related to the realization of the rights of young people - in particular the promotion of the rights of youth in BiH; examines the proposals of documents and reports of BiH institutions related to youth issues, and other issues in the field of human rights, children's rights, youth, etc.;

The Council of Ministers of BiH - the highest state executive administrative body to submit proposals of laws and other executive and administrative acts, which adopts executive decisions, plans, strategies, approves research and other executive activities for the purpose of implementing international obligations and laws of BiH. It consists of nine line ministries that perform administrative and professional tasks within the jurisdiction of Bosnia and Herzegovina. The ministries are responsible for the implementation of laws and other regulations, the preparation of draft laws and other acts, monitoring and implementation, the implementation of measures with the aim of implementing the regulations in force and in connection with the development of certain state plans, programs, strategies, projects, research and all other activities in accordance with the Constitution of BiH and the laws of BiH;

Ministry of Human Rights and Refugees of BiH - individual and collective complaints, petitions and inquiries related to violation of any human rights and rights of

the child can be submitted to this Ministry. The Ministry considers the submitted acts and in this regard issues appropriate recommendations to the competent institution and recommendations for the submitter of the act. The Ministry can also submit initiatives for amending and supplementing some laws or practices that directly violate the human rights of an individual or certain group of citizens, members of minorities, children, women, persons with disabilities, refugee returnees, asylum seekers, aliens or some other vulnerable category of citizens and ask that it coordinate activities to overcome the problem;

Ministry of Justice of BiH - providing assistance in international and inter-entity judicial cooperation (international kidnapping of children), drafting appropriate laws and regulations, field of criminal legislation, court organization, prison system, extradition, extradition, registration of associations of citizens and non-governmental organizations;

Ministry of Foreign Affairs of BiH - requests for issuance of visas and assistance in connection with residence and protection of the rights and interests of BiH citizens in permanent and temporary residence abroad and domestic legal entities abroad and other activities related to international relations are submitted to this Ministry;

Ministry of Civil Affairs of BiH - this ministry is responsible for citizenship, registration and registration of citizens, protection of personal data, registration of residence and residence, identity documents, travel documents, etc. and coordinates activities, harmonization of the plans of the entity authorities and defining international strategies in the field of health and social protection, and in connection with the mentioned competences, initiatives for amending and supplementing a law, regulation or strategy development, etc. can be submitted;

Ministry of Security of BiH - Immigration and Asylum Sector are in charge of regulating the status, movement and residence of foreigners, granting of asylum, protection of victims of trafficking, and in particular protection of children and youth;

State Investigation and Protection Agency SIPA is an administrative organization within the Ministry of Security of BiH, with operational autonomy, established for the purpose of performing police affairs. SIPA has the obligation to monitor and collect all the interesting ways of smuggling people, collecting evidence of committed crimes related to trafficking in human beings, in particular children, preventing and combating trafficking in human beings and sexual offenses, combining trafficker, trafficking and sexual torture records, victim assistance, preventive activities, cooperation with non-governmental and governmental sector, organization of training of SIPA investigators on the way of work in the field of fight against human trafficking.

BiH Border Police is an administrative organization within the Ministry of Security of BiH established for the purpose of carrying out police affairs in the area of border control and traffic control at border crossings, as well as performing all police affairs related to offenses committed ex officio. The BiH Border Police is organized in the following manner: the body is headed by a director, deputy and assistants;

Main office; field offices; units of the border service; in the Main Office there is a Central Investigation Office, comprised of the Investigation Department where investigators are involved in the fight against trafficking in human beings, and within this activity is the work on prevention of violence against children in the form of taking measures and activities for preventing trafficking in children. Field offices are located in Bijeljina, Višegrad, Sarajevo, Capljina, Grahovo and Gradiška. In the Investigation Department, investigators are working to combat trafficking in human beings. Within

the framework of the fight against trafficking in human beings, the Border Police Investigators keep separate records and apply special measures when it comes to children as victims of trafficking, or when it comes to cross-border crime (smuggling) of children. Interpol is by definition the International Criminal Police Organization whose primary task is to exchange data, to act upon the request of criminal police of other Interpol member countries, exchange of experiences, etc. Since BiH is an Interpol member, within the above-mentioned activities, through the Interpol, *i.e.* the NCB (National Central Bureau) of Sarajevo, there is, *inter alia*, the exchange of data related to trafficking in human beings, and consequently also in connection with violence against children. In the organization of the NCB, inspectors are in charge of the line of work related to trafficking in human beings. All requests of criminal police in BiH, regardless of the police agency concerned, are addressed to other countries, are forwarded through the Interpol (NCB) of BiH Sarajevo. With the General Secretariat of Interpol there is a Task Force specialized in combating child crimes.

The BiH Prosecutor's Office is responsible for the prosecution of perpetrators of criminal offenses in accordance with the Criminal Code of BiH, especially the acts of trafficking in human beings. The Brčko District of BiH has its own prosecutor's office and the police and institutions dealing with the protection of children, the Center for Social Work. Entity parliaments - parliamentary commissions on gender equality and human rights have similar competencies as the Joint Commission of the Parliamentary Assembly of BiH.

Entity and cantonal governments - Entity governments - have executive power and define proposals for laws and other acts and policies. The Government of the Federation of BiH has 16 ministries and the Government of the RS 16. The High Judicial and Prosecutorial Council of Bosnia and Herzegovina, the Center for Education of Judges and Prosecutors of the Federation of Bosnia and Herzegovina, the Center for Education of Judges and Prosecutors of the Republika Srpska and the Brčko District Judicial Commission, contribute to the professional training and training of judges and prosecutors in the field of children's rights.

The Ministries of Justice (FBiH, RS) have an important role in the field of child protection with ministries of justice, social, health and child protection.

Ministry of Labor and Social Policy FBiH/Ministry of Health and Social Welfare RS - centers for social work have the most important role when it comes to protecting children and persons in a state of social need from any form of abuse; institutions for social and child protection that are mainly used for the accommodation, protection and resocialization of the victim of trafficking in human beings, especially children;

The Ministry of the Interior (FBiH, RS), the Prosecutor's Office and the Courts (FBiH, RS) - the Entity and Cantonal Ministries of Interior, Police and Prosecutors have the same competence when it comes to protecting children from any form of violence, prostitution related to human trafficking, pornography, child prostitution and other forms of exploitation of children;

Ministry of Health FBiH/Ministry of Family, Youth and Sports RS - Inspection services are specific bodies that have a certain supervisory role in overseeing the work of state and public institutions and organizations. Mental health centers and family counseling centers have been established in both entities and the Brčko District of BiH.

5.2. Violence against children in Bosnia and Herzegovina

5.2.1. Legal framework

Rights and protection are also guaranteed by agreements on the prohibition of racial discrimination, discrimination against women, the prevention of torture and the rights of migrant workers and members of their families. International human rights agreements have been supplemented by instruments that, although not legally binding, lay down standards and establish principles relating to the eradication of violence against children. So there are the 1985 Beijing Rules of Juvenile Justice and the Riyadh Guidelines of 1990 dealing with juvenile delinquency and the protection of minors deprived of their liberty. Certainly the most important international source adopted for the protection of children is the 1989 Convention on the Rights of the Child[10], which Bosnia and Herzegovina took over as a succession. The Convention on the Rights of the Child establishes the general standards for the protection of children and contains special provisions on the rights of the child, which emphasize the obligations of the authorities of each State Party to respect its provisions.

The Convention on the Rights of the Child establishes the general standards for the protection of children and contains special provisions on the rights of the child, which emphasize the obligations of the authorities of each State Party to respect its provisions.

Considering that Bosnia and Herzegovina is a signatory to this Convention, it starts from the direct obligation defined in Article 19 of the Convention on the Rights of the Child for Member States, which relates to the obligation of a Contracting Party to undertake appropriate legal, administrative, social, educational measures for the protection of the child from all forms of physical or mental violence, injuries or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while under the care of parents of legal representatives or any other person concerned.

Such protective measures should, to the extent appropriate, include effective procedures for the establishment of social programs in order to provide the necessary support to the child and to those who take care of the child, as well as other forms of prevention and identification, reporting, advising, investigating, treating and monitoring cases of abuse children described earlier and, when necessary, court involvement. If the Convention is considered as a whole, it is necessary to pay attention to the standards established under the following articles: 32. (Economic exploitation), 33. (Prohibition of the use of drugs and alcohol), 34. (Prohibition of sexual exploitation and child pornography), 35 (Disallowing abduction, selling and trafficking in children), 36. (Prohibition of any kind of exploitation of a child), 37. (Prohibition of torture or any form of humiliation, fair treatment in lawful detention of a child, ensuring the right to legal assistance), 38. (Prohibition of the participation of children in armed conflicts and provision of protection to children in war), 39. (Ensuring the right to recovery and resocialization of children who have been subjected to violence) and 40. (Fair treatment of children, perpetrators of criminal offenses and regulation of appropriate conditions for execution of sentences and respecting all other human rights standards) which, in the light of these child protection standards, constitute the basis for the harmonization of national legislation and practices.

[10] Of the 1989 Convention on the Rights of the Child.

In addition to the UN Convention on the Rights of the Child, BiH has also adopted other international instruments that establish international standards for the protection of children against violence for some of the specific forms of violence:

- The UN Convention to Combat Organized Transnational Crime was adopted in 2000 and supplemented by the following Protocols: Protocol for the Prevention, Punishment and Punishment of Trafficking in Persons, Especially Women and Children, and Protocol for Combating the Smuggling of Migrants by Land, Sea and Air. In this regard, the European Union and the Council of Europe have issued several resolutions and recommendations that oblige states to create a child-friendly environment, for example, "Building a Europe for and with children".

- In 2005, the Council of Europe adopted the European Convention on Action against Trafficking in Human Beings, signed and ratified by Bosnia and Herzegovina. This Convention introduces additional obligations for Member States with regard to the protection and care of victims of trafficking and requires States Parties to provide special protection to children who are victims of trafficking.

-2006. BiH becomes a member of the Council of Europe Cyber Crime Convention. This is the largest, most comprehensive, and the highest quality European document on this kind of crime that has been signed by some non-European countries. The Convention was solemnly signed on November 23, 2001. In Budapest, it has been presented as an international legal instrument which first regulates problems related to the use and transfer of information and data through information and telecommunication systems. This is precisely why it is called the Cyber Convention, not Cybercrime. The integration of information and telecommunications technology is becoming more and more rapid, and their interdependence leads to the connection of their abuse, and the term "computer crime" is becoming too narrow and replaced by the wider term "cyber crime". Cyber crime includes all offenses committed within the popular cyberspace, with the help of either the information and telecommunications technology itself, which makes its infrastructure. And the basic infrastructure of cyberspace is the Internet, which with its globality, openness and accessibility is becoming a source of ever greater and more dangerous abuse, and the fight against them requires firm international cooperation. The Convention stipulates that the parties will adopt legal and other solutions necessary in order to prosecute perpetrators of criminal offenses in the domestic legislation against the secrecy, integrity and availability of computer data and systems, computer-related crimes in relation to content and in relation to infringements of copyright and related rights. This document provides for the resolution of procedural issues related to the investigation and obtaining evidence, authorization of police services, jurisdiction of the court, extradition of perpetrators and mutual cooperation, as well as obligations of the internet service provider. Bosnia and Herzegovina ratified this Convention and its Protocol on 19 May 2006, and they came into force on 1.9.2006.

- In 2006, BiH ratified the European Revised Social Charter 2, which is also one of the most important European conventions relating to the field of social rights. The European Revised Social Charter, as well as the European Convention on Human Rights, were drafted under the auspices of the Council of Europe. These two conventions practically establish a regional European system for the protection of economic and social rights and complement the conventions giving guarantees only to civil and political rights. The Charter proclaims a list of 19 categories of "rights

and principles" and here will be listed only those that BiH has ratified for children's rights:

* Article 7. The right of children and youth to protection;
* Article 8. The right of employees to protection of motherhood;
* Article 11. The right to health care;
* member 13. The right to social and medical assistance;
* Article 16. The right of the family to social, legal and economic protection.

- 2010. BiH has joined the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Abuse), and the ratification process is underway. The Convention is the latest comprehensive European instrument adopted to complete the child protection system against any form of sexual abuse and exploitation and was adopted by the Committee of Ministers of the Council of Europe in July 2007 to 1002. Sessions of Deputy Ministers. The Convention is a completely new international document and legal basis for the further upgrading of the legislative framework and the protection of children against sexual exploitation and child abuse for all European countries that have acceded to this new international document. This Convention requires Member States to establish: 1. measures to prevent any form of violence against children, 2. implement measures to raise awareness of citizens about the unacceptability of any behavior aimed at sexual exploitation and abuse of children, 3. introduce a series of protection and support measures victims of violence, 4. oblige states to inform the public and, in particular, children about the rights they have and the dangers that can lead to their violation on this basis, 5 and to establish records of perpetrators of these parts. This Convention also provides for the establishment of a monitoring mechanism to monitor its application. The Convention is particularly significant for the fact that it introduces within the scope of Article 3 a definition that the "child" defines as any person under the age of 18 years. In Articles 18 to 23. These conventions also define the concepts of sexual exploitation and sexual abuse of children, as discussed in more detail in the text on forms of violence against children. A special novelty under this convention is the definition of "victim" that denotes any child subjected to sexual exploitation and sexual abuse.

The significance of this Convention is also in Chapter 2, BiH has signed this convention in May 2004, and will make reservations to some of its members during the ratification process, since Chapter 2 is dedicated to the preventive measures required by the States Parties to this Convention. This chapter starts with the principle that obliges the State party to take all legal and other measures to prevent all forms of sexual exploitation and sexual abuse of children and the protection of children. Article 5 of this Convention provides for the obligations of the state in relation to employment, education and raising awareness of persons working with children in the areas of education, health, social protection, the judiciary and the police sector, and in the areas related to sports, culture and leisure activities, paying particular attention to the fact that candidates who have been convicted of sexual exploitation and sexual abuse of children have no access to those professions. It should be taken into account in particular that the Convention requires States Parties to ensure that children receive information on the risks of sexual exploitation and sexual abuse in their primary and secondary education as well as on how to protect them by their age.

The Convention also implies ensuring the participation and cooperation with parents, and in particular paying attention to risk situations, in particular the risks

involved in the use of new information and communication technologies. States Parties should ensure that persons at risk of being able to commit any offense provided for in this Convention may have access, where appropriate, to programs and measures to prevent the risk of committing such offenses. The Convention provides for measures for the general public and obliges the signatory countries to promote and raise awareness in the general public with information on the phenomenon of sexual exploitation and sexual abuse of children and preventive measures that can be taken. It is particularly necessary for countries to take legal and other measures to prevent and prohibit the dissemination of material propagating offenses established in accordance with this Convention.

As highlighted in Article 9 of this Convention, Member States must specifically encourage the participation of children, the private sector, the media and civil society. These preventive measures require Member States to encourage the participation of children by their age and development, which affects the implementation of their national policies, programs or other initiatives that are taken to prevent sexual exploitation and abuse of children. Member States will encourage the private sector, in particular information and communication, and the tourism and transport, banking and finance sectors, motivating them to participate in the elaboration and implementation of these policies through self-regulation and co-regulation. Media and activities of the Member States related to encouraging the media have a special role to provide relevant information regarding these forms of exploitation and child abuse, bearing in mind the independence of the media and the freedom of the press. Member States should encourage financial activities, where appropriate, to create financial funds for the implementation of projects and programs implemented by civil society in order to prevent and protect children from sexual exploitation and sexual abuse.

The Convention also requires Member States to establish a national system of coordination and cooperation, the implementation of protective measures and assistance to victims (establishing a multidisciplinary victim support structure) and providing assistance to parents, caregivers, to each person in charge of taking care of them. The Convention specifically emphasizes the need to establish a system of reporting on the commission of these crimes, then a helpline, then establish effective intervention programs and measures, access to all information, information on all facts, etc. Member States will also improve their criminal legislation by harmonizing it in Art. 18.-29. These conventions relating to criminal offenses. The Convention also provides for the promotion of investigations, prosecutions and procedural law in order to ensure that these proceedings are conducted in the best interest and respecting the rights of the child.

An important part of this Convention is the chapter on the recording and storing of information about convicted sex offenders. The Convention also provides for international co-operation giving it the legal basis for mutual legal assistance in criminal matters or extradition in respect of offenses established in accordance with this Convention. The Convention provides that the signatory States shall establish a committee as a monitoring mechanism with the obligation to establish procedures for the collection of data with the aim of monitoring the application of this Convention. This Convention shall not affect the obligations of the Member States arising from the rights and obligations arising out of the United Nations Conventions and the Protocols. Its function is to provide greater protection and assistance to children victims of sexual abuse and abuse.

- 2011. BiH signed the Hague Convention on the Contact with Children and the Convention on the Maintenance of Children.

5.2.2. Legal framework in BiH

The assessment of the degree of harmonization of laws in Bosnia and Herzegovina, on the whole, is very positive and continuing the trend of harmonization of BiH. laws (laws from the period 2007-2010).When it comes to laws adopted at the BiH level and other strategic documents relating to the rights and protection of children, the most important ones should be mentioned: - Action Plan for Children BiH 2010-2014. - Law on the Prohibition of Discrimination of BiH ("Official Gazette of BiH", No. 59/09). - Law on Gender Equality in BiH ("Official Gazette of BiH", No. 16/03, 102/09 and 32/10 - consolidated text). - Framework policy for the promotion of early growth and development of children in Bosnia and Herzegovina ("Official Gazette of BiH" No. 36/12). When it comes to entity laws, it should be noted in the observed period: In the Federation of BiH, in the past period, the following should be noted: - Law on Protection against Domestic Violence in FBiH ("Official Gazette FBiH", no. 22/05 and 51/06) FBiH Family Law ("Official Gazette FBiH", No. 35/05 and 41/05), - FBiH Criminal Code ("Official Gazette FBiH" No. 36/03, 37/03, 21/04, 69/04, 18/05 and 42/10),

In the past, in the Republic of Srpska, the importance of adopting amendments to the Republic of Srpska should be emphasized: - The RS Law on Protection against Domestic Violence ("Official Gazette of RS", No. 118/05 and 17/08), which improves existing legal solutions related to the protection of children from Domestic Violence - adoption of the Law on Preschool Education and Education ("Official Gazette of the Republic of Serbia", No. 119/08), - the Law on Primary Education and Education ("Official Gazette of the Republic of Serbia", No. 74/08), - the Law on Secondary Education (RS Official Gazette, No. 74/08), - RS Government adopted in 2008 the RS Family Development Strategy for the period 2009-2014, - RS Government adopted Strategy for Fighting against violence in the RS family until 2013, - in 2009, the Youth Policy of the Republic of RS 2010-2015 was also adopted.

In the past, the Brčko District of BiH should emphasize: - The Law on Child Protection of the Brčko District of BiH ("Official Gazette of Brčko District BiH", No. 1/03, 4/04, 21/05, 19/07, 2/08 and 51/11), - Law on Social Protection of the Brčko District of BiH («Official Gazette of the Brčko District of BiH» No. 1/03, 4/04, 4/04, 19/07, 2/08) - Law on education in basic and secondary schools of the Brčko District of BiH («Official Gazette of the Brčko District of BiH», No. 10/08).

The general assessment of the degree of harmonization of laws in BiH can be summarized in several noted problems, such as:

- unequal social benefits, unmatched child protection, insufficient financial resources and professional capacities, causing unequal protection; in some laws, the definition of a child of the victim of violence is lacking, which allows for their more effective protection;

- There are no laws in BiH relating to the prevention of violence against children or parts of sectoral laws that deal more closely with prevention issues; there is a lack of a system of expert supervision that should enable the raising of standards for the protection of children against violence, which can be achieved within the established system of social prevention;

- In the field of education, laws are largely harmonized, but there is an evident need to improve the school management system, i.e. the responsibility of school management in relation to peer violence among children;

- In the interior sector, we note that there are no harmonized legal solutions regulating the central system for recording violence against children, that is, the system of records of persons who committed violence against children (separation of records only according to the age of the victim),

- In the justice sector, trends have been noted regarding the need for further harmonization of criminal legislation with international law, especially when it comes to a more permanent determination according to the definition of a child as established under the UN Convention on the Rights of the Child, then the need to harmonize the penal policy,

- In the health sector, we note the need to improve inter-departmental cooperation (protocol) in order to cooperate with the non-governmental sector, as well as a permanent system for recording violence against children and establishing a list of services that should be provided to children who are victims of violence and their family.

6. Concluding observations in the form of a note

Already in the previous one-year project of this strategy for its three-year implementation (2007-2009), it is envisaged to comply with international conventions signed and ratified by BiH, specifically the UN Convention on the Rights of the Child, which defines the child as a person under 18, a person under 14 years of age is considered a child in the Criminal Code of BiH. In connection with the aforementioned convention, it is necessary to incorporate procedural measures for the protection of the child victim of the criminal offense. This measure has not been fully realized and in the next strategic period it is necessary to make additional efforts to try to achieve all the provisions and activities envisaged by it.

During the project as a permanent process of monitoring the implementation of the strategy, attention was drawn to the need for harmonization of criminal legislation in BiH. It was precisely in relation to the Strategy that priority was given to crimes against sexual freedom and morality and criminal offenses against marriage and family, both in terms of the definition of criminal offenses and in terms of sanctions. There is not much that has been done in this project plan and is necessary for the implementation of this strategic goal and additional efforts to accompany the measures. A very similar situation is also with regard to more severe criminal policy, that is, criminal sanctions for the crimes in which the victims are damaged or victims of children, which must be more stringent in line with the type, severity, manner of execution and the consequences that these offenses leave to the child victim. A similar situation is also in view of the need for a clearer definition of criminal law provisions relating to obsolescence of crimes committed at the detriment of children, so that obsolescence begins from the day when a child who is injured by a criminal offense, especially in his sexual sphere, becomes punitive.

There is also a need to prescribe more stringent criminal sanctions in accordance with the type, severity, manner of execution and consequences that these offenses leave to a child damaged by a criminal offense. For some criminal offenses, this measure has been achieved, but in general, in the next strategic period, this strategic measure needs

to be fully realized and aligned with international standards. Its realization is very important and should be considered as a generally preventive segment of action, which makes it clear that the child is protected in the right way, that is, in accordance with the provisions of the Convention on the Rights of the Child.

Creation of unique databases is one of the burning problems in BiH when it comes to strategic planning. For many strategies, due to financial expenditures, due to political problems, an adequate and unique update of the collected data on "problem-oriented" information has not been established. In the previous strategic period, the objectives were aimed at adopting a sustainable system/record keeping function for victims of crimes that would clearly delineate data in relation to adult and juvenile victims of crime, the type of crime, as well as the gender of the victim, then the flow and outcome procedure, and content with regard to children victims of the crime, and delineated the columns according to the age of the child (up to 14, 14-16, 16-18 years). It was also necessary to introduce a section on data on measures to protect and inform the child victim of the crime. The analysis of the data obtained in the monitoring process identified the problem of non-uniformity in the completion of the questionnaire and the inability to determine the competence and information of the respondents (representatives of institutions) about the problem, and more precisely, the situation in that area. It has been found that modernization of the application for data collection from all levels should be carried out through innovative systems and innovative technical support (web applications etc.). In this way, ambiguity will be avoided with respect to certain "problem-oriented issues" on the one hand, and on the other hand, a uniform, permanent data entry from all levels and all sectors would be achieved.

One of the burning problems in treating child victims in the previous reference period is certainly the existence or lack of cooperation between the governmental and non-governmental sectors. In the Strategy, which is the subject of this paper, one of the strategic measures was to improve the cooperation with the non-governmental sector and the centers for social work with regard to the accommodation and protection of the child victim of violence, as well as ensuring the exchange of information and data, which especially refers to the courts with regard to criminal offenses domestic violence and the pronouncement of protection measures by the court. It is evident from the analysis that a lot has been done in this respect, but that certain measures are not sufficiently precise, and thus not harmonized. Therefore, when it comes to cooperation between the non-governmental and governmental sector, we could not find a uniform protocol on cooperation that is uniform and professional standards. Responsibility for this situation should be shared and proposed in the next strategic period the development of alternative projects (shadow project) in order to get information on violence against children in the right way, but also to a great extent concretize the cooperation between the government and the non-governmental sector.

Education of judges and prosecutors in order to improve this area was one of the basic ideas of this strategy. It was planned to carry out education of judges and prosecutors for this type of criminal offense and possibly train judges/prosecutors to be entrusted with acting in cases involving children who are victims of a crime, because a special procedure for this category of victims is needed, a more sensible approach and the acquisition of the trust of the child in the interest of obtaining a better quality statement, the application of witness protection measures (the Law on Witness Protection under threat and threatened witnesses) and data for identifying the criminal offense and the perpetrator, collecting the necessary evidence and pronouncing an

adequate criminal sanction. In the previous period, several strategies were adopted in which the child was treated in different ways, so this obligation was carried out through several strategic documents. What we noted in the analysis is the fact that training of judges and prosecutors regarding the protection of the rights of the child in accordance with the Convention on the Rights of the Child is planned in the coming period. Special education is planned for judges and prosecutors who, in their professional orientation and duties, have a child in the focus of interest. In this way, the CEST of the FBiH and the RS Road show great progress in this regard.

Considering that the analysis of the Strategy has determined the existence of several protocols (*e.g.* the Protocol on the Treatment of Violence against Children) which have not sufficiently specified the provisions on cooperation between the competent institutions as regards procedures in specific situations, it should be noted that attention should be directed to their innovation and most importantly to the training of experts for the application of the provisions of those protocols. The analysis concluded that the Republika Srpska adopted the Protocol on the Treatment of Violence against Children, but it can be seen from the qualitative analysis that much remained at the level of formalities. It is also evident that professionals from different sectors are not sufficiently informed about the content and structure of these documents. In the following period, it would be particularly necessary to provide a special strategic measure to address this problem, and in particular media information on violence against children and youth in Bosnia and Herzegovina.

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The Digital World Affecting Children Rights and The Affects of Internet Governance

Ph.D. Elena Tilovska-Kechedji[1]
Assistant professor
Faculty of Law
University "St. Kliment Ohridski", Bitola
Macedonia

Ph.D. Darian Rakitovan[2]
Notary Public Office, Alibunar
Republic of Serbia

Abstract:

In today's modern world everybody uses the new technologies to communicate across the globe. Children from very young age use I-pads or smart phones to play, learn new things, communicate but not all the information or graphic imagery that is on the internet is good for them. Adults can distinguish and can choose what is appropriate and good. But can children distinguish the dangers that are on the internet? Can they decide for themselves and be protected from the online influences and information? The UN children rights exists so they can be respected and protect the children but they were created in a period of time when the internet did not exist. Can this rights protect the children offline as well as online or there should exist new rights/measures specifically applied for the internet, the media and the technology of today? All of these questions will be discussed in this paper in order to come with an appropriate solution to this problem that is spreading with the speed of the light in the whole world.

Keywords: *internet, governance, children's rights.*

1. The young generations and the internet

Today everybody uses the Internet. In developing and developed countries all the activities are conducted on the Internet and mobile phones. When the Internet era begun, it was a phenomenon of the developed countries but today it is part of everyday lives of people all around the world. The policy makers, legislators, regulators and the internet governance in the begging assumed that the only users of the internet would be adults, they did not assume that they will be children.[3] Therefore, the policies and regulations were created to protect adults therefore children are not protected.

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[1] Contact: elena-tilovska-kechegi@hotmail.com; elena.tilovska-kechegi@uklo.edu.mk.
[2] Contact: drakitovan@yahoo.com.
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The information and communication technology (ICT) is developing and spreading very fast and it is reshaping children lives. Every day more and more children are using the internet to learn, participate, play, and socialize. We all rely on technology, in order to communicate, to work, to learn, to pay bills, to shop and so on. Almost every aspect of children's lives has an online dimension, directly or indirectly. There is no distinction between offline and online. Governments promote ICT for business and commerce in order to compete in the global world, they create national and international policies that do not mention children. At home it is assumed that provisions will meet the needs of children or that parents will be responsible for their children online. But neither of these assumptions are considered as sufficient.[4] You can not assume that the provisions of the general public will apply to all the children, because they are all different and have different needs and abilities, different age. General provisions and regulations can not apply for children, there is a need for specific regulations to protect the children because they are the future of our world.

2. The UN Convention on the Rights of the Child

The Internet brings many benefits and many risks for children. In order to promote the benefits of the internet you need to have a safe and secure online environment where children rights will be safeguarded and respected. The United Nations Convention on the Rights of the Child (CRC) is the foundation of children's rights. Every UN member state has ratified the CRC, with the exception of the USA. The Convention is based on four principles: • Children should be free from discrimination. • Policies should be based on the best interests of children. • Children should be allowed and encouraged to develop to their full potential. • Children's views and perspectives are important and need to be heard. It also discusses the rights of children in three broad spheres – provision, protection, and promotion (or participation).[5]

Online rights are not mentioned in the CRC because the internet era came much later. The UNCRC sets the basic standards for all children and specifies the rights and freedoms that governments should implement, it is a guide to policy makers. It complements the Universal Declaration of Human Rights. The UNCRC was ratified in 1989, and incorporates all of the human rights – civil, cultural, economic, political and social rights. The CRC is the starting point for the rights of the child online, which were extended by the Oslo Challenge and other documents and conventions. The CRC confirms and supports children rights which is relevant to the internet governance and corresponds to the internet challenges.[6]

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[4] Sonia Livingstone, Monica E. Bulger, *A global research agenda for children's rights in the digital age,* Journal of Children and Media, 2014, 8 (4). pp. 317-335. ISSN 1748-2801 DOI: 10.1080/17482798.2014.961496 Retrieved from: http://eprints.lse.ac.uk/62130/1/Livingstone_Global_Research_Agenda_Childrens_Right_Digital_Age.pdf.

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3. What is Internet governance and Internet

Internet governance (a definition concluded on the World Summit on the Information Society -WSIS) "is the development and application by governments, the private sector, and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programs that shape the evolution and use of the Internet". Furthermore, the Internet governance and the term 'governance' have variable interpretations. Governance is synonymous with government, many national delegations had understanding, that Internet governance should be the priority of governments and issues should be addressed at intergovernmental level with minimal participation of non-state actors. Also the term is used by some international organizations to promote the reform of states, the governance of institutions including non-governmental ones. And by the Internet community, the term governance describes the way the Internet has been governed so far. In correlation, the word 'Internet' does not cover all of the aspects of the digital developments, therefore the terminologies information society and information and communication technology (ICT) – are terms that are more global or overall terms. This terms include areas that are beyond the Internet domain, such as mobiles or other technologies.[7]

The Internet is a mirror reflecting the real world, and in the real world we have moral and legal norms and regulations that provide freedom and security. The same rules should exist in cyberspace. There are three levels of Internet governance: supranational, national, and self regulation.[8]

4. Positive effects for children using the internet

Children should use the internet and use its benefits for education, health, social connection, economy, civic engagement, etc. But while using the internet they should be educated how to work and what are the positive and negative effects of it. Literacy provides children with the skills required to access, understand, produce and participate in digital media. Children develop digital literacy by formal and informal education, and they do not always understand their competencies. When asked about the effects of the internet, children state that the internet enabled them to participate, it broadened their horizons, they learned about cultures and are informed globally. They use the technology for school as well as to satisfy their curiosities. They acknowledged that the internet is a distraction from their studies, but managing this helped them to engage responsibly. Children embrace digital media positively, it has improved their lives, they learned to share the responsibility for making the internet a safe place for themselves and their peers. It is therefore important to support digital literacy and encourage children to take responsibility for their online safety.[9]

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[7] Jovan Kurbalija, *op. cit.,* pp. 5-6.

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[9] Amanda Third, Delphine Belerose, Urszula Dawkins, Emma Keltie, Kari Pihl, *Children's Rights in the Digital Age,* A download from children around the world, 2014. Retrieved from: https://www.unicef.org/publications/files/Childrens_Rights_in_the_Digital_Age_A_Download_from_Children_Around_the_World_FINAL.pdf, p. 13.

The 2012 UNHRC Resolution on the promotion, protection and enjoyment of human rights on the Internet ended the debate on whether human rights apply online or whether a new set of rights is needed for the online environment. The CRC offers a guide to the principles and ideals of meeting children's rights offline, and can also offer the same protection online.[10]

When it comes to promoting the benefits of technology for children while fostering a safe and secure environment, stakeholders need to balance between children's need to be protected against inappropriate content and behavior and their rights to access information and the freedom of speech.[11]

5. Negative effects of children online

Understanding how children use technology and the Internet is crucial for policy makers to promote and respect children's online safety. The technology evolves fast and it has a significant impact on children's lives. While anybody can be at risk online, children are particularly vulnerable, as they are still in the process of development, the risks include: inappropriate content, adult content and violent content. Also, they can be exposed to harmful contact, such as bullying and harassment, usually conducted by their own peers, but they can be victims to potential perpetrators of sexual abuse. Inappropriate conduct includes publishing inappropriate comments or revealing personal information or images that may have negative consequences, sharing of sexual content, commercial risks, online privacy and the collection of data. All of these are presumable threats/risks for any child, but they are higher depending on the child's age, gender, and resilience. When using social networks which are also used by abusers, children and young people are often not aware of hidden identities. The virtual conduct can transform to offline contact, increasing the risk of abuse and exploitation of children, pedophilia, the solicitation of minors for sexual purposes, trafficking, and child pornography. Parents, guardians, educators, government, the business sector, and other stakeholders play an important role in protecting children online, and in helping them deal with such risks.[12]

Children can also help the governments, the educators, the parents the policy makers to realize how they use the internet and what they are afraid of. The EU Kids Online data presented the following statistics. When asked if there were things on the Internet that would bother children of their own age, 55% of 9-16 year olds answered that there were things online that made them uncomfortable and upset. 23% of children expressed concern about pornographic or sexual content as the most common things that bother them, also violent/aggressive content (18%), as well as scary or gory content. The content about self-harm or suicide or anorexia/bulimia, and racist or hateful speech was also on their list. In 2010, 9-16 year-olds when asked if 'There are lots of things on the Internet that are good for children of my age', 47% answered positively. But by 2014, this numbers declined to 41%.[13] Therefore children can

[10] Jovan Kurbalija, *op. cit.,* pp. 215-216.

[11] *Ibidem*, pp. 108-112.

[12] *Ibidem*.

[13] "Research for CULT Committee-Child Safety online: definition of the problem", 2018, Directorate - general for Internal policies. Retrieved from: http://www.europarl. europa.eu/Reg Data/etudes/ IDAN/2018/602016/IPOL_IDA%282018%29602016_EN.pdf, pp. 13-16.

distinguish what is good or bad for them especially 9 to 16 year olds and they can be a direction for the policy makers.

In 2012, the United Nations recognized the huge impact of digital technology on human rights and resolved that "The same rights that people have offline must also be protected online". This resolution reflects a hope for the future.[14] But the rights of the child are not enough and they should be expended in the digital world.

Online risks faced by children are many and evolving. Addressing them requires a blend of approaches that include legislative, self and co regulatory, technical, awareness and educational measures, as well as content provision and child safety zones. In practice, each country operates its own policy characteristics and priorities, which reflects its perception of priorities as well as its culture and style of government.[15] But the regulations and directives should be also on the global level.

6. What to do to prevent the negative effects of the internet

In order to prevent the negative effects of the Internet we need combination of legislation and policy, technical tools, education, and awareness. Many countries have executed legislation that makes certain content illegal. On an international level, the key instruments to protect the children are the UN Convention on the Rights of the Child and the Second Optional Protocol on the sale of children, child prostitution and child pornography; the COE Convention on Cyber-crime and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the International Center for Missing & Exploited Children (ICMEC) developed a framework for evaluating/determining national legislation. Furthermore, other effective approach is the self‑regulation of the industry and co-regulation (combination of government and private regulation). For example, ISPs may provide measures and may filter illegal content; social media platforms can set age requirements for children. In 2008, the CoE published Guidelines for cooperation between law enforcement and ISPs against cyber crime. ITU's Child Online Protection (COP) initiative provides guidelines for children, parents and guardians, educators, the industry, and policymakers. Parents and educators have a responsibility to guide and support children, educate and make them aware. Governments have a primary responsibility to protect children, the industry has the responsibility of ensuring that the online environment is safe and secure. Service providers can provide safer environment. Children's NGO's and child helplines are stakeholders in the fight against child sexual abuse and exploitation.[16] Therefore there is not one actor or one universal declaration that can protect children online, but all of the above actors need to work together to create an umbrella of protection.

Only partial progress has been made so far in supporting children's rights online. In the early days of the internet, public policy concerns it was inappropriate content, because pornography of all kinds was pushed via pop-ups. But approaches to internet governance have changed, 'cyberspace' is a distinct sphere in need of distinct regulation,

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[14] Becky Hogge, *Travel guide to the Digital world: Internet policy and governance for human rights defenders*, 2014. Retrieved from: https://www.gp-digital.org/wp-content/uploads/2014/06/Travel-Guide-to-the-Digital-Worlds-1.pdf, p. 8.

[15] "The Protection of Children Online". Recommendation of the OECD Council. Report on Risks Faced by children Online and Policies to protect them, 2012. Retrieved from: https://www.oecd.org/sti/ieconomy/childrenonline_with_cover.pdf, pp.14-15.

[16] Jovan Kurbalija, *op. cit.*, pp. 108-112.

what is illegal or inappropriate offline is the same online. But the effort to apply regulations and governance practices offline, online they conflict with liberal efforts to keep the internet open and free.[17]

Present measures offer legal frameworks for classifying illegal content and activity on the internet, children have the right to be protected from trafficking and exploitation. The production of illegal child abuse images, sexual grooming for abuse and other forms of exploitation all have online dimension, they have intensified, worsened, by the Internet anonymity and means to bypass the law. Society does not wish to keep children forever in a 'walled garden', they must explore, make mistakes and learn to cope in order to develop in responsible adults and digital citizens. This leaves policy makers only with the act of supporting and empowering children online.[18] But it limits the border lines until where they can act. It is also problematic that the internet is largely blind to age. The effort to develop international regulatory bodies and forms of internet governance is somewhat fragile and uneven.[19] Also people should use the Internet with freedom and confidence. An open, inclusive, safe and enabling environment must go hand in hand with a maximum of rights and services with minimum restrictions and security which users are entitled to expect. The Council of Europe fully supports the mufti-stakeholder model of Internet governance which ensures that the Internet remains universal, open and innovative, and continues to serve the interests of users in the world.[20]

Government policies to protect children online are fragile. To enhance their efficiency and catch up with the Internet, governments face three main challenges: Managing policy complexity through enhanced policy co-ordination, consistency and coherence; Adopting an evidence-based policy-making approach; Taking advantage of international co-operation to improve the efficiency of national policy frameworks and foster capacity-building. Governments should appreciate the continuity of their policy measures and tools in collaboration with all stakeholders. Policies to protect children online would benefit from policy objectives, like the preservation of fundamental rights and maintenance conditions which have enabled the Internet to become a global platform for innovation, economic growth and social progress. International and regional co-operation is another area for improvement. While international and regional intergovernmental organizations are already involved, coordinated international work by governments and stakeholders is needed to enhance international strategic partnerships, capacity building and joint events as well as the sharing of successful educational and awareness raising campaigns.[21]

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[17] Sonia Livingstone, Brian O'Neill, *Children's right online: Challenges, dilemmas and emerging directions,* 2014. Retrieved from: http://eprints.lse.ac.uk/62276/1/__lse.ac.uk_storage_LIBRARY_Secondary_libfile_shared_repository_Content_Livingstone,%20S_Childrens%20rights%20online_Livingstone_Childrens%20rights%20online_2015.pdf, p. 3.

[18] *Ibidem*, pp. 5-6.

[19] Sonia Livingstone, Monica E. Bulger, *A global research agenda for children's rights in the digital age*, Journal of Children and Media, 2014, 8 (4). pp. 317-335. ISSN 1748-2801 DOI: 10.1080/17482798.2014.961496 Retrieved from: http://eprints.lse.ac.uk/62130/1/Livingstone_Global_Research_Agenda_Childrens_Right_Digital_Age.pdf, p. 4.

[20] "Internet Governance". Council of |Europe Strategy 2012-2015. Minister's Deputies CM Documents 2012. Retrieved from: https://www.innova.puglia.it/documents/10180/14203/Internet%20 Governance%20Strategy%202012%20-%202015.pdf, p. 2.

[21] "The Protection of Children Online". Recommendation of the OECD Council. Report on Risks Faced by children Online and Policies to protect them, 2012 Retrieved from: https://www.oecd.org/sti/ieconomy/childrenonline_with_cover.pdf, pp. 14-15.

Digital media should be seen through children's eyes. This is necessary if we want to develop credible and effective ways for them to use digital media within their rights.[22] Children's participation in the decision-making processes is vital. When children are provided with opportunities to participate in policy and decision-making processes, they develop skills, and their contributions is meaningful. These contributions lead to better decisions, because they incorporate the specific knowledge and perspectives.[23]

Access, skills, risks and opportunities are all part of the overall picture of children's well-being and rights in the digital age and should be used when developing policy interventions. Children are not a homogeneous group, they are different age, different digital skills, places of access, devices they use and support they receive. It is important therefore to differentiate policy goals based on these differences and real life situations. Policy must pay attention to vulnerable groups, such as indigenous or ethnic minority children, migrants, children in poor or rural settings or those who have some form of disability. Improving school access, supported by teacher training, could further link internet use with education and information benefits, by developing digital skills.[24]

7. Conclusion

Children use the Internet and mobile phones to seek information and assistance, they use it for leisure and games, for interaction and communication and so on. The Internet today has increased access to information in all of the world, offering children and young people the ability to research their interests, access worldwide media, and harness ideas for the future. It allows children to claim their rights and express their opinions. Despite the numerous benefits of the Internet, children can also face a lot of risks. Children can be exposed to inappropriate content or inappropriate contact, including potential perpetrators of sexual abuse. They can suffer reputational damage associated with sensitive personal information.[25] They can be exposed to violent contact, bullying and harassment. Children can be at risk of exploitation, pedophilia, trafficking and other atrocities. That is why the policy makers, governments, the NGO's, the industry sector and the children, their parents and educators should work together under an umbrella system where all the opinions and information will be heard and elaborated upon in order to make precise and applicable norms and regulations that will in the same time not restrict the freedom of the internet but also will not disrespect the rights of the children as well to protect the children from any harm possible.

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[22] Amanda Third, Delphine Belerose, Urszula Dawkins, Emma Keltie, Kari Pihl, *op. cit.*, p. 14.

[23] *Ibidem*, pp. 17.

[24] Global Kids Online. Research Synthesis 2015-2015. Summary. Retrieved from: https://www.unicef-irc.org/publications/pdf/Misc_GKO_ExSum_2016.pdf, p. 14.

[25] Children's Rights and the Internet. From Guidelines to Practice, UNICEF, 2016 Retrieved from: https://www.unicef.org/csr/files/Childrens_Rights_and_the_Internet_Guidelines_to_Practice_Guardian_Sustainble_Business_English.pdf, p. 6.

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Civil Forfeiture in the United States

József Kelemen
PhD student,
Doctoral School of the Faculty of Law
University of Pécs
Hungary
Visiting scholar, University of Wisconsin Law School (USA)

Abstract

This article examines how the United States Congress has combated organized crime and attempted reducing the profitability of criminal offenses. One result of the legislation is the civil forfeiture which is based on the superstitious notion arose from the medieval that inanimate items have their own minds. Today, civil forfeiture is used to protect the public from assets involved in or derived from criminal activity. Civil forfeiture requires only probable cause in order to someone's property may be seized, and the legal presumptions are all turned around. In other words, the burden of proof is on the owner of property. As a result, civil forfeiture requires less evidence and provides fewer protection than criminal forfeiture. It can be an advantage for the law enforcement agencies and a major threat to the owners of assets. Moreover, in 88 percent of civil forfeiture cases, the properties are automatically transferred to the law enforcement agencies. Therefore, nowadays civil asset forfeiture is one of the most controversial practices in the American criminal justice system. Furthermore, there are more than 400 federal forfeiture statutes relating to several federal crimes, and each state has own statutory provisions for some form of asset forfeiture, which do not facilitate the defense of property owners. In addition, this essay reviews the history of civil forfeiture in the United States and also analyzes the possible constitutional conflicts of this tool.

Keywords: *asset forfeiture, civil forfeiture, forfeiture without criminal conviction, combating organized crime*

1. Introduction

Starting from the second half of 20th century combating organized crime has been a particularly important issue in the developed countries. Governments recognized the incarceration is not an efficient and sufficient tool to reduce the amount of criminal offenses. The punishments against individuals cannot restrain the members of organized crime groups who have been at large from committing criminal conducts again with use of unseized assets. These properties can be reinvested by other members

of the criminal group that results in an increasing amount of criminal offenses. Ultimately the incarceration without asset forfeiture is beneficial for the criminal enterprises because they can freely use the proceeds of previous crimes to commit new criminal acts in order to gain profit and support the incarcerated group members. Consequently, the replacement of an organized criminal group member is much easier than the replacement of properties which are needed to commit crimes. The forfeiture of proceeds of crimes deprives the criminals of the essence of committing criminal offenses. In other words, this legal practice can play a significant role in the struggle with crimes. On the other hand, the asset forfeiture has been being criticized for a very long time for impacting not only on the offenders but on their family members as well.

It is believed that the only way of combating organized crime is to disrupt and dismantle these criminal enterprises through the deprivation of their financial base, namely the forfeiture of proceeds of crime.

The main purpose of this essay is to introduce the regulation of forfeiture of proceeds of crime in the United States, with particular focus on the civil forfeiture through its employment the law enforcement agencies can seize and keep the asset suspected of involvement in criminal act. This paper briefly reviews the history of civil forfeiture in the United States and the possible constitutional conflicts of this tool as well.

2. Types of asset forfeiture

"The term forfeiture is best defined as the divestiture without compensation of property used in a manner contrary to the laws of the sovereign."[1] This legal tool expresses the criminals cannot retain the unlawful obtained gain, because the government take the profit arose from criminal offenses. The concept of forfeiture of criminal assets can be a very strong disincentive for them who want to commit a criminal conduct in the future.

The asset forfeiture had not been having role in combating crimes in the United States until the 1970s. At that time the federal government observed that they were prosecuting and convicting more members of criminal organizations than before. "Incarcerating these individuals, however, did not necessarily put an end to their criminal activity."[2] The government recognized, criminal enterprises and drug trafficking organizations sometimes continued to conduct business from prison or other criminals stepped into vacant leadership positions despite the risk that they would also face prosecution, unless their ill-gotten empires were dismantled asset by asset.[3]

"In 1970, Congress passed the first criminal forfeiture statutes in the United States history."[4] The purposes of the legislation have been to seize the profit of organized crime figures which are acquired from criminal activities. "In 1978, Congress amended the civil forfeiture sections of federal law to permit the seizure of all monies used in and all proceeds obtained from the illegal drug trade. […] This was the first statute in the

[1] Juan C. Marrero, David B. Smith, Forfeitures, *Volume I: Introduction to Civil Statutes*, U.S. Department of Justice, Criminal Division, Asset Forfeiture Office, 1984, p. iii.

[2] Marrero, Smith, p. v.

[3] *Ibidem*.

[4] Harry L. Myers, Joseph P. Brzostowski, *Drug Agents' Guide to Forfeiture of Assets*, Drug Enforcement Administration, Washington, D.C., 1981, p. 1.

United States to permit the civil forfeiture of the accumulated profits of criminal activity."[5]

Furthermore, the law enforcement agencies can benefit from the forfeitures since they can retain a part of the seized proceeds.

In the 1980s, the Department of Justice increasingly relied on the forfeiture laws to combat and deter crime more effectively.[6] They found that the forfeiture statutes were "powerful economic disincentives to crime."[7] "The government had few law enforcement tools as effective in deterring crime as the forfeiture of assets involved in or derived from criminal activity."[8]

The forfeiture law in the United States has two different types on both the federal and state level. One of them is the criminal forfeiture, the other one is the civil forfeiture. However, a sharp distinction cannot be drawn between the labels "criminal" and "civil."

The U.S. Supreme Court considered that "punitive ends may be pursued in civil proceedings, and, conversely, the criminal process is frequently employed to attain remedial, rather than punitive, ends."[9] This notion was affirmed again when the Supreme Court sustained that "civil proceedings may advance punitive as well as remedial goals, and, conversely, that both punitive and remedial goals may be served by criminal penalties."[10]

In the American criminal justice system, the traditional aims of punishment are the retribution and the deterrence.[11]

"In the United States, asset forfeiture is usually a two-pronged process. First, the assets are seized through either a civil or criminal action. Next, the assets are forfeited through either a civil or criminal proceeding."[12]

In order to employ criminal forfeiture, a person is required and found guilty of committing a criminal offense and this person also must own the property which was either used to commit a crime or derived from a criminal conduct.

"The Constitution applies to people only, which means that for criminal forfeiture, people receive constitutional protections; they cannot have their assets seized until and unless they are actually found guilty of a law violation. Criminal forfeiture requires that a person who is accused of committing a crime has a right to a trial. He or she must be found guilty beyond a reasonable doubt."[13] The burden of proof is on the prosecutor, and only after the accused is proven guilty may the criminal assets be forfeited. Thus, criminal forfeiture is tied to the criminal conviction of an individual, the government must actually demonstrate in court that the owner of property has obtained his or her property unlawful.[14] Criminal forfeiture is a punitive act which takes part after an individual is found guilty and sentenced.[15]

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[5] Myers, Brzostowski, p. 1.

[6] Marrero, Smith, p. v.

[7] *Ibidem*.

[8] *Ibidem*.

[9] United States ex rel. Marcus v. Hess, 317 U.S. 554 (1943).

[10] United States v. Halper, 490 U.S. 447 (1989).

[11] Kennedy v. Mendoza-Martinez, 372 U.S. 168 (1963).

[12] Shaun L. Gabbidon, George E. Higgins, Favian Martin, Matthew Nelson, Jimmy Brown, *An Exploratory Analysis of Federal Litigation in the United States Challenging Asset Forfeiture*, Criminal Justice Policy Review 22 (1), 2011, p. 51.

[13] Daniel Y. Rothschild, Walter E. Block, *Don't Steal; The Government Hates Competition: The Problem with Civil Asset Forfeiture*, The Journal of Private Enterprise 31 (1), 2016, p. 46.

[14] Marian R. Williams, Jefferson L. Holcomb, Tomislav V. Kovandzic, Scott Bullock, *Policing for Profit: The Abuse of Civil Asset Forfeiture*, Institute for Justice, 2010, p. 9.

[15] Gabbidon *et al.*, p. 51.

The standard of proof means how much evidence the government must present at trial and how compelling that evidence must be in order to successfully justify the defendant's guilt. The highest standard is "beyond a reasonable doubt", generally associated with convictions on criminal charges. The lower standard is "probable cause", usually it is needed to justify search warrants and the arrest of suspected person. "Defining 'probable cause' is no easy task. Although it is more than a hunch or even the 'reasonable suspicion' […], the probable cause threshold is not high."[16] This standard means merely that the government has a reasonable belief that the person has committed a criminal offense.[17]

The employment of criminal forfeiture requires higher standards than civil forfeiture, since only humans have rights and objects do not.[18] Upon the criminal forfeiture the person is considered guilty of committing a crime. Civil forfeiture, by contrast, means that the object itself is considered guilty of breaking the law.[19]

Civil forfeiture is a legal fiction that allows law enforcement agencies to take legal action against inanimate objects for participation in alleged criminal activities, regardless whether the owner of the object is guilty or innocent, or even whether the owner is charged with a criminal offense.[20] As Blumenson and Nilsen point out: in nearly 80 percent of civil forfeiture cases the owners of properties were never prosecuted in the 1980s.[21]

Civil forfeiture requires only probable cause in order to someone's property may be seized, and the legal presumptions are all turned around. In this case the defendant needs to prove the innocence instead of prosecutor proving guilt.[22] In other words, the burden of proof is on the owner of property. As a result, civil forfeiture requires less evidence and provides fewer protection than criminal forfeiture. It can be an advantage for the law enforcement agencies and a major threat to the owners of assets.

Consequently, nowadays civil asset forfeiture is one of the most controversial practices in the American criminal justice system.[23]

The basis of modern civil forfeiture is the relation-back doctrine. This concept means that when a property is involved in a criminal act, the title immediately transfers to the government. "Even though the government does not take actual possession until it eventually seizes the property, its ownership rights relate back to the date of the illegal activity."[24] Since the forfeiture actually takes place at the moment of the criminal act, third party cannot acquire a legally cognizable interest in the property after the date of unlawful act. In other words, criminal activity cuts off the rights of third parties to obtain legally protectible interests in the asset. It means that no one can prevail by

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[16] Cecelia Klingele, Keith Findley, *Introduction to Criminal Procedure*, University of Wisconsin Law School, p. 158.

[17] Williams *et al.*, pp. 20-22.

[18] Greg L. Warchol, Brian R. Johnson, *Guilty Property: A Quantitative Analysis of Civil Asset Forfeiture*, American Journal of Criminal Justice, 21 (1), 1996, p. 62.

[19] Rothschild, Block, p. 46.

[20] Williams *et al.*, p. 9-10.

[21] Eric Blumenson, Eva Nilsen, *Policing for Profit: The Drug War's Hidden Economic Agenda*, The University of Chicago Law Review, Vol. 65, 1998, p. 40.

[22] Rothschild–Block, p. 46.

[23] Gabbidon *et al.*, p. 51.

[24] Mark A. Jankowski, *Tempering the Relation-Back Doctrine: A More Reasonable Approach to Civil Forfeiture in Drug Cases*, Virginia Law Review 76, 1990, pp. 165-166.

establishing an innocent owner defense if the base of claim arose after the date of the criminal act.[25]

The relation-back doctrine cannot be employed in criminal forfeiture because the right to the property vests in the government only after the owner is found guilty. In other words, in criminal forfeiture the guilt of the individual is the essential element, and the guilt of the asset is not relevant.[26]

3. History of civil forfeiture

The concept of forfeiture has arisen from the Old Testament: "If a bull gores a man or woman to death, the bull is to be stoned to death, and its meat must not be eaten. But the owner of the bull will not be held responsible."[27] It can be pointed out the religious order subjected the bull to the forfeiture without regard to the owner's guilt. Moreover, the owner of the animal could not be held responsible. In other words, the bull that caused death was found guilty and the owner remained innocent. Forfeiture under this verse did not depend on criminally convicting anyone. If a bull gored someone to death, the owner lost his rights to the bull.[28]

The concept of the Roman law from 450 B.C. was similar to the Old Testament, but the need of indemnity also appeared. "If a quadruped causes injury to anyone, let the owner tender him the estimated amount of the damage; and if he is unwilling to accept it, the owner shall, by way of reparation, surrender the animal that caused the injury."[29]

The doctrine of civil forfeiture was used in the common law. The British Navigation Acts in the mid-17th century required import and exports from England to be carried on British ships. If the Acts were violated, the ships or the cargo on board could be forfeited to the crown without regard to the guilt or innocence of the owner.[30]

In the United States, the first statutory provision of civil forfeiture was enacted in the Act of July 31, 1789, ch. 5, entitled, "An Act to regulate the Collection of the Duties imposed by law on the tonnage of ships or vessels, and on goods, wares and merchandises imported into the United States." First United States Congress allowed the government to take parallelly civil forfeiture action against the property and criminal prosecution against the individual based on the same underlying unlawful act (*e.g.*, goods, wares or merchandise which were unloaded at night or without permit were forfeitable, and the perpetrators were subject to punish).[31]

Based on the British model, the United States Congress enacted the first forfeiture statute, namely the Act of 3 March, 1819, c. 75, entitled, "An act to protect the commerce

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[25] Jankowski, pp. 165-177.

[26] *Ibidem*, p. 176.

[27] Exodus, Chapter 21, Verse 28

[28] Myers, Brzostowski, pp. 2-3.

[29] The Laws of the Twelve Tables, Table VII, concerning crimes, Law I.

[30] Williams *et al.*, p. 10.

[31] Act of July 31, 1789, ch. 5, § 12: "That no goods, wares or merchandise, shall be unladen or delivered, from any ship or vessel, but in open day, or without a permit from the collector for that purpose; and if the master or commander of any ship or vessel shall suffer or permit the same, such master and commander, and every other person who shall be aiding or assisting in landing, removing, housing, or otherwise securing the same, shall forfeit and pay the sum of four hundred dollars for every offence; […]".

of the United States and punish the crime of piracy," continued in force by the Act of 15 May, 1820, c. 112. These statutes were upheld by the Supreme Court in 1827.[32]

The Supreme Court allowed the government to enhance the power of forfeiture during the Civil War, nevertheless, civil forfeiture was not an often-employed legal tool in the 20th century until the 1970s with one exception: "It was used extensively during Prohibition against automobiles and other vehicles transporting illegal liquor."[33]

According to Myers and Brzostowski, the ancestors created the concept of forfeiture out of a need for revenge; revenge against the offending thing, if not against its owner.[34] "Over the centuries, the concept of revenge has gradually faded from our laws, but the traditional doctrine of forfeiture remains. Today, forfeiture is used to protect the public from harmful objects, such as adulterated foods and sawed-off shotguns, and it is used to deter crime."[35]

Civil forfeiture is based on the superstitious notion arose from the medieval that inanimate items have their own minds. Consequently, this concept means that the object itself committed the crime, not that person who used this object. According to Rothschild and Block, who are in opposite to this doctrine, this legal fiction can lead the only murderers who killed the victims with their own bodies should be incarcerated. If the murderer used a knife or a gun to kill the victim, he or she should be set free, while the gun or the knife should be imprisoned.[36]

Obviously, the maxim of civil forfeiture cannot be literally interpreted. There is no doubt, this concept can facilitate the law enforcement agencies to deprive criminals of the proceeds of crime.

First, the Comprehensive Drug Abuse Prevention and Control Act of 1970 was enacted to allow the law enforcement agencies to take the profit out of drug money and transfer it to the federal government in order to fund the public services. After that, the Comprehensive Crime Control Act of 1984 was passed in order to allow the state and local law enforcement agencies to forfeit the assets which are used in criminal activity.[37] Federal forfeiture law was reformed by the Civil Asset Forfeiture Reform Act of 2000, although it left unchanged the ability of law enforcement to benefit financially from civil forfeiture.[38]

Nowadays, there are more than 400 federal forfeiture statutes relating to several federal crimes, and each state has statutory provisions for some form of asset forfeiture.[39]

4. Possible constitutional conflicts of civil forfeiture

Forfeiture, which is punitive in character, seemingly violates the Double Jeopardy Clause of the Fifth Amendment. It provides that "... nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb …" One of its meanings is the

[32] The Palmyra, 25 U.S. (12 Wheat.) 1

[33] Williams *et al.*, p. 10.

[34] Myers, Brzostowski, p. 4.

[35] *Ibidem*.

[36] Rothschild, Block, p. 47.

[37] *Ibidem*, p. 48.

[38] Dick M. Carpenter, Lisa Knepper, Angela C. Erickson, Jennifer McDonald, *Policing for Profit: The Abuse of Civil Asset Forfeiture*, Institute for Justice, 2015, p. 10.

[39] Williams *et al.*, p. 11.

prohibition of multiple punishment. Namely, it prohibits the government for punishing twice for the same criminal conduct. However, if the criminal procedure results in not only imprisonment but the forfeiture based on the same offense, forfeiture of properties is seemingly a second punishment for the same law violation.

The U.S. Supreme Court consistently has concluded that "the forfeiture […] is no part of the punishment for the criminal offense"[40] and "the provision of the Fifth Amendment to the Constitution in respect of double jeopardy does not apply."[41] The Court distinguished between *in rem* civil forfeitures and *in personam* civil penalties such as fines: "Though the latter could, in some circumstances, be punitive, the former could not."[42] The Supreme Court made its point absolutely clear: "the forfeiture is not barred by the Double Jeopardy Clause of the Fifth Amendment because it involves neither two criminal trials nor two criminal punishments"[43] and "the forfeiture is not barred by the prior criminal proceeding."[44]

The Supreme Court affirmed only the fact that the behavior was already a crime is "insufficient to turn the forfeiture into a punishment subject to the Double Jeopardy Clause."[45] The Court concluded the Congress has not provided civil forfeiture as such punitive sanction which would result in criminal penalty instead of civil remedy. As a final result of the Supreme Court's inquiry "civil forfeiture is not an additional penalty for the commission of a criminal act, but rather is a separate civil sanction, remedial in nature."[46] Consequently, the Court restated "*in rem* civil forfeiture is a remedial civil sanction, distinct from potentially punitive *in personam* civil penalties such as fines, and does not constitute a punishment under the Double Jeopardy Clause."[47]

The Sixth Amendment provides that "in all criminal prosecutions, the accused shall enjoy the right […] to have the Assistance of Counsel for his defence." This Amendment provides the appointment of legal counsel in every trial for a serious crime but in courts' opinion, civil forfeiture is not a criminal case.[48] Full panoply of constitutional protections afforded criminal defendants have not been deemed to be a requirement in civil forfeitures.[49]

The Supreme Court inquired whether civil forfeiture violates the Excessive Fines Clause of the Eighth Amendment. It provides that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." In essence, this Clause prohibits disproportionate penalties. The text of the Excessive Fines Clause by itself does not answer whether a penalty is proportional or not. The Supreme Court turned to the constitutional question: how proportional to a criminal offense a fine must be. The Court concluded that "the Clause prohibits only the imposition of 'excessive' fines, and a fine that serves purely remedial purposes cannot be considered 'excessive'

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[40] Origet v. United States, 125 U.S. 247 (1888).
[41] Various Items of Personal Property v. United States, 282 U.S. 581 (1931).
[42] United States v. Ursery, 518 U.S. 275 (1996).
[43] *Idem,* 518 U.S. 276 (1996).
[44] *Idem,* 518 U.S. 277 (1996).
[45] *Idem,* 518 U.S. 278 (1996).
[46] *Idem*.
[47] *Idem*.
[48] Douglas Kim, *Asset Forfeiture: Giving up Your Constitutional Rights*, Campbell Law Review 19, 1997, p. 573.
[49] United States of America, Appellee, v. One 1982 Chevrolet Crew-cab Truck Vin 1gchk33m9c143129, Appellant, 810 F.2d 178 (8th Cir. 1987).

in any event."[50] Since the Supreme Court stated civil forfeiture serves not only remedial goals but punitive purposes as well,[51] civil forfeiture can be subject to Excessive Fines Clause of the Eighth Amendment.[52] The Court did not determine whether a forfeiture is excessive based on the value of property and the gravity of the unlawful act; it must be judged case by case.[53] The Supreme Court emphasized that the value of the forfeited property could not be independent from the gravity of the criminal act. "The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish."[54] The Court noted it is unconstitutional if the amount of the forfeiture is grossly disproportional to the gravity of the criminal conduct.[55] In that case, if the full forfeiture does not serve remedial purpose and it is clearly punishment, "in no way suggest that [...] forfeiture is constitutionally proportional."[56]

5. Civil forfeiture in the practice

The use of civil forfeiture has been shown by the increasing of the amount of seized assets. The U.S. Department of Justice's Assets Forfeiture Fund held less than $100 million in 1986, but in 2008 the amount of seized assets rose to more than $1 billion.[57] Moreover, this amount reached $4.5 billion in 2014.[58] Law enforcement agencies clearly take the advantages of civil forfeiture. Between 1987 and 2013, 87 percent of forfeitures were civil forfeitures, while the proportion of criminal forfeitures was only 13 percent.[59]

If the police officer believes that a property was involved in a crime or obtained from an offense, he or she can seize the asset. Thus, for seizure of a property it is sufficient to believe that the cash, car, vessel, real estate or other asset are connected to a criminal conduct. Once the asset is taken, the government will send a notice to the owner letting him or her know that the burden of proof is on him or her to try getting the property back. If the owner does not respond within the proper time frame and in the appropriate manner, the law enforcement agency automatically can keep the seized property. Even though the owner is eligible to attempt to win back the asset in the court, but due to the reverse onus he or she must carry most of the burdens.[60] In other words, the owner must establish his or her innocence in order to take back the property.

Once property had been seized by the law enforcement agency, and the owner already responded to the letter of government, prosecutors file civil action against the asset in order to forfeit it. In that case, prosecutors only need to demonstrate in the court that there is probable cause to believe a connection exists between the asset and the criminal act. In order to employ civil forfeiture, it is not necessary to prove that the owner of asset is guilty of a crime. Moreover, the civil forfeiture can occur even when criminal charges are never filed against the owner of property.[61]

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[50] Austin v. United States, 509 U.S. 622 (1993).
[51] United States v. Halper, 490 U.S. 447 (1989).
[52] Austin v. United States, 509 U.S. 610 (1993).
[53] *Idem*, 509 U.S. 622 (1993).
[54] United States v. Bajakajian, 524 U.S. 334 (1998).
[55] *Idem*, 524 U.S. 337 (1998).
[56] *Idem*, 524 U.S. 344 (1998).
[57] Williams *et al.*, pp. 6-7.
[58] Carpenter *et al.* (2015), p. 5.
[59] *Ibidem*.
[60] Williams *et al.*, p. 9.
[61] *Ibidem*.

Since prosecutors file civil action against the property supposedly involved in or derived from criminal offense, the title of cases became very strange (*e.g.* United States v. Twenty-Two Thousand, Two Hundred Eighty-Seven Dollars ($22,287.00), United States Currency, 709 F.2d 442, 446-47 (6th Cir. 1983); United States v. One Single Family Residence Located at 6960 Miraflores Ave., Coral Gables, Florida, Case No. 88-0349-CIV-SCOTT (S.D. Fla. 1988); United States v. One 1978 Chevrolet Impala, 614 F.2d 983, 984 (5th Cir. 1980)).

In 88 percent of civil forfeiture cases, the property transfer to law enforcement agencies takes place automatically. In these cases, the owners do not respond to the letter of government or fail to file the claim to the court.[62] Its reason could be the lack of owners' knowledge related to their rights or just the lack of financial sources. The other reason can be the owners' inability to afford a lawyer to represent them in the proceeding.

There is another reason which weakens the protection of the property owners. The state and federal courts have consistently ruled that there is no right based on the Constitution to counsel in forfeiture proceedings. Moreover, the Civil Asset Forfeiture Reform Act of 2000 provides legal counsel just in a very limited number of federal forfeiture circumstances. Therefore, some owners are unwilling or unable to finance the attorney's fees from personal resources.[63] Some defense attorneys' fees are more than $10,000, therefore legal representation is not worth if the value of the property is less than this amount.[64]

Furthermore, finding a defense lawyer skilled in civil forfeiture litigation is not an easy issue for the seized property owners. But going without legal representation is not an option due to the responsibility of filing court documents, paying various fees according to a strict timetable, and appearance at least once in the court.[65]

After all, Minnesota's data are not surprising: Only 17 percent of forfeitures were reviewed by the courts in 2010, and in just 10 percent of cases the owners retrieved their seized properties. 51 percent of forfeitures were cash, while only 3 percent of cash seizures were returned to the owners.[66]

According to an analysis by Williams, Holcomb and Kovandzic, 8 out of 50 states do not allow the law enforcement agencies to retain the forfeited properties,[67] 16 states give not less than 50 percent nor more than 95 percent shares of the assets to law enforcement,[68] and in 26 states the entire forfeited proceeds go to the participating agencies.[69, 70] Consequently, only 8 states are exempt but in every other state law enforcement agencies have profit motive to increase the amount of forfeiture, because they can retain the seized property for official use.

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[62] Carpenter *et al.* (2015), p. 5.

[63] Williams *et al.*, p. 116.

[64] Karis Ann-Yu Chi, *Follow the Money: Getting to the Root of the Problem with Civil Asset Forfeiture in California*, California Law Review 90, 2002, p. 1642.

[65] Carpenter *et al.* (2015), p. 12.

[66] Dick M. Carpenter, Lee McGrath, Angela C. Erickson, *A stacked deck: How Minnesota's civil forfeiture laws put citizens' property at risk*, Institute for Justice, 2013, p. 3.

[67] Indiana, Maine, Maryland, Missouri, North Carolina, North Dakota, Ohio, Vermont.

[68] Colorado, Wisconsin, Connecticut, New York, Oregon, California, Nebraska, Louisiana, Mississippi, Florida, Illinois, Minnesota, New Hampshire, Rhode Island, Texas, South Carolina.

[69] Alaska, Alabama, Arkansas, Arizona, Delaware, Georgia, Hawaii, Idaho, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Montana, Nevada, New Jersey, New Mexico, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wyoming.

[70] Williams *et al.*, p. 17.

Mast, Benson and Rasmussen point out there was a correlation between the law enforcement agencies' incentive and the drug arrests. After the Comprehensive Crime Control Act of 1984, "between 1984 and 1989, drug arrests per 100,000 population rose by 72 percent after a 14-year period of relatively constant drug arrests per capita, suggesting that the law enforcement effort against drugs increased dramatically."[71]

According to the FBI, law enforcement agencies made an estimated 10,662,252 arrests in 2016. The highest number of arrests were estimated 1,572,579 arrests for drug abuse violations[72] which confirm Masts' assumption.

As Rotschild and Block explain the increasing drug arrests cause a substitution effect. When law enforcement agencies enhance the amount of seizures and arrest in a field (*e.g.*, drug sale or manufacture), that field becomes less attractive. Therefore, offenders "move from drug crimes toward those for which they are less likely to be caught."[73] It leads to an increasing rate of violent crimes which causes more victims.

6. Conclusions

The ancient forfeiture of property was based on the guilt of asset, but in the 18th century the main objective of the forfeiture had been changed in order to ensure the customs revenue. In order to combat drug crimes, the Congress enhanced the power of law enforcement in the second half of 20th century. Therefore, statutory provisions were enacted, and the legislation has allowed the law enforcement agencies to obtain and retain a part of or the whole seized assets. The Congress gave a strong incentive to law enforcement which means on the other side a disincentive for the offenders. The main goal of forfeiture is reducing the profitability of crimes but the purpose of employment of forfeiture should not be the enhancement of law enforcement agencies' revenue, because the application of this legal tool should not change the law enforcement agencies into business entrepreneurs. If law enforcement has uncontrolled financial interest in forfeitures, it can result in abuse of the rules.

According to Justice Scalia, civil forfeiture is a confiscation of "property rights based on improper use of the property, regardless of whether the owner has violated the law."[74] Civil forfeiture serves not only remedial goal and deterrence but as the U.S. Supreme Court has stated, it has punitive purpose as well. Therefore, transfers of properties to law enforcement agencies without supervision of court should not be general. According to the Minnesota's data in 2010, 83 percent of forfeitures were not reviewed by the courts. Despite the fact that, these cases were initiated due to alleged criminal offenses, and they ended up in forfeitures which served partially punitive goal, these sanctions were not reviewed by court. In fact, these punitive sanctions were imposed by law enforcement agencies.

Criminal forfeiture is a punitive act which takes part after the individual is found guilty and sentenced. On the contrary, civil forfeiture can occur even when criminal charges are never filed against the owner of property. While criminal forfeiture requires

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[71] Brent D. Mast, Bruce L. Benson, David W. Rasmussen, *Entrepreneurial Police and Drug Enforcement Policy, Public Choice*, Vol. 104, No. 3/4 (2000), p. 285.

[72] https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/persons-arrested.

[73] Rothschild, Block, p. 53.

[74] Austin v. United States, 509 U.S. 624 (1993).

the standard "beyond a reasonable doubt", civil forfeiture accepts the lower standard "probable cause." Civil forfeiture is in contrast with the legal tradition of innocent until proven guilty. The lower evidentiary threshold of civil forfeiture tremendously facilitates the burden of proof of the prosecutor. Moreover, the prosecutor is helped by the reverse onus, as a result the owner carries most of the burden. But for the property owner it is hard to find a defense lawyer skilled in civil forfeiture litigation because there are more than 400 federal forfeiture statutes relating to several federal crimes, and each state has own statutory provisions for some form of asset forfeiture. Consequently, nowadays civil asset forfeiture is one of the most controversial practices in the American criminal justice system.

It is strongly believed there is a tight connection between the criminal offense and the asset involved in or derived from criminal activity. If the defendant is found guilty, at the end of criminal procedure the sentence will be imposed. I consider in most cases the forfeiture should be a part of the sentencing because the forfeiture as a sanction serves partially a punitive goal. I believe criminal forfeiture should be the primary legal tool of forfeitures and civil forfeiture should remain the secondary, subsidiary legal practice in order to deprive the offenders of their unlawful profit.

I agree with the employment of civil forfeiture in some exceptional cases such as when the defendant is not found guilty, but the evidences can meet the standard of civil forfeiture, namely there is a probable cause to believe the property was connected to a criminal offense. In addition, I also consider the employment of civil forfeiture is acceptable when the criminal procedure will be foreseeably protracted.

I believe that 87 percent of civil forfeitures and 13 percent of criminal forfeitures within all forfeitures are disproportionate. It shows in 87 cases out of 100 the owners have less protection and they must establish their innocence instead of proving their guilt by the prosecutor in a criminal procedure.

In criminal forfeiture the right to the property vests in the Government only after the owner is found guilty. Contrary to criminal forfeiture, in civil forfeiture the title immediately transfers to the Government based on the relation-back doctrine. In this case, the Government's ownership right relates back to the date of the criminal conduct. As a result, in civil forfeiture the criminal offense cuts off the rights of third parties to obtain legally protectible interests in the asset. Thus, the rights of third parties depend on the prosecutors' decisions. If the prosecutor files civil action against the property in order to forfeit it, the third party cannot establish an innocent owner defense if the base of claim arose after the date of the criminal act. In that case, when the prosecutor employs the criminal forfeiture to confiscate the asset, the third party has more protection to defend the rights to the property.

There is no doubt, the forfeited properties serve to compensate the law enforcement agencies for the expenses of their activities which obviously can benefit the taxpayers, but I still consider the protection of property owners' rights should be enhanced.

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Current issues of espionage in the new Hungarian criminal law

PhD. István László Gál[1]
Full professor
Head of department of Criminal Law
Faculty of Law
University of Pécs
Hungary

Abstract

It is not an easy task to prove beyond reasonable doubt the commitment of espionage with the help of the toolbox of criminal law. Until now, in the Hungarian legal practice only such cases happened when the perpetrator gave classified information to the foreign organization (as well).

Nowadays we have to count with national security risks arising from forwarding information collected, classified, analysed and concluded through opened sources (such as Internet, national and local mediums) that can be available for foreign powers or organisations (counter-interested secret services). The question arose during a criminal procedure whether such action can be classified as criminal act of espionage according to the Criminal Code, or going further: can it be a crime according to Hungarian criminal law? This article aims to answer this question.

Key words*: crime, OSINT, spy, espionage, criminal law.*

1. Introduction

"Democratic societies nowadays find themselves threatened by highly sophisticated forms of espionage and by terrorism, with the result that the State must be able, in order effectively to counter such threats, to undertake the secret surveillance of subversive elements operating within its jurisdiction. The Court has therefore to accept that the existence of some legislation granting powers of secret surveillance over the mail, post and telecommunications is, under exceptional conditions, necessary in a democratic society in the interests of national security and/or for the prevention of disorder or crime."[2]

According to the official statistics, hardly any case of espionage comes to cognizance of the authorities in Hungary. No wonder. On the one hand, it is true that just a very few espionage become known before the authorities since agents are not some amateur criminals, they take (criminal) actions as part of high conspiracy. On the other hand, it is not really effective to call to account criminally a caught agent, or if it is, then it

[1] Contact: gal.istvan@ajk.pte.hu.

[2] Klass v. Federal Republic of Germany case: European Court of Human Rights: Judgement (Strasbourg 6. September 1978. Council of Europe Reports, 1978. p. 18).

might be more practical to charge such agent with a crime against public order (which is usually easy to do because they commit a complex illegal series of acts) and sentence this person as a convict for crimes against public morality turpitude. By so doing possible international diplomatic complications can be avoided as well. In certain cases, „turning back" the caught agent can serve more the national security interest of a country, meaning to employ such agent as a double agent, whereby the secret service of the other interested party can be misled. Besides to replace agents caught abroad with Hungarian agents can make it necessary to not to institute criminal procedures. However, sometimes, even in Hungary agents are brought to criminal justice. With a criminal procedure an international propaganda can be created which can render the bargaining position of the country better, if the exchange of agents of Hungarian interest comes up.

"The protection of national security requires the repression of espionage even in a democratic society. Consequently, counterespionage by secret surveillance constitutes a necessary restriction of freedom of information for the protection of national security."[3] Nowadays we have to count with national security risks arising from forwarding information collected, classified, analysed and concluded through opened sources (such as Internet, national and local mediums) that can be available for foreign powers or organisations (counter-interested secret services). The question arose during a criminal procedure whether such action can be classified as criminal act of espionage according to the Criminal Code, or going further: can it be a crime according to Hungarian criminal law? This short study aims to answer this question.

2. The concept and interpretation of OSINT

The concept of intelligence gathering consists of the following areas according to the traditional classification of the secret service[4]:

a) HUMINT (*Human Intelligence*): In order to collect secret and private information every state owened and private secret service establishes human sources abroad and with a foreign interest at home. The range of human sources starts from occasional information sources to institutionalised (foreign agents) co-operation. The secret circle of connections consists of persons who already have or can create possibilities to obtain foreign secrets.

b) *TECHINT (Technical Intelligence):* Technical Intelligence is a comprehensive designation that ranges from the traditional tools of secret service (*e.g.* tapping the phone) to intelligence gathered through electronic devices and procedures created by scientific methods. The concept of technical intelligence includes gathering information from telecommunication channels and data communication systems, furthermore from attacking cyphering and office equipment by technical tools and methods. Intelligence gathering from telecommunication channels usually realized by attacking international – mainly foreign governmental- telecommunication channels. Cyphering and office equipments are attacked by receiving and processing certain concomitants that is resulted from their functioning or which were induced by certain technological intervention, furthermore the attack can be the restoration of open information on the

[3] John Kish, *International Law and Espionage*, Kluwer Law International, Netherlands, 1995. p. 29.

[4] http://www.mkih.hu/hivatal_hirszerzes.shtml, accessed 2.10.2011.

attacked systems by combining the application of various scientific methods and technical tools.

c) *OSINT (Open Source Intelligence):* secret services are watching the open source intelligence as well. Open sources of information: press releases, programmes of mass media, open databases and information systems and the internet. The necessary information must be filtered off this mass of facts.

d) *International Co-operation:* certain national secret services take part in several multilateral secret service so-operations. Our partner relations are usually based on reciprocity, mutual interest and equal rights.

From among the above mentioned areas of espionage, the OSINT[5] deserves a more thorough introduction. In a general term, the OSINT deals with the search, analysis, collection, systematization and evaluation of information that can be gathered from not classified sources with legal tools but which constitute assets for the intelligence services. This type of data collection uses sources that are accessible for anyone (Internet, written and online media, commercial databases). The gathering, analysis and evaluation of unconcealed information are nut traditional tasks of the intelligence services[6], but such information is searched for intentionally[7], it is differentiated and identified individually[8], filtered and which is going to be used subsequently.[9]

The OSINT plays a great role in military intelligence as well: „The Open Source Intelligence – OSINT has grown to be a modern type of intelligence gathering. It shall mean the analysis of newspapers, radio and television broadcasts, and mostly the expedient use of the news on the Internet. The processing of open source intelligence – as always in history -, if it is executed in a professional manner and with an appropriate knowledge, can be of a great value. In the 70's there were already official estimations saying that 60-70% of the information of the intelligence services was collected from open source intelligence."[10]

3. The regulation on espionage in the new Hungarian Criminal Code

The new Criminal Code of Hungary, Act C of 2012 determines the crime of espionage basically the same as it was in Act IV of 1978:

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[5] Open Source Intelligence. Its definition and types can be found in scientific literature on the Internet. See, *e.g.*, the NATO OSINT *Handbook,*

http://www.oss.net/dynamaster/file_archive/030201/ca5fb66734f540fbb4f8f6ef759b258c/NATO%20OSINT%20Handbook%20v1.2%20-%20Jan%202002.pdf, accessed 30.12.2013.

[6] See in detail: Lévay Gábor: *OSINT (OPEN SOURCE INTELLIGENCE), Nyílt információs hírszerzés.* Zrínyi Miklós *Nemzetvédelmi Egyetem, egyetemi jegyzet* http://osint.gportal.hu/gindex.php?pg=20201555&nid=3320934, accessed 29.12.2013.

[7] The secret service agency searches for information expediently which it has an interest in, and are necessary for the analysis, evaluation and the determination of assessment and prospective developments.http://osint.gportal.hu/gindex.php?pg=20201555&nid=3320934 accessed 29.12.2013.

[8] For the sake of fast retrieval and evaluation of the truthfullness and reliablity of information, the author, place of invention, subject matter, keywords, references to other sources are also recorded.http://osint.gportal.hu/gindex.php?pg=20201555&nid=3320934 accessed 29.12.2013.

[9] Izsa Jenő, *Nemzetbiztonsági alapismeretek (A titkosszolgálatok működése)* [*Fundamentals of national security (Operation of secret services)*] ZMNE, Kossuth Lajos Hadtudományi Kar, Budapest, 2009, pp. 49-50.

[10] Hajma Lajos, *A katonai felderítés és hírszerzés története (egyetemi jegyzet) [The history of military intelligence (lecture notes)]* ZNME Budapest, 2001, p. 212.

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"(1) Any person who engages in gathering intelligence for a foreign power or foreign organization against Hungary is guilty of a felony punishable two to eight years of imprisonment.

(2) Any person who commits the espionage defined in (1) by disclosing top secret information shall be punishable by five to fifteen years of imprisonment.

(3) Any person who engages in preparations for espionage shall be punishable by one to five years of imprisonment.

(4) Any person who – before having performed any further act of espionage – reports his or her engagement or undertaking to the authorities or the relevant state bodies and fully discloses his or her foreign contact shall not be liable for prosecution for offering or undertaking to participate in espionage operations".

The legal object of espionage is the (constitutional) order of the state according to the Fundamental Law (Constitution) of Hungary, explicitly states on the security of the state and every political, military, social or economic interest of our country.

The object of perpetration can be any kind of data that is suitable to be used against the interest of Hungary. The aggravated case of espionage determines a specific object, namely data that is classifies as top-secret information.

The act that establishes the commitment of this crime: intelligence work which includes the following areas according to the formerly introduced traditional classification[11]: HUMINT, TECHNINT, OSINT, international co-operation.

Criminal textbooks after the turn of the millennium interpret the notion of intelligence work in a wider sense: Nowadays, espionage is not limited to secret intelligence gathering and supplying, but it consists of far extensive activities. It includes actions like for example finding the adequate person for the intelligence service, compromising the target person, operating residency for intelligence work. The modern intelligence services have overcome the traditional forms of espionage (recruitment, recording of the statement for recruitment), and they choose looser forms of communication to keep in touch. The statement of facts of this crime renders punishable basically the secret intelligence gathering acts and the promoting thereof."[12]

The open and secret methods of data collection complete each other, secret information gathering follows the open source information collection in order to supplement and complete the knowledge collected in an open manner.

The two basic types of espionage are the offensive espionage and the aversion.

The legal methods of offensive espionage are shadowing the media and internet, analysing the information accessible from open databases (register of companies, register of title deeds, etc.). The proper classification, evaluation and analysis of available mass-information can result in data that can help to legally „figure out" secret information (without committing a criminal offence). Means of operation include the recruitment of agents (collaborators, or with a technical term: source of information).

The intelligence gathering or averting services may establish a system of appointed agents in order to guarantee fast and effective flow of information. A well-trained external member of the service, former contact person or even an agent trained to be an appointed agent can be the appointed agent. The appointed agent keeps in touch with

[11] http://www.mkih.hu/hivatal_hirszerzes.shtml, accessed 2.10.2011.

[12] Belovics-Molnár-Sinku, *Magyar büntetőjog Különös rész* [*Hungarian Criminal Law Special Part*] Budapest, 2005, pp. 35-36.

3-5 agents at their best, and forwards the collected information to the agency through his liaison officer.

According to the Criminal Code, espionage acts can be carried out in two directions: for

a) foreign power, or

b) foreign organization.

Foreign power is usually a state; the foreign organization is usually a foreign secret service agency. Any kind of organization could be mentioned, which functions are carried out of the territory of Hungary. If this foreign organization is a cover company for a foreign secret service, then the fact that among the owners of the company there are Hungarian citizens as well will not change possibility to establish the crime of espionage. (It is another question that the criminal liability of such Hungarian owners should also be examined.)

The Criminal Code does not determine a result regarding this crime, meaning espionage is considered to be committed when the person carries out the specific criminal behaviour according to law. The legislator does not need a purpose or a motive to establish this crime, so it does not matter, if espionage was committed for political or material reasons.

Carrying out intelligence work the crime of espionage is completed. According to judicial practice, carrying out a work cannot mean one act; it necessitates acts isolated in time and space. Intelligence work itself means a continuous line of acts according to the secret service jargon, so the crime cannot be committed by one action. If the perpetrator carried only one conduct, then the attempt of espionage or other crime (like crime violating certain kind of secrets, or other crime against the state) can be established; or if neither attempt nor other crime can be established then the accused must be acquitted for the lack of crime.

(Thus, for example, carrying out a messenger work only one time in favour of a foreign secret service agency, or handing over unclassified information, preparing an analysis-evaluation report thereof only one time for a foreign power or organization does not count as a crime according to the new Criminal Code.) Attempt can only be established, if the perpetrator begins the act in order to acquire information, but he does not obtain it or he prepared only one report including one or more facts, moreover, it can be proven that the connection between the informant and the foreign power or organization was established for a considerable period of time. In the point of view of legal practice this results in an expectation that the activity of the informant must be documented and verified with special thoroughness so the court could establish the commitment of the crime of espionage (and to be able to prove it in court). The Criminal Code renders the preparation of this crime also punishable, expressing the increased threat of espionage to the society.

The statement of facts of this crime does not require a result, which means that behaving in a certain way, so doing intelligence work makes the commitment of this crime complete.

The subject of espionage can be anyone irrespective of citizenship. Foreign citizens usually do intelligence work within embassies, under diplomatic cover. Embassies are in the majority of cases the centres of the appointed agent's group. Foreign diplomats, however, are protected by diplomatic immunity, so in Hungary only Hungarian citizens and non-diplomatic foreign agents can be held criminally liable. (Nevertheless, these agents – even if they were brought to justice – are exchanged to private agents after

some years have passed since the final judgment[13]). Espionage can only be committed intentionally, both with *dolus directus* and *dolus eventualis*.

Aggravated case of the crime is when espionage is committed by handing out top secret information.

Espionage is committed by carrying out a activity, so it is a continuous, prolonged criminal offence. Therefore, if someone does intelligence work repeatedly or continuously for the same organization or foreign power, espionage constitutes natural unity. If espionage is committed for several organization or foreign power then the sameness of the injured party, meaning the Hungarian state creates one continuously committed offence, as a unity created by law. Multiple offences can be established in a rare and unlikely case when the perpetrator does intelligence work for several organization or foreign power and continuously committed offence cannot be established due to the long period of time between the executed partial acts.

The Criminal Code guarantees impunity for the perpetrator who reports his volunteering or undertaking to the authorities and discloses all information on his foreign connection before he had done any intelligence work. This rule can be a useful tool for the Hungarian secret services to „turn back" foreign agents after their identification, thus to employ them as double agents and to mislead the foreign secret service with false information. It is an important issue in practice that the double agent must be given real information as well because such agent could be caught quickly, if he is given only false information. In this case, espionage is committed pro forma, but if the Hungarian colleagues of the secret service hand out real data besides the false information through the double agent in conformity with the professional rules then in my opinion the crime cannot be established due to the lack of danger to society. In such cases, however, the national secret service has to act particularly carefully and in compliance with the professional rules and real information can only be given to the foreign power or foreign organization in the narrowest possible limits.

Crimes violating obligations to keep certain secrets have the following relation to espionage: according to both the principle of specialty and the principle of consumption (meaning that the less serious crime merges into the more serious one) – due to even the more severe punishment – we have to establish espionage in case of seeming multiple offences.

Espionage and the violation of trade secrets can be distinguished according to the following aspects: if the intelligence work can be proven as the act of perpetration (on the basis of later scientific literature, with regard to the widened interpretation of intelligence work this would not be difficult), and this person forwards economic secrets for a foreign power or foreign organization, commits espionage (economic espionage).[14] If someone obtains economic secrets for his own benefit or for a domestic company which cannot be proven to be linked to a foreign secret service, only the violation of trade secrets can be established (in literature it is called industrial espionage). The most important distinguishing element is whether the perpetrator is able to violate the

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[13] For the exact meaning of legal force see: Elek Balázs, *A jogerő a büntetőeljárásban.* [*Legal force int he criminal procedure*] Monográfia, Debrecen, DE ÁJK, 2012, pp. 74-80.

[14] For the increasing importance of economic data and information, see Kecskés András, *A kezdeti nyilvános részvénykibocsátások árfolyam-stabilizációjának jogi szabályozása* [*Regulation of the stabilization of the current price of initial public issue of shares*], Magyar Jog, 2012. Október, pp. 589-597.

financial, economic other relevant interest of Hungary by managing such data illicitly. [15] If yes, then espionage should be established, if not, then no matter how big the damage is, the perpetrator only violated trade secrets.

4. Can espionage be committed by only collecting and analysing open source information?

Since OSINT extract newer data in quality from the analysis of open source information, we must pose the question whether the acquisition and forwarding of information coming only from open sources

1) can meet the statement of fact of the crime of espionage, and
2) can establish the crime of espionage.

Ad 1) We have to separate the collection and analysis of data from forwarding data. In our opinion, merely the analysis of open databases and collecting data there from are entirely neutral activities, even if the person obtained new information by means thereof. (Information put on the Internet always constitutes open source information, even if classified data can be or is mixed among them, just think about the scandal regarding Wikileaks.) In case the data gained from open source information is forwarded to foreign power or foreign organization, then the statement of facts of espionage can be met. However, it matters what kind of information and to what kind of foreign organization or power the perpetrator forwards the data. For example, collecting and forwarding medical, technical or scientific open source data to a person working at a foreign research facility does not meet the statement of fact of espionage. However, collecting, analysing, processing and forwarding governmental, political or economic information to an opposed secret service can meet the statement of facts of the crime of espionage.

Ad 2) After examining the statement of facts we must examine the issues of danger to society and guilt. It is not easy to prove the danger to society in this case. The action has to damage or danger the interest of Hungary. In addition, the perpetrator can allude to error in danger to society. With regard to the question of guilt, intention can also be hard to prove for the authorities: since the authorities have to prove that the perpetrator knew that the collected data violates the interest of Hungary and that he also knew that the data is forwarded to a foreign power or organization, and that this activity is suitable to potentially cause damage to Hungary.[16]

This means that espionage can only be verified under multiple qualified circumstances against a perpetrator who gains only open source information but in certain cases it is possible to establish this crime.

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[15] For the relation between national economic and corporative interests, see: Kecskés András, *The Legal Theory of Stakeholder Protection*, JURA, 2010/ 1. Szám, pp. 67-76.

[16] Regarding this issue a mistake can have a great importance, as a ground for excluding criminal liability see: Polt Péter (szerk.), *Új Btk. kommentár. 1. kötet, IV. fejezet, 1.4. Elek Balázs: A tévedés* [*Commentary to the new Criminal Code Book 1, Chapter IV. para 1.4. The mistake by Balázs Elek*], pp. 137-147, Elek Balázs, *Juris ignorantia non excusat? A jogi tévedés megítélése a gazdasági büntetőperekben.* [*Juris ignorantia non excusat? The evaluation of legal mistake in economic criminal cases*] Rendészeti Szemle, 2009/7-8, pp. 96-109.

5. Conclusion

As it can be seen before, it is not an easy task to prove beyond reasonable doubt the commitment of espionage with the help of the toolbox of criminal law. Until now, in the Hungarian legal practice only such cases happened when the perpetrator gave classified information to the foreign organization (as well). Maybe the most interesting case was the criminal procedure of Steven Belovai (deceased in 2009)[17] who wrote in his memoir – a book titled Code-name: Scorpion[18] – that he decided after a long struggle to contact CIA in order to forestall the new world war. Practically, due to his activities was the Conrad-conspiracy uncovered and circulated in the world press. Clyde Lee Conrad (1948-1998) a U.S. Army non-commissioned officer in Germany sold top secret information to the People's Republic of Hungary between 1974-1988. The most important of these secrets was the draft of the lock of the nuclear shaft that separated East and West Europe, and by which means the soviet tanks could get without difficulty to the La Manche. In 1990 he was convicted of espionage and high treason in a German court and was sentenced to life imprisonment. Belovai was, however, caught earlier in the mid 80's, when he received a document at a hide-out. The manipulates stone to be sued therefore, as a material „mailbox" can still be viewed in Budapest as a museum exhibit in the central office of National Defence Bureau. The prosecutor asked for death penalty against Belovai according to the Criminal Code that was effective back then at the trial, but in the end he was sentenced to life imprisonment and complete confiscation of property, and in 1990 Árpád Göncz the President of the Republic gave pardon to him, so he did not have to serve the remained punishment.

In my opinion, open source intelligence (OSINT) can only be prosecuted and the perpetrator can only be punished in the future, if in case of an already caught spy the submission of classified data cannot be proven, but his regular connection to the foreign organization and that he transferred filtered and analysed information that originated from publicly available sources can.

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[17] An additional interesting tidbit from recent years: According to the prosecutor's office of Bolivia, Eduardo Rózsa Flores kept in touch with the CIA through Stephen Belovai, who organized a terrorist group for the Bolivian separatists. Rózsa Flores and Belovai as an agent of the CIA probably get in touch at the Balkan and Belovai gave Rózsa Flores financial and technical help for hisBolivian activities – indicated the Bolivian press. http://www.mixonline.hu/Cikk.aspx?id=37012, accessed 23.10.2011.

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