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Copertă:	Aurelian Leahu

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e-mail: redactie@universuljuridic.ro
Distribuție:
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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.

Our concerns aim at enlisting the Journal in additional databases, others than the ones in which the magazine is presently indexed, **namely Social Science Research Network (SSRN), EBSCO and HeinOnline.**

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The present issue includes, in its first part, the lectures presented within the Foreign Section for Criminal Sciences of the XIVth edition of the Biennial International Conference organized by the Faculty of Law of the West University in Timisoara, Romania, which took place on 20th-21st of October 2022, in Timisoara.

The Section for Criminal Sciences of the Conference was dedicated to the Protection of the Victims of Crime and marks an important moment – the 10th anniversary of the adoption of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA.

The works dedicated to the theme of the Protection of the Victims of Crime capture substantive and procedural aspects and offer us a glimpse of what it is still to be done in this regard, from the perspective of well-known theorists and practitioners from Italy, Hungary, Serbia and Slovenia.

Dr. Laura Maria Stănilă
Editor in Chief

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Protection of the Victims of Crime

Ten Years Since the Adoption of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of the Victims of Crime

Some Thoughts on the Victims of Terrorism

Gál István László*

Abstract

Terrorism is a complex phenomenon, one of the most serious global and national security risks today. The danger in terrorist acts lie in their unpredictability and in their fast and mobile striking effect. In addition to civilian casualties, governments insidiously conspire to abuse other basic rights in the name of fighting terrorism; they tighten security to an unreasonable degree, impose petty rules and regulations, and censor the masses, hence, creating police states devoid of freedom and instilled with fear – the perfect breeding grounds for terrorism.

Keywords: *terrorism, human rights, criminal code, Counter Terrorism Centre, United Nations*

I. The Concept of Terrorism

Terrorism is a complex phenomenon, one of the most serious global and national security risks nowadays. The social costs of victims of terrorism can be divided into two categories: personal (dead, injured, health damage) and financial (additional financial expenses generated by various responses to terrorism). Its material and non-material effects are huge, and if we also take the indirect effects into account, we can hardly come up with an exhaustive list. The cost elements that I consider to be the most important are the following.

Terrorist acts are one of the most dangerous criminal offenses. Their protected legal interest is the public interest with regard to the forceless and uninterrupted operation of states, governmental agencies, furthermore the population's uninterrupted, calm way of life that is free of fear[1].

The basic motivation behind terrorism at the end of the past century were anarchism and nationalism; although this is the past for today's terrorism, many components of their ideals are to be seen in the justification of terrorist acts in following eras and are the motivating power behind those acts. Their set of instruments differed as well (daggers, poison, bombs), they committed a sequence of attacks against Heads of States and monarchs – from the French president Carnot at the top of the list down to Queen Elisabeth[2]. Nevertheless, it can be stated that

* Full professor, Head of Department of Criminal Law, University of Pécs, Hungary, Faculty of Law; University of Public Service Faculty of Military Sciences and Officer Training. Contact: gal.istvan@ajk.pte.hu.

[1] E. Belovics, G.M. Molnár, P. Sinku, *Büntetőjog II. a 2012. évi C törvény alapján [Criminal Law II in accordance with Act 2012 C]* HVG-ORAC Lap-és Könyvkiadó Kft., Budapest, 2012, p. 471.

[2] Gy. Szövényi, *A terrorizmus jellegzetességei az ezredfordulón [The characteristics of terrorism at the turn of the millennium],* Európai Tükör, 1998/3, p. 92.

terrorism is distinctly a phenomenon of the 20th century and has developed into a severe problem after World War II in three main geographic regions: Western Europe, the Middle East and Latin America.

"Terrorism is the systematic use of force or threats to use force drawing upon different ideologies, abiding by a specific logic and taking on different forms. Its aim is to achieve political endeavours by developing opportunism amongst victims, the audience, within the state and the society. The declared objective usually is of political, ideological, religious, ethnic etc. nature enforcing a radical change; a sequence of acts applied in order to achieve the objective. However, the tool used for the achievement is a common and violent criminal offense"[3]. The most crucial challenges to be faced in the future are nuclear terrorism, ecoterrorism, biological terrorism, cyber terrorism as well as the acts of radical religious terrorist groups, which have to be seen as an increasingly serious problem. Studies addressing terrorism agree that it is mainly a political phenomenon based on both structural and psychological factors. It is considered that modernization, democracy and tension undealt with may lead to conditions resulting in terrorism.

The danger in terrorist acts lie in their unpredictability and in their fast and mobile striking effect. The change between the terrorism of previous eras and today's terrorism is based on quality but the main differences developed through history[4]. 9/11 can be considered as a main turning point in the history of terrorism (and potentially in the history of mankind). The structure and the method of financing terrorist organizations have changed.

In the past 50 years, when this phenomenon started to become an unprecedented threat, many international conventions have been emerged in connection with terrorist acts, which were fully implemented into the Hungarian Criminal Code[5].

Terrorism is such a crime, which is strongly affected to the human rights, and the policy of war on terror is also strongly affected to human rights too[6]. "In the War on Terrorism, what becomes of international human rights? It seems beyond dispute that the war model poses a threat to international human rights, because honoring human rights is neither practically possible nor theoretically required during war"[7]. "Terrorism aims at the very destruction of human rights, democracy and the rule of law. It attacks the values that lie at the heart of the Charter of the United Nations and other international instruments: respect for human rights; the rule of law; rules governing armed conflict and the protection of civilians; tolerance among peoples and nations; and the peaceful resolution of conflict. Terrorism has a direct impact on the enjoyment of a number of human rights, in particular the rights to life, liberty and physical integrity. Terrorist acts can destabilize Governments, undermine civil society, jeopardize peace and security, threaten social and economic development, and may especially *negatively*

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[3] L. Korinek, *A terrorizmus [Terrorism]* in K. Gönczöl, K. Kerezsi, L. Korinek, M. Lévay (eds.), *Kriminológia – Szakkriminológia [Criminology]*, CompLex Kiadó, Budapest, 2006, p. 447.

[4] A. Gergely, *A terrorizmus természetrajza [The nature of terrorism],* Kapu, 1994/10-11, p. 92.

[5] See more: A. Kasznár, *A terrorizmus megjelenése Magyarországon az 1970-es és 1980-as években [The emergence of terrorism in Hungary in the 1970s and 1980s],* in (T)ERROR & ELHÁRÍTÁS 2017/1-2, pp. 98-101.

[6] See more: L. Kőhalmi, *Az önvédelmi korrupció koncepciója [The concept of self-defense corruption]* in JURA 21/1, 2015, pp. 65-69.

[7] D. Luban, *The War on Terrorism and the End of Human Rights* in Philosophy & Public Policy Quarterly, Vol. 22, No. 3, 2002, p. 13.

affect certain groups. All of these have a direct impact on the enjoyment of fundamental human rights"[8].

"A 2009 study conducted by the University of North Carolina concluded that the most commonly utilized counter-terrorism tactics, such as extrajudicial killings, torture, forced disappearances, and political imprisonment are, in fact, themselves acts of terror. To terrorize in the name of combating terrorism is ironically hypocritical. When counter-terrorists use the tactics of terrorists in order to counter terror, they descend to their moral level and just add more terror to the world. And if that were not enough, when counter-terrorists terrorize people, they generate more terrorists. In addition to civilian casualties, governments insidiously conspire to abuse other basic rights in the name of fighting terrorism; they tighten security to an unreasonable degree, impose petty rules and regulations, and censor the masses, hence, creating police states devoid of freedom and instilled with fear – the perfect breeding grounds for terrorism. Thus, we are facing a vicious cycle: counter-terrorism breeds more terrorism, and then more terrorism breeds more counter-terrorism, and so on, ad infinitum"[9].

II. The Cost of Terrorism for the Society and for the Victims

The social costs can be divided into two groups: personal (dead, injured, health damage) and financial (financial extra costs generated by the reactions to terrorism). Terrorism is a complex phenomenon, one of the most serious global and national security risks. Both its financial and non-financial effects are huge and if we take in consideration the indirect effects also, then it is quite impossible to make a perfect list. In my opinion the most important cost elements are the following.

a) Death and injury

The biggest danger of the terrorist attacks is that they want to kill people. All of the important terrorist attacks of the past demanded human victims generally of the order of tens or hundreds but there have also been bigger attacks. *Presently the most serious (and unfortunately the most realistic) fear is such an attack with a weapon of mass destruction against a big city, which city's center is located near the harbor.* In such cities lots of containers are unloaded from the commercial ships but only a very small part of these containers are checked. If in the future we should check all containers of all commercial ships, then it would make international trade more expensive in such a way that could cause damages like the worldwide economic crisis that appeared last year.

b) Direct medical effect

We also have to mention that apart from the dead and injured victims it is interesting that the terrorist attacks indirectly can have health damaging effects, even years after the attack. Transcriptionally these people are also to be considered as victims of terrorism. According to the researches of American psychiatrists the live broadcast of the terrorist attack of Septembe 11th, 2001 increased the frequency of heart illnesses to its triple in the next three years[10].

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[8] http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf (accessed on 17.09.2017).

[9] http://www.huffingtonpost.com/lydia-canaan/fighting-terrorism-withou_b_9513034.html (accessed on 17.09.2017).

[10] http://www.stop.hu/articles/article.php?id=320646 (accessed on 17.09.2017).

c) Financial damages

Terrorist attacks usually cause significant financial damages too. The ratio of the effective financial damages caused by a blast can be multiple to the historical cost of the whole terrorist act.

Without any doubt it was the fall of the twin towers of the World Trade Center and the neighbor buildings (adding the value of the four airplanes) was the attack that caused the most serious financial damages in the history of terrorism. According to estimations the direct costs of 27.2 billion USD caused by the September 11 attacks contributed to 0.25 % of the annual GDP of the United States of America in 2001. The loss of the private sector was 14 billion dollars, 1.5 billion dollars the expense of the local government, 0.7 billion the loss of the federal government while the rescue and the cleaning away of the ruins cost 11 billion.

d) Damaging effects on national economy (tourism, catering, stock exchange, etc.)

Apart from the direct financial damages, most of the attacks cause indirect damages also to the attacked city, region or country but the attack of September 11. also had economic effects on international levels.

As a consequence of the blast on Bali in 2002 the GDP of Indonesia decreased by 2%! The blasts in Istanbul set the economic growth of Turkey back and the flow-out of Western capital started. The approximately 18 billion USD income of London coming from tourism was decreased by approximately 33% by the terrorist attack in 2005[11].

Apart from this terrorist attacks cause decreases on the financial markets of the given country but a bigger attack can have effects on the stock exchanges of the whole world.

e) Extra costs in the financial intermediate system

The continuous lookout on terrorist financing and the announcing of the suspicious cases appear as extra tasks to the institutions of the financial intermediate system (banks, investment services, insurance companies, etc). The costs of which are not measurable and it is even hard to estimate them. Namely because these institutions had already been using and working this system even previously in order to precede and prevent money laundering. The bigger banks for example employ several colleagues in the compliance (to comply to different laws) area, their salaries and the cost of the regular training of the employees of course mean an extra cost but these costs would arise even if they did not have the task to check on terrorist financing[12].

f) The costs of prevention and investigation (criminal investigation, jurisdiction, secret service)

Terrorism generates extra costs in criminal investigation, jurisdiction and secret service. Of these the extra cost of the secret service is the most important. The fight against terrorism most probably raised the budget of the secret services by several billion dollars worldwide.

g) The costs of penalty execution

The closing of the Guantanamo base was first raised after the election of Barack Obama as president. Apart from having grave human right problems, the institutions

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[11] S. S. Costigan, D. Gold, *Terronomics*, ASHGATE, Great Britain, 2007, p. 22.

[12] E. Balázs, *Economic Crimes in the Hungarian Penal Code* (Studies regarding criminality in the economic field Romanian and Hungarian legislations, Debrecen, 2008, p. 228.

for the execution of penalties that are maintained especially for terrorist-suspicious people must have high costs too.

h) The cost of military actions

The military actions that are generated directly or indirectly by terrorism form one of the most serious cost factors. However, there is no agreement in the related articles if these actions were provoked by the terrorist attacks or if the terrorist attacks were just reasons for applying military means for other, underlying purposes.

III. A Terrorist Case from Hungary

In the past ten years an average of 3 terrorist acts took place in Hungary. However, these cannot be seen as terrorist acts in "classic" criminological terms, but as criminal offenses, which have been declared as terrorist acts by the increasingly spreading scope of criminal law. Pursuant to the Hungarian criminal law the common criminal offenses listed in the section "Acts of Terrorism" of the Criminal Code have been declared as terrorist acts, when e.g. the objective of the perpetrator is to intimidate the general public, coerce a government agency, another State into doing, not doing or countenancing something; or to disrupt e.g. the operation of an international organization.

One of the cases attracting huge interest in the press has been the criminal proceeding against Ahmed H. Due to the "situation caused by mass immigration" in Hungary, the state of emergency was declared on 15th of September 2015 and on the same day new rules in asylum and criminal law became applicable. This reform on the Asylum Act obliges refugees to file their asylum requests within one of the newly established transit zones alongside the Schengen external borders. The transit zones on the Hungarian-Serbian border – Röszke and Tompa – opened on 15th September 2015, but in the beginning only hundred requests were allowed per day. The border crossing at Röszke, where thousands were previously able to enter the EU per day, was basically closed overnight. As a consequence thousands of people were trapped; not able to move forward anymore and not knowing what was happening[13].

After declaring the state of emergency as a consequence of mass immigration hundreds of migrants assembled on the Serbian side of the road border crossing Röszke-Horgos on the 16th of September 2015. The peaceful minded groups of people with the aim to enter Hungary became aggressive over time, trying to tear down the fence, some of them throwing stones at the policemen on the Hungarian side. Many policemen were injured during the confrontation. According to the judgement of the Court of First Instance Ahmed H. threatened with breaking down the cordon and attacking the police. The suspect has addressed the mass several times with a megaphone, threw stones at the police three times himself and has illegally entered Hungary after opening the gate closing down the crossing point. Ahmed H. then returned to the Serbian side and could only be detained 3 days later. According to prosecution this act has to be considered a terrorist act because the suspect did use force against the representative of public authority in order to force the police to let him enter the country.

On 30th of November 2016 Ahmed H. was convicted in Szeged to 10 years imprisonment on account of illegally crossing the border and a terrorist offense. In

[13] http://no-racism.net/article/5234 (accesed on 17.09.2017).

addition, he was expelled from the Hungarian state territory indefinitely. On 15th of June 2017 the appeal hearing took place in Szeged: resulting in the procedure being resubmitted to the first instance court, whilst the accused remains in pre-trial detention. Ahmed H. has been detained since September 2015 and has therefore been imprisoned for almost 2 years now. In addition to national press and 2 representatives of the international media, Amnesty International Hungary, one delegate of the Swiss Democratic Lawyers (ELDH member organization) and supporters of Ahmed H. were also present and attended the hearing[14].

Pursuant to Hungarian criminal law what Ahmed H. committed is a terrorist act. The perpetrator of Syrian nationality was convicted of a terrorist act and of the illegal crossing of the border at first instance by the General Court of Szeged. As a consequence, he was sentenced to imprisonment of 10 years in a high secured prison and has been expelled from Hungary. The Court of Appeal of Szeged repealed the decision. The proceeding is still ongoing in the autumn of 2017.

In Hungary, the detection and prevention of terrorist acts falls within the correspondence of the Counter Terrorism Centre[15]. This state agency is specialized on prosecution and intelligence service. Pursuant to the relevant legislation (Government decree 295/2010. (XII. 22.) its main tasks are as follows:

a) It analyses and evaluates the threat of terrorism on Hungary.
b) It organizes and coordinates the activity of state agencies for the prevention of and response on terrorist acts, performs preparational, implementation and administrative tasks in connection with the Counter Terrorism Centre.
c) It contributes towards developing the national program on the protection of critical infrastructure, evaluating the level of threat and the elaboration of plans on security action plans, furthermore – according to a specific contract –, it is responsible for the protection of the critical infrastructure being important in terms of terrorist threats.
d) Pursuant to the government decree on the protection of individuals and designated establishments it provides protection for the General Prosecutor and the Prime Minister, and fulfils other tasks regarding the protection of persons, which were temporarily or on case-by-case basis assigned to it by the Minister of Policing.

At intelligence level the Counter Terrorism Centre (TEK) plays an essential role. Although they can use the police powers under the Chapter 7 of the 1994 Police Act (covert operations), the TEK does not conduct investigations, but operates exclusively in the area of collecting intelligence. Their sources include human intelligence, financial intelligence, technical intelligence (telephone/wiretapping, internet and other communication surveillance) and foreign counterpart information. The information is classified until the TEK decides to file a report on suspicion of terrorism-related offences to the law enforcement authorities. Though the TEK has not yet specifically focused on financing terrorism, this aspect has come up in other intelligence actions, for instance with regard to suspicions of business activities being used to financially support terrorist organizations (which were however later not confirmed). The TEK is clearly well-informed and aware of terrorist threats, even if until now it has not found concrete indications of terrorist-related activities and considers that there is not yet

[14] http://no-racism.net/article/5234 (accessed on 17.09.2017).
[15] Hungarian name: *Terrorelhárítási Központ*, TEK.

need for immediate action, while at the same time recognizing the importance of raising awareness for the terrorist threat[16].

"In September 2018, a Hungarian court eventually found him guilty of "complicity in an act of terror", under the country's extremely vague counter-terrorism laws. While delivering the final judgement, the judge acknowledged that Ahmed had in fact tried to calm the situation and mediate between the police and the crowd. He was originally sentenced to 10 years in prison. Following an appeal, a retrial was ordered in which he was again convicted and given a reduced sentence of five years in prison, despite a glaring lack of evidence to back up the extremely serious charge. The United Nations, the European Parliament and the US State Department all expressed concern about Hungary's deliberate misapplication of terrorism charges in Ahmed's case"[17].

IV. Some Conclusions

One reason for why no "traditional" terrorist attack took place in Hungary that needs to be highlighted is the effective operation of the Counter Terrorism Centre. This agency is subject to the responsibility of intervention before the commitment of a terrorist act and in this case misuse of firearms will be registered within the criminal statistics, as the perpetrator has been detained before he/she could commit a criminal offense with his/her illegally obtained firearm. Other possible reason could be that we had luck in the past decades. We cannot prove, what is right, but the point is the same: there was no serious terrorist attack in Hungary up to this day. This doesn't mean, that we don't have to prepare or that we will never have a serious terrorist attack in the future in Hungary. We have to find the best practice and the balance between the human rights and the security in the next years too.

References

1. Balázs, E., *Economic Crimes in the Hungarian Penal Code* (Studies regarding criminality in the economic field Romanian and Hungarian legislations, Debrecen, 2008.
2. Belovics, E., Molnár, G.M., Sinku, P., *Büntetőjog II. a 2012. évi C törvény alapján [Criminal Law II in accordance with Act 2012 C]* HVG-ORAC Lap-és Könyvkiadó Kft., Budapest, 2012.
3. Costigan, S. S., Gold, D., *Terronomics*, ASHGATE, Great Britain, 2007.
4. Gergely, A., *A terrorizmus természetrajza [The nature of terrorism],* Kapu, 1994/10-11.
5. http://no-racism.net/article/5234 (accesed on 17.09.2017).
6. http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/MER-Hungary-2016.pdf (17.08. 2022).
7. http://www.huffingtonpost.com/lydia-canaan/fighting-terrorism-withou_b_9513034.html (accessed on 17.09.2017).

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[16] http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/MER-Hungary-2016.pdf (accessed on 17.08.2022).

[17] https://www.amnesty.org/en/latest/press-release/2019/09/ahmed-h-what-happened/ (accessed on 05.09.2022).

8. http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf (accessed on 17.09.2017).

9. http://www.stop.hu/articles/article.php?id=320646 (accessed on 17.09.2017).

10. https://www.amnesty.org/en/latest/press-release/2019/09/ahmed-h-what-happened/ (accessed on 05.09.2022).

11. Kasznár, A., *A terrorizmus megjelenése Magyarországon az 1970-es és 1980-as években [The emergence of terrorism in Hungary in the 1970s and 1980s],* in (T)ERROR & ELHÁRÍTÁS 2017/1-2.

12. Korinek, L., *A terrorizmus [Terrorism]* in K. Gönczöl, K. Kerezsi, L. Korinek, M. Lévay (eds.), *Kriminológia – Szakkriminológia [Criminology]*, CompLex Kiadó, Budapest, 2006.

13. Kőhalmi, L., *Az önvédelmi korrupció koncepciója [The concept of self-defense corruption]* in JURA 21/1, 2015.

14. Luban, D., *The War on Terrorism and the End of Human Rights* in Philosophy & Public Policy Quarterly, Vol. 22, No. 3, 2002.

15. Szövényi, Gy., *A terrorizmus jellegzetességei az ezredfordulón [The characteristics of terrorism at the turn of the millennium],* Európai Tükör, 1998/3.

Protection of Victims of Crimes in the Republic of Slovenia

Dr. Vid Jakulin*

Abstract

The author discusses the rights of victims of crime set out in Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 and in the laws of the Republic of Slovenia. The author notes that victims of crime have long been rather neglected participants in the criminal procedure. The main focus of attention was on the accused and his or her rights.

In recent times, there has been growing awareness that victims and perpetrators of crime are equally important. Therefore, the European Parliament and the European Council issued a Directive with a view to improving the situation of victims of crime in all EU Member States.

This Directive transposed a number of new rights of victims of crime into the laws of the Republic of Slovenia. Even though the author doubts that the rights of victims of crime transposed into Slovenia's laws by Directive 2012/29/EU will significantly improve the treatment of victims in criminal proceedings, he rates them as positive as they stir up awareness that, in addition to the accused, criminal proceedings involve victims of crime whose rights and interests need to be protected.

Keywords: *Directive, Slovenia, victim of crime, injured party, rights of victims of crime*

I. Introduction

Victims of crime have long been rather neglected participants in the criminal procedure. The main focus of attention was on the accused and his or her rights. A comparison between the rights of the accused (perpetrator of a crime) and the victim in criminal proceedings shows that the accused has many more rights than the victim. The disparity between the rights of one and the other is so great that, in my opinion, the principle of equality before the law guaranteed by Article 14 of the Constitution of the Republic of Slovenia[1] and the principle of equal protection of rights guaranteed by Article 22 thereof are violated[2]. The undisguised privileging of perpetrators of crimes at the expense of victims of crimes shows that in criminal proceedings the rights of

* Full Professor at the Faculty of Law of the University of Ljubljana, Slovenia. Contact: vid.jakulin@pf.uni-lj.si.

[1] In Slovenia, everyone is guaranteed equal human rights and fundamental freedoms, irrespective of national origin, race, gender, language, religion, political, or other conviction, material standing, birth, education, social status, disability, or any other personal circumstance.

[2] Everyone is guaranteed equal protection of rights in any proceeding before a court and before other state authorities, local community authorities and bearers of public authority that decide on their rights, duties or legal interests.

victims are completely neglected at the expense of protecting the rights and interests of the accused (perpetrators of crimes). This gives rise to the question as to why the Criminal Procedure Act is adapted to suit the perpetrators of criminal acts (i.e. those breaking the law) and not to the victims of crime.

The continuous introduction of new alternative criminal sanctions reasonably strengthens the feeling that they have been tricked and left without adequate legal protection because the perpetrators have not received a fair punishment. This raises serious doubts about justice and the rule of law, which are the foundation of any democratic social order.

In recent times, there has been growing awareness that victims and perpetrators of crime are equally important. Anyone can become a victim of crime. Several million people are victims of crime in the European Union every year. According to Eurostat, 30 million crimes against people or property occur every year, and there are many crimes that are never reported. A crime often affects more than one person, and indirectly also those close to the victim. According to this data, it can be estimated that the number of direct victims of crime probably reaches 75 million each year.

These figures show how important it is to ensure that appropriate and effective measures are taken regarding the rights of victims of crime or traffic accidents in their own country or when traveling or staying abroad. This is a cross-border as well as an internal problem that requires action at the EU level.

The EU has already taken measures concerning victims' rights in criminal proceedings, and most Member States provide some level of protection and assistance for victims. However, the role and the needs of victims in criminal proceedings still generally do not receive enough attention, and the extent of victims' rights still varies widely across the EU.

The European Commission has noted that there is obvious correlation between victims' rights and crime prevention. Therefore, the Commission has been taking action for many years aimed at preventing crime and violence and ensuring greater road safety. Prevention is crucial both for short and medium-term reduction in the incidence of crimes and accidents, as well as for changes in attitudes towards crimes or reckless behavior that can bring positive, long-term and lasting results.

The Commission points out that minimum standards should be applied in all Member States. Today, victims of crime are guaranteed a certain level of protection and support in most Member States. However, the role and the needs of victims in criminal proceedings are still not fully addressed by national judicial systems. With a certain minimum level of guarantees and standards applied in all Member States, judicial cooperation will be easier, the quality of justice will be better, and people's confidence in the very concept of "rights" will increase.

The Commission emphasizes that fundamental rights must be respected. Appropriate treatment of victims is consistent with the range of fundamental rights recognized by the Charter of Fundamental Rights of the European Union (EU Charter) and the European Convention on Human Rights (ECHR)[3]. Therefore, it is necessary to ensure the actual

[3] Fundamental rights are the following: the right to human dignity, the right to life, the right to personal integrity, the right to respect for private and family life, the right to protection of personal data, the right to property, the right to freedom of movement and residence, the right to equality before the law, the rights of children and the elderly, the right to inclusion of people with disabilities, and the right to an effective legal remedy.

recognition and respect of the victims' rights, especially their human dignity, private and family life and property, while also ensuring the fundamental rights of others, e.g. the accused. EU measures will raise the standards of fundamental rights for everyone involved in criminal proceedings – victims, the accused or remand prisoners, thus ensuring that rights are not restricted unnecessarily and disproportionately.

The commission notes that meeting the needs of victims contributes to reducing the overall costs of crime. Strengthening the rights of victims has a positive effect on individual victims and on society as a whole. Meeting the needs of victims before, during and after the criminal procedure can significantly reduce the overall cost of crime. This includes tangible costs in the economic and health sector as well as in the criminal justice system, and intangible costs, such as the victim's pain, suffering and reduction of quality of life. Victims who are respected, supported and protected will recover sooner, both physically and emotionally, enabling them to get back to their normal lives more quickly. This will limit loss of earnings, absenteeism from work as well as the need for further health care. Well-treated victims are also likely to become more actively involved in the proceedings, which increases the likelihood of successful prosecution and sentencing, which in turn reduces repeat offending and impunity.

The Commission believes that particular attention should be paid to the victims of crimes. According to the commission, victims need the following:

- recognition and respectful treatment,
- protection,
- support,
- access to justice,
- return to the state before crime took place (if this is possible due to the nature of things).

Particular attention should be paid to special categories of victims. This category includes victims of terrorism, victims of traffic accidents and particularly vulnerable victims. The categories of vulnerable victims include children, persons with disabilities and victims of sexual violence and human trafficking. In addition, victims may be vulnerable for other reasons related to their personal characteristics (e.g. a high level of fear or distress, a risk of bullying or repeated violence, or a personal, social or economic situation that makes it difficult for the victim to face the consequences of the crime or understand court proceedings), and/or due to the type and characteristics of the crime (e.g. terrorism, organized crime, prejudice-motivated crime or gender-based violence). For example, victims of organized crime are particularly vulnerable to intimidation and repeated violence by perpetrators and may require special protective measures[4].

As a member of the European Union, Slovenia is bound by the provisions of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/PNZ. First, I will present the provisions of this Directive, followed by the rights of victims of crimes under the laws of the Republic of Slovenia.

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[4] Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions, Strengthening the rights of victims in the EU EU /* KOM/2011/0274 final */ s. 1-4. Available at: https://eur-lex.europa.eu/legal-content/SL/TXT/?uri=CELEX:52011DC0274.

II. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA[5]

The directive has a rather extensive preamble and thirty-two articles. There are some observations in the preamble that deserve our attention. The European Parliament and the Council declare that the European Union is committed to protecting victims of crime and to establishing minimum standards in this area.

Crime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognized and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health. Victims of crime should be protected from secondary and repeat victimization, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.

The rights set out in this Directive are without prejudice to the rights of the offender. The term 'offender' refers to a person who has been convicted of a crime. However, for the purposes of this Directive, it also refers to a suspected or accused person before any acknowledgement of guilt or conviction, and it is without prejudice to the presumption of innocence.

A person should be considered to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them. It is possible that family members of victims are also harmed because of the crime. Such family members, who are indirect victims of the crime, should therefore also benefit from protection under this Directive.

Justice cannot be effectively achieved unless victims can properly explain the circumstances of the crime and provide their evidence in a manner understandable to the competent authorities. It is equally important to ensure that victims are treated in a respectful manner and that they are able to access their rights. Interpretation should therefore be made available, free of charge, during questioning of the victim and in order to enable them to participate actively in court hearings, in accordance with the role of the victim in the relevant criminal justice system.

Persons who are particularly vulnerable or who find themselves in situations that expose them to a particularly high risk of harm, such as persons subjected to repeat violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crime in a Member State of which they are not nationals or residents, should be provided with specialist support and legal protection. Specialist support services should be based on an integrated and targeted approach, which should, in particular, take into account the specific needs of victims, the severity of the harm suffered as a result of a criminal offence, as well as the relationship between victims, offenders, children and their wider social environment.

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[5] Official Journal of the European Union L315/57.

The risk of secondary and repeat victimization, of intimidation and of retaliation by the offender or as a result of participation in criminal proceedings should be limited by carrying out proceedings in a coordinated and respectful manner, enabling victims to establish trust in authorities.

Victims who have been identified as vulnerable to secondary and repeat victimization, to intimidation and to retaliation should be offered appropriate measures to protect them during criminal proceedings[6].

The Directive is divided into six chapters and contains thirty-two articles. Chapter 1 contains general provisions. Article 1 defines the objectives of the Directive. The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

Member States must ensure that victims are recognized and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.

Member States shall ensure that in the application of this Directive, where the victim is a child, the child's best interests shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, should prevail. The child and the holder of parental responsibility or other legal representative, if any, should be informed of any measures or rights specifically focused on the child.

Article 2 contains definitions. For the purposes of this Directive, 'victim' means:

(i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;

(ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm due to that person's death. 'Family member' means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim, as determined by national law.

Chapter 2 of the Directive regulates the provision of information and support to victims. Victims have the following rights:

- the right to understand and to be understood (Article 3);
- the right to receive all the necessary information from the first contact with a competent authority (Article 4);
- the right to receive information about their case (Article 6);
- the right to interpretation and translation (Article 7);
- the right to access victim support services (Article 8);
- the right to support from victim support services (Article 9).

Article 5 regulates the rights of victims when making a complaint. Member States must ensure that victims who wish to make a complaint with regard to a criminal offence and who do not understand or speak the language of the competent authority be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance.

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[6] Highlights from the preamble.

Chapter 3 regulates the victims' participation in criminal proceedings. This Chapter regulates the following rights of victims of crime:

– the right to be heard (Article 10);
– rights in the event of a decision not to prosecute (Article 11);
– right to safeguards in the context of restorative justice services (Article 12);
– the right to reimbursement of expenses (Article 14);
– the right to the return of property (Article 15).

Article 13 regulates the right to legal aid. Member States must ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid are to be determined by national law.

Article 16 regulates the right to decision on compensation from the offender in the course of criminal proceedings. Member States must ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

Article 17 regulates the rights of victim residents in another Member State.

Chapter 4 regulates the protection of victims and recognition of victims with specific protection needs. This Chapter regulates the following rights of victims of crime:

– the right to protection (Article 18);
– the right to avoid contact between victim and offender (Article 19);
– the right to protection of victims during criminal investigations (Article 20);
– the right to protection of privacy (Article 21).

Article 22 regulates individual assessment of victims to identify specific protection needs. Article 23 regulates the right to protection of victims with specific protection needs during criminal proceedings. Article 24 regulates the right to protection of child victims during criminal proceedings.

Chapters 5 and 6 of the Directive contain other and final provisions. Pursuant to Article 27, Member States must bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 16 November 2015. Despite this provision, the Republic of Slovenia adopted the Act Amending the Criminal Procedure Act, which did not implement the provisions of the Directive until April 2019.

III. The Rights of Victims of Crimes under the Laws of the Republic of Slovenia

In the Republic of Slovenia, the rights of victims of crimes are regulated by the following acts:

– the Criminal Procedure Act (hereinafter: *ZKP*)[7];
– the Social Assistance Act[8];
– the Domestic Violence Prevention Act[9];

[7] The Criminal Procedure Act, unofficial consolidated version NPB of 15 May 2019, available at the websites of the National Assembly of the Republic of Slovenia.

[8] The Social Assistance Act – unofficial consolidated version NPB11 of 20 May 2019, available at the websites of the National Assembly of the Republic of Slovenia.

[9] The Domestic Violence Prevention Act, unofficial consolidated version NPB 2 of 16 May 2018,

– the Enforcement of Criminal Sanctions Act (hereinafter: *ZIKS*)[10];
– the Witness Protection Act[11];
– the State Legal Aid Act[12];
Compensation to Crime Victims Act[13].

The rights of victims of crimes are clearly explained in the brochure "The Rights of Victims of Crimes" published by the Ministry of Justice and the Ministry of the Interior of the Republic of Slovenia[14].

Pursuant to the aforementioned legislation, victims of crimes have the following rights:

– the right to be treated with special care and consideration when this is necessary due to the victim's vulnerability, e.g. due to age, health, infirmity or other similar circumstance. (Article 18a of the ZKP)
– the right to use mother tongue or the language that the victim understands (Article 8 of the ZKP);

(4) the right of attendance of a supportive person of the injured party's choice at pre-trial and criminal proceedings, unless this would be against the interest of pre-trial or criminal proceedings or the injured party's benefits (paragraph four of Article 65 of the ZKP);

– the injured party's right to be represented in the proceedings by a lawyer. Juvenile victims of certain criminal acts must have a lawyer all the time since the commencement of criminal proceedings. If the juvenile injured party does not choose an attorney him or herself, the lawyer is appointed by the court. (Article 65 of the ZKP);
– the right to free medical, psychological and other assistance and support from social work centers and other organizations (indent one of paragraph one of Article 65a of the ZKP and Article 14a of the Social Assistance Act);
– the injured party's right to be informed of the possibilities of assistance and measures provided by the Domestic Violence Prevention Act (indent two of paragraph one of Article 65a of the ZKP);
– the injured party's right to avoid undesired contact with the suspect or the accused, unless such contact is necessary for the successful conduct of the pre-trial and criminal proceedings (paragraph five of Article 65 of the ZKP);
– the injured party's right to be, in order to ensure his or her safety, informed of the release or escape of suspects or accused persons from remand or remand in custody at home (paragraph four of Article 65a of the ZKP);
– the injured party's right to request notification of the leave, release or escape of a prisoner (Article 30b of the ZIKS);

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available at the websites of the National Assembly of the Republic of Slovenia.

[10] The Enforcement of Criminal Sanctions Act, unofficial consolidated version NPB 6 of 12 March 2018, available at the websites of the National Assembly of the Republic of Slovenia.

[11] The Witness Protection Act, unofficial consolidated version NPB 3 of 11 May 2018, available at the websites of the National Assembly of the Republic of Slovenia.

[12] The State Legal Aid Act, unofficial consolidated version NPB 4 of 15 April 2015, available at the websites of the National Assembly of the Republic of Slovenia.

[13] The Compensation to Crime Victims Act, unofficial consolidated version NPB 1 of 5 November 2010, available at the websites of the National Assembly of the Republic of Slovenia.

[14] The Rights of Victims of Crimes (brochure), the Ministry of Justice and the Ministry of the Interior, the Police, Ljubljana, 2019.

- the injured party's right to protective and other measures to ensure his or her personal safety under the Criminal Procedure Act and the Witness Protection Act. This right encompasses the following:
- sound recording of the interrogation of the witness (injured party) younger than 15 years of age (paragraph one of Article 84 of the ZKP);
- collecting information (before the police) performed by the same person or by a person of the same sex (Article 148b of the ZKP);
- interrogation with the assistance of a professional and in premises adapted to this purpose (paragraphs five and six of Article 240 of the ZKP);
- protection of the witness's personal data and interrogation using technical means, such as the screen for the witness (Article 240a of the ZKP);
- interrogation via videoconference (paragraph one of Article 244a of the ZKP);
- exclusion of the public from the main hearing (Article 295 of the ZKP);
- the injured party's right that the rights referred to in paragraph five of Article 65 and paragraph six of Article 240 of the ZKP must also be taken into account by an expert during the examination or interview for the preparation of an expert opinion (Articles 264 and 264a of the ZKP);
- the injured party's right to obtain a certificate or a copy of the crime report on reporting a crime (Article 147a of the ZKP);
- the injured party's right to be informed about the progress of his or her case and his or her role in pre-trial or criminal proceedings (paragraph three of Article 65a of the ZKP);
- the injured party's right to be informed of the details of the contact person of the competent authority responsible for communication about his or her case (indent eight of paragraph one of Article 65a of the ZKP);
- the injured party's right to call attention to all facts and to present evidence in the criminal proceedings, and to access and copy the file (Article 59 of the ZKP);
- the injured party's right to give opinion on the intended dismissal of a criminal charge for an offence punishable by a term of imprisonment exceeding eight years (paragraph four of Article 161 of the ZKP);
- the injured party's right to assume the prosecution when it is abandoned or not initiated by the state prosecutor (Article 60 and paragraph two of Article 63 of the ZKP);
- the injured party's right to file a motion to enforce a property claim (Articles 100-111 of the ZKP);
- the injured party's right to state legal aid in accordance with the provisions of the Legal Aid Act;
- the injured party's right to be informed of the method and conditions for exercising the right to compensation for victims of violent intentional crimes under the Compensation to Crime Victims Act;
- the injured party's right to payment and reimbursement of the costs of criminal proceedings (Article 92, paragraph four of Article 96 and Article 97 of the ZKP);
- the injured party's right to appeal against judgment (paragraph four of Article 367 of the ZKP)[15]. In the Act Amending the Criminal Procedure Act (ZKP-N)[16] the injured party's right to appeal was broadened somewhat to allow the injured

[15] The Rights of Victims of Crime (brochure), *op. cit.*
[16] Official Gazette of the Republic of Slovenia No. 22/19.

party to appeal against the judgment by which the court dismissed the charge or acquitted the accused of the charge (the accused previously had no such right). However, the right to appeal against the judgment by which the court found the accused guilty is still limited. The injured party may challenge such a judgment only with regard to the decision on the indemnification claim, the publication of the final judgment and the decision on costs[17].

IV. Conclusion

According to Gorkič, amendments to the ZKP (amended ZKP-N) referring to the position of the injured party significantly interfered with the relations between entities involved in the proceedings. This amendment strengthened the injured party's position in all areas: information, protection and participation in criminal proceedings. The strengthening of the injured party's position is largely the result of the transposition of Directive 2012/29/EU on the rights of victims and partly of the implementation of the decision of the Constitutional Court of the Republic of Slovenia from 2017. The new regulation reveals the conflict between the injured party and the suspect, i.e. the accused. The injured party as a participant in the criminal proceedings is placed alongside the state prosecutor and acts as an opposing participant to the accused. The amendment to the ZKP enabled the injured party to influence the outcome of the proceedings in a direction that is less favourable for the accused.

In Gorkič's opinion, changes in the injured party's position have fundamentally altered the relations between the parties to the procedure. With the new regulation of the injured party's position, it has become clear that criminal proceedings are conducted not only in the public interest, but also in the interest of the injured party. The injured party exercises his or her rights in criminal proceedings not only for moral satisfaction, but also for the exercise of property interests which can be critically impacted by the outcome of criminal proceedings[18].

Although I agree with the views of my fellow expert Gorkič, I nevertheless believe that the rights of victims of crime transposed into Slovenia's laws by Directive 2012/29/EU will not significantly improve the treatment of victims in criminal proceedings.

It should be taken into account that certain rights of injured parties (victims) are mutually exclusive. If the injured party decides to participate more actively in criminal proceedings, this increases the risk of secondary victimization, revenge or intimidation. In short, in that sort of case, the protection against the negative effects of criminal proceedings is significantly reduced.

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[17] Paragraph 4 of Article 368 of the ZKP:

The injured party may challenge the judgment by which the court dismissed the charge (Article 357), acquitted the accused of the charge (Article 358), and the judgment by which the court found the accused guilty may only challenge the decision on the indemnification claim (point 7 of paragraph one of Article 359), publication of the final judgment and decision on costs. However, if the state prosecutor has taken the prosecution over from the injured party acting as prosecutor (paragraph two of article 63), the injured party may appeal on all grounds on which a judgement may be challenged (Article 370).

[18] P. Gorkič in P. Plesec, P. Gorkič, *Criminal Code (KZ-1), unofficial consolidated version, Introductory explanations to the amendment of the ZKP-N and table of contents*, Official Gazette of the Republic of Slovenia *[Uradni list RS],* Ljubljana, 2019, pp. 12-13.

Although the injured party's right to appeal against court decisions has been significantly extended, the right to appeal the judgment by which the court found the accused guilty is still limited. The injured party may challenge such a judgment only with regard to the decision on the indemnification claim, the publication of the final judgment and the decision on costs. Even if the accused receives an extremely mild sentence or even an alternative criminal sanction (weekend imprisonment, house arrest, community service), the injured party does not have the right to appeal against the criminal sanction imposed. This situation reasonably arouses in injured parties the feeling that they have been tricked and left without adequate legal protection because the perpetrators have not received a fair punishment. This raises serious doubts among injured parties and the broader public about justice and the rule of law, which are the foundation of any democratic social order.

Victims have the right to assert indemnity claims in criminal proceedings. It is common knowledge that courts in criminal proceedings very rarely decide on property claims as well. As a rule, the injured party is referred to litigation (contentious proceedings), which is associated with lengthy court proceedings and also often costs. Even when injured parties are successful in litigation, they are often not reimbursed for legal costs, as perpetrators often have no assets. This happens even in cases where the amount of the resulting damage needs to be established for a proper legal qualification of the crime. A provision in law that criminal court should decide on an indemnity claim would have a positive effect, unless this would give rise to disproportionate difficulties or a disproportionate prolongation of criminal proceedings. It should be taken into account that there are also injured parties who are more interested in receiving compensation for their damage than in seeing the perpetrator punished.

Although I doubt that the rights of victims of crime transposed into Slovenia's laws by Directive 2012/29/EU will significantly improve the treatment of victims in criminal proceedings, I rate them as positive as they stir up awareness that, in addition to the accused, criminal proceedings involve victims of crime whose rights and interests need to be protected.

References

1. EU Commission, *Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions, Strengthening the rights of victims in the EU,* EU /* KOM/2011/0274 final */ s. 1-4. Available at: https://eur-lex.europa.eu/legal-content/SL/TXT/?uri=CELEX:52011DC0274.

2. Ministry of Justice, Ministry of the Interior, Police, *The Rights of Victims of Crimes (brochure)*, Ljubljana, 2019.

3. Plesec, P. Gorkič, P., *Criminal Code (KZ-1), unofficial consolidated version, Introductory explanations to the amendment of the ZKP-N and table of contents*, Official Gazette of the Republic of Slovenia *[Uradni list RS],* Ljubljana, 2019.

The Victim of Crime Between Oblivion and Protagonism

Dr. Maristella Amisano Tesi*

Abstract

The crime doesn't constitute a bilateral relationship, between the offender and the victim or between the State and the offender, rather is a trilateral relationship, between State, offender and victim. So, no rights of the involved partied should be denied. The victim's rights and the active participation in the trial can't be neglected, but the victim-paradigm, which is the result of an emotional criminal law, can't be abused. It's necessary to find a difficult equilibrium. Through an historical reconstruction of the condition of the victim and its guarantees in the Italian penal system, we will be able to discover the balance point found today. A new reform in the Italian criminal system accepts the challenge of the restorative justice, which is not only a kind of compensation, but which constitutes a real sanction, overturning the traditional system of punishment.

Keywords: *Italian criminal system-victim-offender- rights- restorative justice*

I. The Victim in the Rocco Criminal Code

Each legal system must necessarily deal with two opposing aspects: the victim of the crime must not be forgotten – how happened often in the past – but neither must become a vengeful tyrant. Because the rights of the victim must go hand in hand with the rights of the accused. The protection of the victim is a prerogative of the social-right State and is connected to the duties of the welfare State, but the principles guaranteeing the offender shouldn't be forgotten. So, each legal system needs to find a balance. A balance that has a single center: the human being, whether victim or offender. And a balance that also depends on historical sensitivities. For this reason, I would like to retrace what happened in the Italian legal system from the entry of the penal code, which dates back to 1930, until today. I would like to look at the evolution of this kind of balance in that wide span of time, in order to see how changed over time.

The 1930 code is an illuminist-liberal penal code and, according to the illuminist-liberal vision, the victim plays an irrelevant role, because it wants to affirm the idea that it's the State that must deal with the crime, it is not the private citizen who is entitled to revenge: the relationship is all public, between the offender and the State that imposes the punishment. The relationship is only bilateral: the offender and the State. This is because criminal law is an extrema ratio law and must be used to guarantee peaceful coexistence between citizens. It doesn't work, in the illuminist idea, to

* Associate Professor of Criminal Law, University of Calabria, Italy. Contact: maristella.amisano@unical.it.

implement solidarity requests: thus the protection of the legal assets is depersonalized and the only thing that matters is the objective damage to a legal asset. According to this model, the individual victim is replaced by a collective victim who represents all the interests. It's a process that starts with the ideas of Locke, Rousseau and Beccaria and is based on the fact that the offense is an attack to society and not to the singular victim. Idea that still goes even further in the thought of Binding, who thinks that the victim has to be swallowed by the legal asset. For this reason, the Italian penal code is based on the fact and not on its author.

Is the fact of crime that must be judged, regardless of the characteristics of the criminous. In the same sense, not even the victim can play a role: what matters is just the fact of crime. The reference to the victim in the 1930 code (but also in the precedent code, dated 1889, the Zanardelli Code) was limited to the mitigation of the punishment due to the provocation of the victim. This was the only way to tie the victim and the crime.

A kind of criminal law that presents the value of not falling into the temptation of the enemy's criminal law, but which certainly doesn't value the subjective characteristics of the offender and the victim. And this is because the 1930 penal code was the compromise between two criminological schools: the Classical School and the Positive School. For the Classical School the crime is the result of the free will of the man and the punishment is just the retribution for the evil committed. For the Positive School the crime is the result of family and social problems and the punishment has the purpose to remove the causes that led to the crime. The Positive School retrieves the victim's role, identifying in the compensation the only way for the State to act a real protection of the victim. The compensation is a kind of protection for the victim and is a punishment for the offender too. And this is very important for the end of this analysis, when we will know the new balance found nowadays in the Italian legal system between the guarantees of the offender and the protection of the victim. Sign that the history of a legal system throws seeds destinated to sprout. Certainly, the Classical School prevailed in 1930, but there are many aspects in the criminal code that come from the ideas of the Positive School, which wanted to give more attention to the victim. But at that time there was still no victimological awareness. Therefore, the victim could be valued only by the ethical principle of the protection of weak people.

In 1930 the victimology science was just at the beginning. We can't forget that Von Henting 's book, *The criminal and his victim*, is from 1948 and we can't forget too that the first victimology science studied the biological, psychological, moral, social and cultural characteristics of the victim just to identify the link between these characteristics and the crime. Victimology as criminogenesis and criminodynamics. Offender and victim are an inseparable pair in the genesis of crime. So, the victim was studied to understand if its behavior or even its way of life had been able to ease that type of crime. It wasn't yet a question of enhancing the rights of the victim. It was simply a way of identifying the victim and consider the victim in the dynamic of the crime. Nothing to do with the idea we have today.

Proof is that when the first paper on victimology arrived in Italy, the Italian jurists had a reaction very different from what we might expect. Two great Italian jurists, Bettiol and Leone, discussed on the possibility and utility of introducing a register of people who had been victim of fraud crimes. The idea was that often those who have been frauded are people who try to obtain undue benefits and for that reason they fall into the fraud. By setting up a register of victims of fraud, it's possible to observe a

group of people who present traits of likely and future social danger, because they had the idea of benefiting from behaviors that were not totally lawful. This is how the victim was considered in the era of the beginning of the victimological science.

Until the 1960s, the victim had no role in the Italian legal system.

This fact is also testified by the lexicon. In the criminal code the term 'victim' never appeared: the word to define the victim is *people offended by the crime*. But even in the Italian 1948 Constitution the word victim never appears: neither in the article 111, which talk about the right trial, that means the trial which retains all warranties of all the parties involved. This is because the Italian Constitution has a liberal matrix, primarily attentive to the recognition of the defensive and procedural guarantees of the accused. But it doesn't mean that the victim doesn't have constitutional rights. However, the state of art is that for sure the 1930 code, looking at the penal system as relationship between the offender and the State, neglects the victim, so the balance hangs in favor of the offender.

During the years, however, the needs of the victim have become stronger, also because the attention and care for the victims is a sign of civilization and responds to the constitutional principle of equality among citizens. Thus, the victim has become an autonomous center of rights.

II. The Victim-Paradigm

As often happens when we look for a balance point, the danger is go from an excess to another, to an unbalance to another. The danger is placing the victim's rights in the center, neglecting the guarantees of the offender. I understand that is an unpopular statement in this historical period and I hope to be able to contextualize my point of view, but victimology itself warns of the possible exploitation that the victim can try. In a very interesting paper, Caroline Eliacheff and Daniel Soulez Lariviere analyze the victim's Herostratus complex and the possible narcissistic desire for protagonism. The victim can become a bivalent figure: undoubtedly suffers the consequences of a crime in a physical and emotional sense but may devise the way to obtain privileges of various kinds too. Even unconsciously. Now we have to see how the Italian legal system, who was imposed to do it by various European directives, improved the victim protection. If protects the victim with balance or unbalance about the offender's rights. The Italian legislator started to protect the victim's rights by shaping the criminal laws around the victim. The crime ceases to be an offense to a defined legal asset and becomes an offense to an individual victim. But this way the legal asset loses its guaranteeing function of selection of facts that need the criminal protection and become linked to vague interests. Interests that don't come from the criminal law but from the criminology. An example will help to understand better. The crime that punishes the stalking, in Italian *"Atti persecutori"*, occurs when the behavior of the offender leads the victim to a state of anxiety, or to fear for the own safety or for the next relatives' safety, or force to change the victim's life habits. It is absolutely clear that here the existence of the crime depends on subjective sensitivity of the victim. There are very anxious people who have a tendency to be always afraid: they met completely randomly the ex-husband or ex-wife on the street and they already enter in a state of anxiety. On the other hand, there are people who don't become anxious even facing objectively worrying behaviors. We can say the same about the fear for the own safety and about the forced change of

lifestyle habits. If the ex-husband or ex-wife simply goes to have coffee in that place every morning, without saying anything, without doing anything, without having threatening or violent attitudes, if the victim is particularly sensitive and decides to change direction and never pass there for not seeing the ex, can we consider it a necessary change in lifestyle? We can't link the existence of a crime to the victim's subjective sensitivities. This way, the expectations of the victim become a source of criminal responsibility. We can even get to what Professor Filippo Sgubbi defined as the perceived crime. A behavior that is a crime just in the perception of the victim but which the law support.

There have been numerous victim-centric reforms which are manifestation of symbolic-special legislation that satisfies populist requests. It is easier for the legislator to promote "manifesto laws" that introduce new crimes, than to implement preventive social policies that really help the victims. The increasingly significant role that emotions have acquired in contemporary reality means that the perception of the victim assumes centrality also in the criminal dynamics: the agent's conduct can be neutral, but if it is perceived as harmful by the interlocutor it becomes a crime. The criminal nature of the fact derives directly from the liking or disliking of the recipient. This way the balance falls to the advantage of the victim, creating a sort of criminal law not of the enemy but of the friend, which is incompatible with the guarantees that the Italian Constitution attributes to the offender. For this reason, the victim is also an argumentative tool – that of victim-centrism – defined as the most formidable criminal law of the friend, in which the hostile relationship doesn't pre-exist the repressive reaction but is constituted *ex novo*. Here the crime is impoverished and tends towards a disproportionate sanctioning response, reversing the purpose of the punishment. The risk we were talking about has materialized.

Often even the use of victimological language can be misleading. In Italy we use to speak about femicide, meaning the murder perpetrated by a man against a woman for gender reasons. A crime whose introduction is invoked by several parties, that starts from a category of victims to arrive at the legal asset, following the opposite path to the one that should be followed: first the legal asset is identified and then it is protected in the way that is considered most appropriate. It's from this process that the protection of the victim has to arise. In the specific case of femicide, the legal asset is human life, which must always be protected, regardless of the sex of the victim and the offender. The motivation of the murder linked to gender may constitute a way in which the crime is committed and affects the punishment, it isn't a new and different legal asset. And this is even a way to guarantee more and better the victims of the crime. Therefore, we mustn't fall into attractive temptations, in contrast with the principles that regulate the penal system.

This way of protecting the victim tilts the balance towards the victim, to the detriment of the guarantees owed to the offender.

III. The Restorative Justice

Let us question, which is the balance that can be attempted between the reasons of the offender and those of the victim? I don't have a certain answer valid over time. I just can explain which was the balance found today in the Italian legal system. And today means that this balance is the result of a law reform that was approved at the end of September 2022 and is starting to operate just now.

To properly enhance the role of the victim, the new Italian legal system bet on restorative justice. Before the reform, the only instruments which, after the commission of the crime, protected the victim were the restitutions and the compensation for damages. Pursuant to article 185 of the Criminal Code, each crime obliges to restitution in accordance with the civil laws and, if it has caused pecuniary or non-pecuniary damage, obliges to compensation. In the Zanardelli code, which is prior to the Rocco code, the institution of pecuniary compensation for moral damages already existed. The Rocco code changed the moral damages into non-pecuniary damages, but it didn't arrive at a compensation regime for damages as a public function due to the State – that was the idea of the Positive School. If the restitution is a hypothesis of compensation in a specific form, aimed at restoring the status quo antes the commission of the offence, the compensation has a compensatory function, when restitution is no longer possible. But in the Rocco code the reparation of the damage was cumulative to the sanction, at most had a lenient function. Nowadays the restorative justice assumes the same function of the punishment, of which it stands as an alternative.

The compensation for damage takes on a strictly penal importance, becoming a kind of extinction of the crime or of the punishment. It's no longer just a question of compensation, which consists in a mere monetization of the damage suffered: it's a real reparation for the damage, it's a positive action towards the victim and/or the community.

Criminal law can't be just an instrument of justice that aimed to satisfy the victim and can't be just an instrument of social defense that neglects the victim's rights. This point of view has to change the criminal system: not just a bilateral relationship between the offender and the State, not just a bilateral relationship between the offender and the victim, but a trilateral relationship between offender, State and victim. The reform implemented now in Italy has a clear personalist imprint, both for the offender and for the victim. The scene is no longer dominated only by the State but by the people. In this way vanishes the colorless victim without a story to tell and the doors open to the concrete victim, who becomes the principal narrator of the story of the crime.

For the first time, the word victim enters in the criminal law lexicon, because the victim is the key of the new Italian criminal justice model: the restorative justice. Restorative justice is the paradigm of the enhancement of the victim's role in the criminal system, still it is also a new punitive model: the tendency is to cure the evil suffered by the victim and not just to inflict another suffering to the offender for the crime committed. It's not a matter of privatizing the criminal justice system and it's not a matter of give to the victim the lordship on the consequences of crime, but it's a new criminal model with a strong characteristic of general prevention.

This is the new equilibrium point found by the Italian legal system. We don't know yet if it will work, if the reasons of the offender and those of the victim will remain in balance.

But this is the new challenge of the Italian criminal law.

References

1. Amalfitano, C., *La tutela della vittima di reato nelle fonti dell'UE diversa dalla Direttiva 2012/29/UE e le misure di attuazione nell'ordinamento nazionale*, in *Vittime di reato e sistema penale*, (a cura di Bargis e Belluta), Giappichelli, 2017.

2. Beccaria, C., *Dei delitti e delle pene*, Einaudi, 1973.
3. Carrara, F., *Programma del corso di diritto criminale*, Tip. Giusti, 1867.
4. Cassibba, F., *Le vittime di genere alla luce delle convenzioni di Lanzarote e di Istambul*, in *Vittime di reato e sistema penale*, (a cura di Bargis e Belluta), Giappichelli, 2017.
5. Cennamo, A., *La tutela della vittima (di reato): una fattispecie di rilevanza meramente civilistica?*, in Rivista di criminologia, vittimologia e sicurezza, I, (2), 2007.
6. Del Tufo, M.V., *La vittima di fronte al reato nell'orizzonte europeo*, in *Punire, Mediare, Riconciliare. Dalla giustizia penale internazionale all'elaborazione dei conflitti individuali*, (a cura di Fiandaca e Visconti), Giappichelli, 2009.
7. Delvecchio, F., *Il danno alla vittima del reato e i suoi rimedi*, Cedam, 2017.
8. Di Muzio, F., *La testimonianza della vittima "vulnerabile" nel sistema delle garanzie processuali*, in Giur. Pen., 2015.
9. Diddi, A., *Processo penale e paradigma riparativo. I nuovi orizzonti della tutela dell'interesse leso*, Wolters Kluwer, 2022.
10. Donini, M., *"Danno" e "offesa" nella c.d. tutela penale dei sentimenti. Note su morale e sicurezza come beni giuridici, a margine delle categorie dell' "offense" di Joel Feinberg*, in *Laicità, valori e diritto penale, The moral limits of the criminal law, in ricordo di Joel Feinberg* (a cura di Cadoppi), Giuffrè, 2010.
11. Donini, M., *Garantismo penale oggi*, in Criminalia, Discrimen, 16/12/2019;
12. Eliacheff, C., Soulez Lariviere, D., *Il tempo delle vittime*, Il Ponte editore, 2008.
13. Gulotta, G., *Dalla parte delle vittime*, Giuffrè, 1981.
14. L. Eusebi, *La risposta al reato e il ruolo della vittima*, in Dir.pen.Proc., 2013, XIX, (5), 527-531.
15. Lombroso, C., *L'uomo delinquente studiato in rapporto all'antropologia, alla medicina legale e alle discipline carcerarie,* Il Mulino, 2012.
16. Magliaro, L., *La vittima del reato nel processo penale*, in Speciale QG, October 2019.
17. Mannozzi, G., Lodigiani, G., *La giustizia riparativa. Formanti, parole e metodi*, Giappichelli, 2017.
18. Mannozzi, G., Mancini, R., *La giustizia accogliente*, FrancoAngeli, 2022.
19. Mannozzi, G., *Nuovi scenari per la giustizia riparativa. Riflessioni a partire dalla legge delega 134/2021*, in Archivio Pen., 1, 2022.
20. Mattheudakis, M. L., *Prevedibilità ed autoresponsabilità della "vittima": uno sguardo critico e propositivo alla casistica*, in Leg. Pen. Online, 25/10/2022.
21. Minicucci, G., *Il diritto penale della vittima. Ricadute sistematiche interpretative*, in DisCrimen, 27/10/2020.
22. Parlato, L., *La parola alla vittima. Una voce in cerca di identità e di "ascolto effettivo" nel procedimento penale*, in Cass. Pen., 9, 2013.
23. Sgubbi, F., *Il diritto penale totale*, Il Mulino, 2019.
24. Sicurella, S., *Lo studio della vittimologia per capire il ruolo della vittima,* in Rivista di Criminologia, Vittimologia e Sicurezza, VI, (3).
25. Venturoli, M., *La protezione della vittima del reato quale autonomo scopo del diritto penale*, in *Sistema penale e tutela delle vittime tra diritto e giustizia* (a cura di Cortesi, La Rosa, Parlato, Selvaggi), DipLab, 2015.
26. Venturoli, M., *La vittima nel sistema penale dall'oblio al protagonismo?,* Iovene, 2015.
27. Vezzadini, S., *La vittima di reato tra negazione e riconoscimento*, Clueb, Bologna, 2006.

Secondary Victimization During Criminal Procedure

Fenyvesi Csaba[*]

Abstract

In constitutional democracies, rules set down in writing that are both accessible and applicable to all (criminal procedural law) are used in prosecution, the goal of which is to ensure the lawfulness and fairness of the procedure by which crimes are brought to light and by which the penal code is brought to bear against the perpetrators of criminal activity. By their mere existence as directives to be followed, prosecutional laws carry with them a symbolic threat. We cannot claim that the eventual use of violence is an essential precondition of all prosecution, but it should nevertheless loom in the background, thereby helping to ensure the voluntary compliance and peaceful behaviour of the participants and so preventing the need to take the cane down off the wall in the first place.

Both theoretical and practical research have shown that those who have committed a crime will try to avoid being held accountable for their actions, attempting to obstruct the authorities in their attempts to ascertain, in turn, the facts of the case through comprehensive investigation. Such behaviour goes some way towards providing the authorities with a basis for justifying the necessity of violence. Thus, if the threat represented by violence and other uses of force were taken away, the implementation of prosecutional laws and law enforcement would not be effective and it would be impossible to achieve the standards demanded by society.

The other fundamental pillar supporting the use of violence is the existence of a high-level interest, namely a criminal-political interest, by which all members of society demand that successful law enforcement and the enforcement of criminal law be categorically upheld. The force of the belief is so strong that it provides a solid basis for the implementation of otherwise undesirable state-implemented violence. State-implemented violence can also exist in constitutional democracies, insofar as it is carried out in compliance with constitutional rights and within the specified limitations.

Keywords: *defense counsel, first strike, human rights, illegal and legal violence, investigation, law enforcement, presumption of innocent, secondary victimization*

I. The Place and Role of Violence in Criminal Procedures

In constitutional democracies, rules set down in writing that are both accessible and applicable to all (procedural laws) are used in prosecution, the goal of which is to ensure the lawfulness and fairness of the procedure by which crimes are brought to

[*] PhD, Professor, University of Pécs, Hungary, Faculty of Law. Contact: fenyvesi.csaba@ajk.pte.hu.

light and by which the penal code is brought to bear against the perpetrators of criminal activity. By their mere existence as directives to be followed, procedural laws carry with them – or at any rate are supposed to carry with them – a symbolic threat, not unlike that in days gone by of "the cane on the primary school wall"[1]. In the classroom the cane occasionally had to be put to actual use, the same is true in the practice of prosecution, to a greater extent, even. We cannot claim that the eventual use of violence is an essential precondition of all prosecution, but it should nevertheless loom in the background, thereby helping to ensure the voluntary compliance and peaceful behavior of the participants and so preventing the need to take the cane down off the wall in the first place.

Both theoretical and practical research have shown that those who have committed a crime – either due to human nature or in response to their own instincts – will try to avoid being held accountable for their actions, attempting to obstruct the authorities in their attempts to ascertain, in turn, the facts of the case through comprehensive investigation, the precise reconstruction of past events, damning and aggravating evidence (or even, occasionally, exonerating or extenuating evidence) as well as circumstances directly linked to the crime being committed. Such behavior goes some way towards providing the authorities with a basis for justifying the necessity of violence. It is no exaggeration to assert that if the threat represented by violence and other uses of force were taken away, the implementation of procedure laws and law enforcement would not be efficient and it would be impossible to achieve the standards demanded by society.

The other fundamental pillar supporting the use of violence is the existence of a high-level interest, namely a criminal-political interest, by which all members of society demand that successful law enforcement and the enforcement of criminal law be categorically upheld. The force of the belief is so strong that it provides a solid basis for the implementation of otherwise undesirable state-implemented violence. State-implemented violence can also exist in constitutional democracies, insofar as it is carried out in compliance with constitutional rights and within the specified limitations[2].

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[1] The expression can be found in Á. Farkas, *A falra helyezett nádpálca [Cane on the wall]*, Osiris, Budapest, 2002, p. 91.

[2] As Ákos Farkas clearly states, "a successful justice system must have effective instruments for making criminal investigation and punishment possible, for providing help in overcoming obstacles that appear in its path – even without the involvement of the defendant – in order to implement the penalties required by the state.

The authorities involved in the above system are each led by a different objective, however:

– for the police, it is to improve crime-fighting statistics,

– for the prosecution, it is to win as many cases as possible,

– for the courts, it is to conclude as many cases as possible with a minimum of successful appeals,

– for the prison system, it is for the time of the sentence to be served with as few problems as possible.

These objectives often clash not only with one another but also with legal objectives. In the interests of achieving their own objectives, the authorities attempt to find more and more ways of interfering with the rights of the individual.

On the other hand, there is the defendant, who demands a fair trial, the observation of procedural rules, the protection of his rights and a constitutional investigation. Finding the right balance is a extremely difficult, a challenge in itself for a court of constitution." Á. Farkas, *Alkotmányosság és büntetőeljárás [Constitutions and criminal procedure]*, Kriminológiai és kriminalisztikai tanulmányok, OKRI, Budapest, Vol. 30, 1993, p. 45.

II. Differentiation Between Necessary-Legal and Unnecessary-Illegal Violence

Now we come to the differentiation between legal and illegal (lawful and unlawful or official and forbidden) violence within criminal procedure. Legal violence is that which is defined and permitted first and foremost by the Constitution, and secondly by the Act of Criminal Procedure (2017/XC, Hungary) and other legal regulations connected to it (e.g. those governing the police, the border guards, the inland revenue and customs as investigating organizations, Act of Prosecution etc). A legal basis for violence does not in itself justify the use of violence in every case, as it is a serious interference with human rights. Law enforcers can resort to violence only under certain specific conditions in accordance with strict criteria; these criteria are necessity and proportionality[3]. *Necessity* stems from that which is unavoidable, otherwise unworkable or unconditionally required, while *proportionality* requires that the principle of the minimum be followed, that is to say, the mildest violence or form of violence applicable to a situation must be applied. The violation of both these requirements (necessity and proportionality) is a serious offence against norms and also a breach of individual constitutional and procedural rights[4].

Seen in negative terms, any form of violent behavior not corresponding to the above requirements is forbidden. Seen in positive terms, I consider the definition of unlawful violence set out in 76.§ (8) of the Police and Criminal Evidence Act (UK, 1984) as acceptable. According to this, oppression includes torture, inhuman or degrading treatment, as well as the threat of torture or violence falling short of torture.

III. The Characteristics of Violence in the Four Main Stages of the Criminal Procedure (Investigation, Interim, Hearing, Penalty Enforcement)

The Act of Prosecution summarizes the task of the investigative (Hungarian) authorities in the following way The task of the investigative authorities is to conduct a fast and thorough investigation of crimes and also to take the necessary steps to call those responsible for committing crimes to account for their actions. The requirement of speed and thoroughness also appears in the sections of the laws of criminal procedure dealing in practical terms with criminalistic requirements (concerning the tactics of investigation). The significance of the so-called *erster Angriff* "first strike"[5] is an extremely important factor in the success of the entire criminal procedure. Let us consider, for example, what happens when someone is caught in the act of committing a crime. The person in question is apprehended and brought forth, then there is the primary collection of facts and immediate detective activity such as search of the

[3] The criteria – given that violence features in them both – share similarities with the requirements of the enforcement of justified defence, where both the theoretical literature and law enforcement require necessity, proportionality, directness (direct attacking) and unavoidability.

[4] See: V. Berces, *A büntetőeljárás reformja és a bizonyítás alapkérdései (Reform of criminal procedure and basic questions of proofing),* ELTE Eötvös Kiadó, Budapest, 2021.

[5] C. Fenyvesi, C. Herke, F. Tremmel, (eds) *Kriminalisztika (Crimnalstics),* Ludovika Egyetemi Kiadó, Budapest, 2022.

surroundings, house and body search, detainment and taking into custody. Practically each phase contains within it an abuse of human rights, and, in cases where resistance is met, violence committed by the authorities and restriction of rights also occur. Of all the phases mentioned above, the process of apprehension is special, in that the public supports the right of individuals to use force in order to help them apprehend the perpetrator of a crime. Here, too, the notions of necessity and proportionality come into effect, the right to use violence legitimately is not to be abused, and the authorities are to be informed immediately so that the apprehended party may be handed over. In practice, this is the cause of numerous conflicts. Confronted with someone who is emotionally overloaded, generally offended and behaving threateningly towards them, their family, or other people or assets, people very often take the law into their own hands, and act like judge, jury and executioner, abusing the perpetrator unnecessarily and without reason and using excessive violence[6].

The law enforcers have also been known on occasion to use violence to excess themselves. Despite the two centuries-old principle that an individual is innocent until proven guilty, some suffer unjustified and illegitimate violence on the basis of "presumed concealment of guilt"[7], because of "the passion for the hunt" or even in order to create a distorted profile of statistical success. The violence can be physical, psychological, or a combination of the two. It can be seen in its most varied forms at the beginning of the procedure (threatening with arrest, threats made in connection with the children, family or workplace of the individual concerned, physical assault and so on, to list just a few by way of example.)

Given that an investigation is by its very nature confidential (not in the public domain), the multitudinous restrictions on rights of protection and instruments of duress – including conditions of containment in serious abuse of human rights, detention (custody)[8], temporary enforced rehabilitation – demonstrate the extent to which law enforcers able and willing to abuse the law are in a position to do so. If we look through the Hungarian files on maltreatment during official procedures, we see that in nearly every case the maltreatment occurred either in the phase immediately prior to the start of the criminal procedure or during the initial investigative phase (most often police investigations). In other words, the authorities use illegitimate violence with an eye to criminalistic and procedural success, attempting to elicit facts about the case at such a time when no counsel for the defense is present.

In the second phase of the criminal procedure, or interim, when it is the public prosecutor who decides on what direction the process will be taking, and in the preparatory phase of the trial, during which the court examines the documents in connection to the trial before its actual commencement, examples of unlawful violence – above and beyond the legitimate violence of measures implemented under duress – are uncommon. In this phase acts of investigation and contact with the participants in the trial, especially the defendant, happen only in exceptional circumstances.

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[6] See more on this theme: A. Bertaldo, *Quo vadis, ungarische Jugendstrafgerichte? (Quo vadis, Hungarian juvenile courts?),* Büntetőjogi Szemle, 2021/1, pp. 11-15.

[7] See Á. Farkas, G. Pap, *Alkotmányosság és büntetőeljárás (Constitutioness and criminal procedure)* Kriminológiai és kriminalisztikai Évkönyv, OKRI, Budapest, 1993, p. 45; J. Skolnick, *Justice Without Trial*, New York, 1994, p. 112.

[8] Further details of its anomalies can be found in C. Herke's monograph *A letartóztatás [The detention],* Dialog-Campus, Budapest-Pécs, 2002, pp. 1-366 and E. Roth, *Emberi Jogok kontra fogvatartás a büntető eljárásban [Human rights contra detention in criminal procedure],* Acta Humana – Emberi jogi közlemények, 1995/20, pp. 3-87.

In the third phase of the criminal procedure, the court trial phase (of the first and second instance, and remedial phase) the court council and the principal judge have the right to order the use of force (taking someone into custody, having them expelled from the hearing or removed from the building, etc.) Instances of illegitimate violence might include the judge overseeing the trial and the witness interviews in an excessively authoritarian style reminiscent of an interrogation. Here we might see the kind of overly coercive, excessively contrived, we could even say violent behavior on the part of the judge who, in a situation where the accused refuses to give evidence, begins an interrogation about the reasons for this stance, bombarding the accused with questions concerning the merits of the case. Defendants refusing to give evidence must not – cannot – be asked questions, as that would be giving evidence. Any intent on the part of the judge to do this, either in a concealed or open way, constitutes illegitimate pressure and is a further burden on the already "enormously disadvantaged defendant"[9].

The fourth phase of the independently regulated criminal procedure is that of sentencing. The defendant now has the legal status of convict, and as such is even more unprotected and exposed. In the confined and strictly ordered prison environment, the convict can only maintain sporadic contact with a lawyer – assuming that he/she has one – and the assumption of innocence until proven guilty is no longer valid, since a verdict has been brought with the full force of law. The opportunities for appeal are slim, and in front of the sentencing judge the principle of contradictoriality is not complied with fully. The "defender" of the rights of the convict is the same public prosecutor who has often affected the status of the convict by seeking a negative verdict, but who can now act in the role of warden of justice. In an institution in which external regulation hardly ever occurs in practice, there are countless ways in which the defendant can suffer from legitimate and illegitimate violence.

IV. The Recipients of Secondary Victimization in the Criminal Procedure

In the four distinct phases of the criminal procedure, the defendant is not the only one who can suffer legal and illegal violence. As their names suggest, both the victim of the crime and the witness to the crime can end up on the receiving end of violence within an investigation. Special consideration needs to be given to the plight of the victim, who has to undergo voluntarily the tribulations of the whole procedure in addition to having suffered unlawful violent attacks against his or her person, rights or property. The violence in question can wound in many ways and cause different types of damage, be it emotional, physical, financial, temporal and so on. These different kinds of violence can happen at the same time with overwhelming effect. When this is combined with incompetent and rough police officers (or other authorities) who are often biased and prone to treat victims and witnesses as if they were themselves under suspicion, and with the indiscrete, insensitive and humiliating nature of the – sometimes multiple – interviews, it all serves to increase the boorishness of the entire situation. Then there is the severity of the occasional medical examinations, the

[9] F. Tremmel, *Magyar büntetőeljárás. [Hungarian criminal procedure],* Dialóg-Campus Budapest-Pécs, 2001, p. 95.

tension caused by the ever-present procedural bureaucracy and the depressing impact of force. Young people and children need to be given special consideration, as those with vulnerable or damaged emotional development are particularly at risk of victimization at the hands of the grown-up authority's seeming omnipotence. In such cases, because of the age of those concerned, the authorities are required to make provisions to ensure that the standard interview procedure cannot be applied.

There are usually between five and seven witnesses called during the course of a trial, and they, too, can become victims of both kind of violence. They can be forced to attend, be subject to various investigations and be made to remain in a particular place, etc. At the same time, it is possible that they could become the victims of illegitimate threats and violent actions, seeing as current legislation does not even allow them to have a lawyer[10].

Others who might suffer forced measures include victims of confiscation, who themselves are neither defendants nor witnesses to a crime. Think here of the shocked owner of a second-hand car who discovers that it is being forcibly confiscated by the authorities due to its involvement in an earlier crime (theft, smuggling, etc.)

V. Victimization Catalysts and Their Functions

The harmful effects of violence (be it legitimate or illegitimate) carried out by the authorities can be reduced by organizations within the institution of Hungarian criminal procedure and also by outside individuals and organizations. These are, in my opinion, the agents of authority (the head of the investigation, the prosecuting lawyer, the judge), the defense counsel, and also external individuals and organizations such as the Constitutional Court, ombudsman, and various organizations for the protection of the legal rights of individuals, such as the Helsinki Convention. All these parties – especially the prosecuting lawyer, who has special status – have a fundamental obligation to guard against violence by the authorities and secondary victimization. They have the chance to make an impact in the first case, however in the latter case they cannot help much, since violent acts usually happen close to the committed crime in terms of place and time, meaning that they can very rarely be present. Since the participation of the defense counsel in the investigation is restricted, his or her role is even smaller. Moreover, empirical studies dating back several decades have shown that barely a third of defendants receive the formal protection of a lawyer, and that two-thirds of those lawyers are publicly appointed. Thus, only ten per cent of all defendants receive the kind of "effective" defense stipulated by the European Convention and Court of Human Rights[11].

The struggle of outside organizations against the use of such violence can take effect only after the event, and only reaches the victims and perpetrators after a series of phases, so is less effective than the implementation of internal "catalysts" during the investigation itself.

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[10] This is due to change as of July 1 2003, when the Act of Criminal Procedure (at that time) gave the witness the right to a lawyer.

[11] For further details, see M. Toth, *Nyomozás és védelem [Investigation and defence],* Magyar Jog, 1989/4, p. 350; C. Fenyvesi, *A védői jogállás empírikus vizsgálat tükrében [The defence councel's right in mirror of empirical research],* Belügyi Szemle, 2001/2, p. 37; C. Fenyvesi, *A kirendelt védői intézmény problematikája [The applied defense counsel's problems],* Jogelméleti Szemle, 2001/4.

VI. Potential Ways to Reduce Violence in Criminal Procedures and Secondary Victimization

I believe that because both the distortion of permitted violence and unlawful violence have the same source and share the same diseased roots, that they can be cured in the same way, by improving the selection not only of those who apply violence, in particular detectives and initial investigators, but also of those employed in the field of penalty enforcement; improvements also need to be made to increase their preparedness and to improve their knowledge, experience and self-confidence.

For the above requirements to be implemented, a particularly competitive system of admissions would also be needed, in which candidates and employees of a violent disposition as revealed through personality traits or lack of self-control would be rejected or dismissed. Successful candidates would also need to demonstrate a high-level awareness of – and ability to implement – the following: theoretical law (the management of police materials and procedures), criminalistics (the tactics and techniques of criminal methodology), psychology (the psychology of criminal imprisonment) and conflict resolution.

Within the penal procedural system, it is imperative that the role, presence and significance of the "catalysts" (especially the authority in charge, defense attorney and lawyer of prosecution) be increased, both from a theoretical and an operational standpoint.

VII. Closing Thoughts and Conclusions

The practice of criminal procedure shows that the legislative threat ("cane on the wall") is in itself ineffective for fulfilling desired law enforcement and crime prevention objectives. The use of legitimate violence and measures of force (the use of the cane) is therefore required. The criminal procedure itself is a repository of force, pressure and obligation; we cannot speak of a "velvety" prosecution, but, at best, of a considerate one. The truth of this statement is most readily seen in the case of those involved in organized crime – they are not known for being overly scrupulous in their choice of methods and instruments, and yet even so the constitutional and legal limits must not be overstepped. The use of violence cannot be high-handed, autocratic, excessive or disproportionate – neither in degree nor in time; legislators and the agents of law enforcement must maintain a delicate balance between the permitted use of violence and the human rights of the defendant (and other participants).

In the course of the criminal procedure, it is not only the defendant who, as "main character", is forced to suffer and bear legitimate violence; other participants also undergo the same treatment whilst also, unfortunately, falling prey to the scourge of illegitimate violence. The overall impact of such treatment can be at times so great that it goes far beyond the disadvantages and offences actually caused by the crime itself. This is highly damaging, both to the individual concerned and to the chances of successful subsequent prosecution. Secondary victimization is a real phenomenon in Hungarian practice, and its prevention should be both a priority and a responsibility for all legislators and law enforcement agents, as well as for those official and unofficial "victimization catalysts."

References

1. Berces, V., *A büntetőeljárás reformja és a bizonyítás alapkérdései [Reform of criminal procedure and basic questions of proofing],* ELTE Eötvös Kiadó, Budapest, 2021.

2. Bertaldo, A., *Quo vadis, ungarische Jugendstrafgerichte? [Quo vadis, Hungarian juvenile courts?],* Büntetőjogi Szemle, 2021/1.

3. Farkas, Á., *A falra helyezett nádpálca [Cane on the wall]*, Osiris, Budapest, 2002.

4. Farkas, Á., *Alkotmányosság és büntetőeljárás [Constitutions and criminal procedure]*, Kriminológiai és kriminalisztikai tanulmányok, OKRI, Budapest, Vol. 30, 1993.

5. Farkas, Á., Pap, G., *Alkotmányosság és büntetőeljárás [Constitutioness and criminal procedure],* Kriminológiai és kriminalisztikai Évkönyv, OKRI, Budapest, 1993.

6. Fenyvesi, C., *A kirendelt védői intézmény problematikája [The applied defense counsel's problems],* Jogelméleti Szemle, 2001/4.

7. Fenyvesi, C., *A védői jogállás empírikus vizsgálat tükrében [The defence councel's right in mirror of empirical research],* Belügyi Szemle, 2001/2.

8. Fenyvesi, C., Herke, C., Tremmel, F., (eds) *Kriminalisztika [Criminalistics],* Ludovika Egyetemi Kiadó, Budapest, 2022.

9. Herke, C., *A letartóztatás [The detention],* Dialog-Campus, Budapest-Pécs, 2002.

10. Roth, E., *Emberi Jogok kontra fogvatartás a büntető eljárásban [Human rights contra detention in criminal procedure],* Acta Humana – Emberi jogi közlemények, 1995/20.

11. Skolnick, J., *Justice Without Trial*, New York, 1994.

12. Toth, M., *Nyomozás és védelem [Investigation and defence],* Magyar Jog, 1989/4.

13. Tremmel, F., *Magyar büntetőeljárás. [Hungarian criminal procedure],* Dialóg-Campus Budapest-Pécs, 2001.

The Protecion of Victims of Crimes in Serbia

Zoran Pavlović[*]

Abstract

Public interest or the demand for retributive justice are only some of the postulates required for the creation of instruments and systems of victim protection in criminal law. In addition to the rights of the victim in criminal proceedings, the obligations of others, and not only the police, the prosecution and the court, appear as equivalent. The victim derives his status after the commission of a criminal act, and other entities, from social protection services to independent institutions, participate in his protection. Protection of the victim's rights is an inter-institutional matter, where it is done in the best interest of the victim. The individual approach in the field of victim protection in criminal proceedings must be continuous, with full trust in the institutions. This means that more must be done in the victim protection system, especially in the case of crimes with elements of violence, and especially where the victims are children and other particularly sensitive categories. Constant improvement of knowledge and skills in relation to victim protection among the holders of judicial functions, with police officers and lawyers is a condition without which there is no victim protection system.

Through the construction of a protection system, the victim is enabled to cope more acceptably with the consequences of the criminal act, still also given protection from secondary and repeated victimization. By creating in the national legislation minimum standards in relation to the rights, support and protection of victims of criminal acts, a system of protection based on international and regional standards is created, as they have already been adopted by the domestic legislation. With this approach, a message is sent to the citizens that full respect for the human rights of the accused does not come at the expense of respect for the same rights of the victim.

Keywords*: victim's rights, inter-institutional protection, minimum standards in international and domestic law, protection from secondary victimization*

I. Considerations on Criminal Acts with Elements of Violence

Violence, as a common element of criminal acts or a way of committing a criminal act, is not a separate criminal act. Still, in the case of a large number of criminal acts, we can say that they are committed with violence. In the case of crimes against life and body, against the freedoms and rights of man and citizen, against honor and reputation,

[*] Full Professor at the Faculty of Law, University of Business Academy Novi Sad, Professor et dr Honoris Causa at the Faculty of Law at the University of Pecs. Contact: zoran.pav@hotmail.com.

against sexual freedom, against marriage and family, etc., crimes are mostly committed with violence. Although in our work we do not deal with the criminality of violence as destructive behavior, we must emphasize that it appears as organized violence, individual, ritual, instrumental and other. Violence can be direct (e.g. severe physical injury) or indirect (e.g. abuse and neglect) or violence against people's integrity (psychological, financial, etc.).

At the beginning of the 21st century, crimes committed out of hatred (due to race, religion, skin color or creed, gender, sexual orientation or gender identity, etc.), as well as domestic violence, violence in schools, peer (adolescent and violence towards and between the elderly) violence, violence by organized criminal groups, at sports events, etc.

In the list of destructive behaviors and forms of violence, it is certain that blood and sexual offenses stand out among them. An attack on the life and physical integrity of a person (victim) does not only include murder, aggravated murder, serious and minor bodily injury, human trafficking, etc., but all crimes of violence that deprive another person of their life, injure or threaten their life, health or physical integrity[1].

One of the basic human rights – the right to life – is most radically threatened by the execution of the criminal offense of murder, where the object of protection is the life and body of a person. Homicide as a criminal offense is gender neutral, but the social response and reaction of the state to the dangers that come through threats and the execution of the criminal offense of murder[2] simply imposed the topic of femicide[3] (Pavlović, 2022), as a gender-based murder of women. The theoretical separation of the murder of women stems from the fact that very often the violence suffered by women consequently ends in their murder.

In addition to the lethal outcome, violence often raises the issue of victimization of children, mothers and fathers, the elderly, and even the rights of the unborn child[4]. Therefore, the issue of violence in the last 40 years at the global level has acquired a dimension that requires answers to questions about its characteristics, indicators, risks and/or causes, in order to arrive at the most effective strategies and activities for the prevention and protection of victims of violence. Despite the obvious changes in legislation, doctrine and jurisprudence related to the suppression and prevention of violence, the number of victims of the crime of domestic violence in the last 10 years in the Republic of Serbia has not decreased.

A victim protection system has been established, the general public's perceptions of phenomenology and the protection of victims from violence are also changing, but the protection of victims' rights (from the moment a criminal offense is committed) implies intersectoral action. So, from social protection services, civil society organizations, police, prosecutor's office, courts, victim support services and others. The thus established violence protection system is starting to show results and positive developments,

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[1] Z.,Pavlović, *Victimization cross life cycles*, Institute for Criminological and Sociological Research and Official Gazeta of Serbia, Belgrade, 2019.

[2] D. Kolarić, *Krivična dela ubistva – de lege lata i de lege ferenda [Criminal acts of murder – de lege lata and de lege ferenda],* NBP. Nauka, bezbednost, policija, 20(2), 2015, pp. 145-165.

[3] Z. Pavlović, *Criminal Legal Reaction to Femicide,* Univerzitet Privredna akademija Novi Sad, 2022, pp. 146-164.

[4] Z. Pavlović*, Protecting the rights of the unborn child*, Yearbook Human Rights Protection from Childhood to the Right to a Dignified Old Age Human Rights and Institutions, No. 5, PZG Ombudsman and Institute of Criminological and Sociological Research Novi Sad, 2022, pp. 257-275.

starting with the creation of an attitude to establish a social zero tolerance for violence, all the way to the criminal law reaction.

II. One Example and a Few Questions Related to Violence

In modern criminal proceedings of the Republic of Serbia, we can state that the rights of the accused are respected and guaranteed, in accordance with the standards and rules that are at the level of the most modern countries. With the protection of victims' rights, regardless of good legal solutions, we cannot be completely satisfied with the implementation of those rights. There are several reasons, and one of them could be the lack of adequate coordination between the competent authorities and services, from the moment a criminal offense is committed, and onward until there is a need for it.

In 2021, criminal proceedings against Z.G. were conducted before the Municipal Court in Sombor[5], for the criminal offense of domestic violence, he was a recidivist, because he was also responsible for the criminal offense of threats and violent behavior in 2010. He was on the run, so he was deprived of his freedom on a warrant, and was in custody from July 29, 2021, until the verdict was passed. On December 22, 2021, he was sentenced by a first-instance verdict for the commission of two criminal acts, non-payment of maintenance and domestic violence to a single prison term of three years and three months, in which he was ordered to prohibit contact and communication with the victims, his wife and daughters M.G. and A.G., one of whom was a child and the other an adult.

By the judgment pronounced in this way, the accused was prohibited from approaching the victims at a distance of less than 100 meters, from further harassing the victims and from further communication for a period of five years. The defendant was ordered to be released immediately, and by the same decision, measures were imposed on him to prohibit him from approaching, meeting and communicating with the victims, as long as there is a need for this, and until the verdict becomes final, i.e. the defendant was sent to serve his sentence, i.e. until March 22, 2022. The control of this measure was supposed to be carried out by the Police Department in Sombor, where he had to report every 2nd and 4th Monday with a ban on leaving his residence. The competent prosecutor's office immediately filed an appeal, but it was not resolved due to procedural reasons. The defense attorney of the convicted did not immediately receive the decision on the termination of detention, and then not even the appeal. During that time, the convict used new violence against the victims for 5 days, harassing them by phone and other things. While the judicial authorities were organizing how to solve procedural problems, on December 29, 2021, the defendant went to the victims' house (which was also his house) and on that occasion took the lives of his wife and two daughters, set their bodies on fire, and then committed suicide The son and brother of the victims were not at home on the mentioned date.

The questions that arise regarding this event include several aspects: were there really elements that would indicate that the detention measure should be replaced by a milder measure, was it possible that the court could not organize an urgent appeal procedure? In a case where the accused is an abuser of victims of domestic violence,

[5] https://www.danas.rs/vesti/drustvo/ugasen-pozar-u-kuci-u-somboru-pronadjena-cetiri-tela/.

then the question of whether there was a basis for imposing emergency measures of protection, removal of the abuser and a restraining order etc., arises.

It is questionable whether the victims received adequate support and protection from the competent authorities, whether these authorities worked in a coordinated manner, whether the team for the prevention of domestic violence met on the occasion of this event, it is also unde question who and how should carry out the risk assessment after the release of a convicted person from detention etc.

To what extent the assessment of the situation in the specific case could have prevented the commission of this criminal act, and whether all competent authorities were involved in its prevention, we have no answer. Because, whether or not all relevant subjects were involved, the consequence of violent behavior is unfortunately such that the number of victims killed in domestic violence in the RS has become higher than it was before the described event. Judging by the writings of the media, issues related to the prevention of a possible negative outcome for victims of violence, after the abolition of detention, cannot be simply recognized. Was the reaction of the socially responsible in the domestic violence protection system adequate? Who was supposed to be the point of attachment after the first-instance judgment was passed and inform the victims of violence about the termination of detention, check whether support and protection measures have been provided, so on and so forth,

A separate question is how the media reported on this event, whether they respected the right of the victims to pray, whether the son and brother of the murdered had the status of a victim in the proceedings. In the search for answers to these dilemmas, let's start in order!

III. Legislative Framework for the Prevention and Suppression of Domestic Violence. The Protection of Victims

In addition to universal international human rights documents (UN Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms) and others. Directive 2012/29/EU on the establishment of minimum standards for the rights, support and protection of victims of criminal acts is of particular importance for the European legal area.

Comparing the provisions of the Directive with the provisions of the Code of Criminal Procedure and other relevant regulations, we note that the provisions of the Directive have been adopted in their entirety on the normative level. One of the big steps in its implementation was the adoption of the Law on Free Legal Aid.

The Istanbul Convention on preventing and combating violence against women and domestic violence is a very important international legal document that pays special attention to the definition of violence against women as gender-based violence. She points to the necessity of coordinated action by institutions and drafting of protocols within all bodies that have in their jurisdiction work with women victims of violence, especially domestic violence.

The Convention determines, for the first time in Europe, binding standards for protection against violence against women and domestic violence, for the protection of victims and punishment of perpetrators. Serbia ratified this convention in 2012, but the actual construction of the system for the protection of women from violence in our

country began in 2002, when the criminal offense of domestic violence was introduced into the Criminal Code for the first time, which said that it is not a private matter of an individual.

The Serbian Family Law from 2005 introduced family law protection measures n cases of domestic violence, while in the legislative sense the most relevant document is the entry into force of the Law on Prevention of Domestic Violence in July 2017. This law completes the institutional framework for responding to violence. At the national level, legislative protection against domestic violence has other forms of articulation, which primarily refers to the Law on Gender Equality, which foresees normative mechanisms for preventing discrimination in all spheres of social life.

Bearing in mind the fact that the issue of attitudes towards domestic violence is considered a strategic, security and even existential issue, this means that seeking an adequate response to these problems is something that concerns not only the immediate victims, but also our descendants, and society as a whole. In this context, it is extremely important what kind of message is given to the public regarding the reaction to domestic violence, especially in relation to violence that results in murder as the final consequence, but also to familiarize the public with the consequences of violence.

IV. The Elderly as Victims of Violence

Violence is considered as any act against another person and against that person's will. By reviewing the relevant literature and positive legal texts in the Republic of Serbia, we did not recognize the appropriate definition of what is considered violence against the elderly, so in this paper we accepted the definition of violence by the World Health Organization (WHO), which defines violence in general as the use of physical force or power, threatened or actual, against oneself self, another person or against a group or community that results in or has a high probability of injury, death, psychological harm, maldevelopment or poverty. The present study used the division or types of violence/abuse of the elderly as defined by the WHO, so we distinguish between physical, psychological, financial and sexual violence/abuse, neglect and neglect. The consequences that occur are the infliction of physical pain or injury on an elderly person, emotional suffering, illegal use of financial resources, endangerment of physical and mental health, and others.

Although in recent years a lot of attention has been devoted to the position of the elderly and the problems they face, there is still no document that would systematically and comprehensively represent the source of law and determine legal protection, legal procedures/procedures for the elderly, but the protection of the elderly as victims of violence regulated through several laws and by-laws. The legal system of the Republic of Serbia recognizes this topic through ratified conventions (Istanbul Convention, etc.), constitutional provisions, legal regulations on social protection, the Law on Prevention of Domestic Violence, the Criminal Code, the Family Law, the Law on Health Care, the Law on Prohibition of Discrimination, Law on road traffic safety, legal provisions of regulations on pension insurance and others (from the set of judicial laws and beyond).

Even before the adoption of these documents in the Republic of Serbia, the National Strategy on Aging was formulated as a document that included the principles of

lifelong development of the individual, respect for diversity and consequently different needs among the elderly population, solidarity and dialogue, achieving equal opportunities for all and affirming personal responsibility, etc.. Therefore, inaction at this moment cannot be justified by the lack of systemic protection, because the instruments are already there, starting with the Constitution of the Republic of Serbia and continuing.

V. Law on Prevention of Domestic Violence

Prevention of domestic violence and the actions of state authorities and institutions in preventing domestic violence and providing protection and support to victims of domestic violence are regulated by the Law on Prevention of Domestic Violence. The provisions of this law do not apply to minors who commit domestic violence. The goal of the law was to regulate the organization and actions of state bodies and institutions in a general and uniform manner and thereby enable effective prevention of domestic violence and urgent, timely and effective protection and support for victims of domestic violence. Domestic violence, according to the provisions of this Law, is an act of physical, sexual, psychological or economic violence by the perpetrator towards the victim with whom the perpetrator is in a current or previous marital or extramarital or partnership relationship, or towards a person with whom he is a blood relative in the direct line, and in the collateral line up to the second degree or with whom he is related by in-laws up to the second degree or to whom he is an adoptive parent, foster parent or foster parent or to another person with whom he lives or lived in a joint household.

The application of this Law is also significant in the field of cooperation in the prevention of domestic violence in criminal proceedings for criminal acts, namely: persecution (Article 138a of the Criminal Code); rape (Article 178 of the Criminal Code); assault on a helpless person (Article 179 of the Criminal Code); fraud by abuse of position (Article 181 of the Criminal Code); illicit sexual acts (Article 182 of the Criminal Code); sexual harassment (Article 182a of the Criminal Code); pimping and facilitating sexual intercourse (Article 183 of the Criminal Code); mediation in prostitution (Article 184 of the Criminal Code); showing, obtaining and possessing pornographic material and exploiting minors for pornography (Article 185 of the Criminal Code); domestic violence (Article 194 of the Criminal Code); failure to provide maintenance (Article 195 of the Criminal Code); violation of family obligations (Article 196 of the Criminal Code); incest (Article 197 of the Criminal Code); human trafficking (Article 388 of the Criminal Code) and other crimes if the crime is a consequence of domestic violence.

The law also applies to the provision of protection and support to victims of the above-mentioned criminal acts. Since the legal regulation in question is aimed at the effective prevention of domestic violence and the unique way of organization and actions of state bodies and institutions, it is important that the legal system organizes and prescribes the application of other regulations when it comes to domestic violence. The Criminal Code, the Code of Criminal Procedure, the Civil Procedure Law are applied to the prevention of domestic violence, in proceedings against perpetrators of crimes specified in the Law on the Prevention of Domestic Violence, and to the provision of protection and support to victims of domestic violence and victims of

crimes specified in this law, Family Law and Police Law. The police, public prosecutor's offices, courts of general jurisdiction, misdemeanor courts, competent state bodies and centers for social work are responsible for preventing domestic violence and providing protection and support to victims of domestic violence and victims of crimes determined by this law.

It is particularly important to point out that the Law on the Prevention of Domestic Violence prescribes that an individual protection and support plan for the victim be drawn up, as well as that a special record of data on cases of domestic violence be kept. How serious the problem of domestic violence (and thus also violence against the elderly) is, can be clearly concluded because the legislator had the need to pass a special law on this matter and to prescribe, in addition to the passed law, that the Government will establish a Council for Suppression to monitor the implementation of that law of domestic violence whose task is to, in addition to monitoring the implementation of the law, improve the coordination and effectiveness of preventing domestic violence and protection against domestic violence.

Such a normative framework would provide a basis for the conclusion that it is sufficient for things to function in the Republic of Serbia in such a way that the victim of a criminal offense is fully protected. But the open questions from the example from the beginning of this paper tell us otherwise.

VI. Instead of Conclusion

The protection of the rights of victims in criminal proceedings has advanced since the end of the 20th century[6]. From the position of an incident subject in criminal proceedings, in modern law the victim is increasingly in the center of attention not only in theory, but also in practice. Thanks to the development of victimology, the protection of human rights, etc., criminal law theory in this century places the victim at the epicenter of its work. The aim is to provide the victim with all his rights, protection and dignity in the proceedings before the competent court. In the international community, but also within the European Union, a whole series of legal instruments have been adopted to date, which provided the basis for the construction of criminal justice systems that put the victim at the center of their work, in a society that will be sensitive to their needs as such, and where the State itself must take part of his responsibility.

Directive 2012/29/EU on the minimum rights of victims is the most important European document in that area and provides victims with support in criminal proceedings in a very detailed and elaborate manner. Together with the Istanbul Convention, the directive, with minor interventions, was successfully implemented into the domestic legislation, thus creating a basis for supporting victims of crimes with elements of violence. Adoption of the Law on free legal aid, development of services in the local community, are just some of the bases for better support for victims. Certain categories of victims are singled out, including unborn children and the rights of the elderly, who are not fully recognized in the protection system, but are not protected either, which leads to their additional, secondary victimization to which they are exposed.

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[6] A. Jain, A. Singh, *Victim-Oriented Criminal Justice System – Need of the Hour*, Indian Bar Review, 44/3, 2017.

Legislative activity in the field of protection of victims' rights is not a sufficient guarantee that the established rights of victims will be adequately used in practice. There are practical problems, but they are not insurmountable, but we will be able to inform the professional and scientific public about the real results only after the establishment of a public database that would allow insight into the effectiveness of implementing support for victims. At the moment, the victim has visibility, from the procedural to the material provisions of the criminal law, but without more precise definitions in the laws and an effective system of protection in practice, the support for the victim will not be complete.

An important segment of support and protection of the rights of victims of crimes with elements of violence means ensuring and improving the preventive role of the media through media content that promotes non-violence and continuously informing the public about the mechanisms of protection against domestic violence, gender-based and other forms of violence, and about available services at the local level. Establish cooperation mechanisms with the media in all institutions, while respecting human rights standards and all ethical principles and reporting codes.

When talking about the rights of victims of crimes with elements of violence, it is necessary to make it more efficient and to sanction journalists and news outlets in cases of unethical media coverage of violence.

It is mandatory to continuously educate professionals in all systems through accredited programs and licensed educators in the field of gender-based, family, sexual violence and violence against members of vulnerable groups (persons with disabilities, the elderly, LGBTI, children...) and periodically evaluate the effects of training. Centers for social work should be given additional and accompanying powers to independently initiate social and family-legal protection procedures. In this way, indirect support is also given to the victims, who very often meet the representatives of the state authorities for the first time, in contact with the centers for social work.

Within all state bodies that work with victims of violence, it is necessary to draw up regulations and protocols on the procedure for protecting victims when they arrive, stay and leave the courthouse. Following the obligations from the Istanbul Convention in the system of protection, Groups for coordination and cooperation were formed, which should now enable victims to participate in the process of planning protection and support, as well as to include in the work of the group other institutions, civil society organizations, whose services are of importance for providing support to victims of violence.

Provide the members of the coordination and cooperation group with greater commitment in the work and development of individual protection and support plans for the victim, through changes in acts in the internal organization and systematization of workplaces and distribution of work within each institution. This particularly applies to public prosecutor's offices, which are in a way the bearers of these activities.

Plan and obligatorily inform the victim about the determination and termination of custody of the accused and about other measures, through the mandatory instructions of the public prosecutor or through the individual plan for the protection and support of the victim prepared by the group for coordination and cooperation.

The process of protecting the victim's rights did not come to an end when the convicted abuser went to prison. That is why it is necessary to impose an obligation on penal institutions to promptly notify the victim and competent institutions (local self-government unit, center for social work in order to ensure adequate post-penal

reception) about the perpetrator's exit from the institution/detention center. And lastly, but not least, to provide the victim with material assistance, so that she can organize her life as long as necessary, and in accordance with the type and severity of the criminal offense with which she was threatened.

To conclude, the normative order in Serbia in the procedure for protecting the rights of victims is not enough for the protection to function.

In addition to certain harmonization of all regulations dealing with the protection and rights of victims, it is also necessary to establish a public database on victims, so that something can be done urgently from legislative visibility so that data on violence and victims cannot disappear from public view. More precise laws and better coordination of work in practice can provide a decisive step in creating a society with zero tolerance for violence.

Unlike some authors who advocate for prompt legal changes, some of which have no basis in domestic law or international documents, we are of the opinion that we should fully implement the adopted laws, plans and strategies, see where we can let's improve the situation, and only after that a suitable solution can be found in a broad discussion.

Victims, family members and their children, as well as society as a whole, deserve special protection, as well as respect through media reporting. Without preventive work and the inclusion of all relevant parts of the system: from social protection services, police, prosecutor's offices, courts, coordination teams, civil society organizations and independent institutions in the effective fight against violence, the number of 30 killed in domestic violence per year in our country will continue to be present as a reality. By creating awareness about the necessity of zero tolerance to violence, that dark reality can be changed. The victims from the above example might have had a chance to live through a different reaction, with all the fences we put forward.

References

1. Jain, A., Singh, A., *Victim-Oriented Criminal Justice System – Need of the Hour*, Indian Bar Review, 44/3, 2017.

2. Kolarić, D., *Krivična dela ubistva – de lege lata i de lege ferenda. [Criminal acts of murder – de lege lata and de lege ferenda.* NBP. Nauka, bezbednost, policija, 20(2), 2015.

3. Pavlović Z., *Criminal Legal Reaction to Femicide,* Univerzitet Privredna akademija Novi Sad, 2022.

4. Pavlović, Z. *Protecting the rights of the unborn child*, Yearbook Human Rights Protection from Childhood to the Right to a Dignified Old Age Human Rights and Institutions, No. 5, PZG Ombudsman and Institute of Criminological and Sociological Research Novi Sad, 2022.

5. Pavlović, Z., *Victimization cross life cycles*, Institute for Criminological and Sociological Research and Official Gazeta of Serbia, Belgrade, 2019.

Protection for Traffic Accidents Victims Caused by Drivers of Electric Scooter in Serbia

Dragan Obradović*

Abstract

Electric scooters have become a reality in everyday life in Serbia. People who operate electric scooters can be seen driving them on roads, sidewalks, and bike paths.

There have already been traffic accidents with various consequences involving drivers operating electric scooters. A special problem consists in the situation when those persons caused traffic accidents injuring other participants in the traffic or causing material damage to them. All these persons are victims of electric scooter drivers. However, the increase in the number of electric scooters in traffic in Serbia is not accompanied by adequate legal or by-law regulations, because they are still not legally regulated. This is an additional problem faced by the victims of those traffic accidents because they do not have the necessary legal certainty as to whom they should turn to with a request for compensation for damages that occurred as a result of such a traffic accident.

The aim of the paper is to present the current situation in this regard in the Republic of Serbia and to indicate possible solutions to this situation.

Keywords: *electric scooters, traffic accidents, road users, victims*

I. Introduction

Different aspects of security are discussed around the world every day. As a matter of fact, safety is a global phenomenon. Defined in this manner, security not only involves the protection against traditional and serious threats, such as armed conflicts or terrorism, but also concerns the broader framework of providing the adequate quality of life, including the functioning of urban transportation infrastructure[1]. The reason for that is that traffic occurs every day around the world, using a wide variety of means of transportation. However, what was almost unimaginable in road traffic before is now becoming a reality. New types of vehicles are appearing – electric and hybrid vehicles. In the last ten years, road traffic in terms of the development of micromobility through a diversity of small means of transportation is occurring in the

* PhD, Singidunum University in Belgrade, Republic of Serbia, associate professor at the Faculty of Health and Business Studies Valjevo. Contact: dr.gaga.obrad@gmail.com.

[1] A. Paraušić, *Bezbednost u gradovima van granica nacionalnog i lokalnog – Politike urbane bezbednosti evropskih organizacija [Security in the cities beyond national and local: Urban security policies of European organizations],* Revija za kriminologiju i krivično pravo [Journal of Criminology and Criminal Law], 57(2), 2019, pp. 99-111.

world. One of these small means of transportation is electric scooters (hereinafter: e-scooters). E scooters have become a widespread means of transport globally, especially in large metropolitan cities.

In addition, the development of micromobility has different aspects, and there is talk of a positive impact on environmental protection. However, there are also the aspects that are have not yet been completely clearly defined which refer to the safe use of some of these means of transportation in road traffic.

In Serbia, of all the small means of transportation that belong in the sphere of micromobile vehicles, electric bicycles are gradually appearing in traffic. This, however, does not exclude other types of micromobile vehicles occurring in traffic on the roads of certain cities. On the contrary, in the last few years, in Serbia, as well as in numerous countries in Europe, and throughout the USA as well as on other continents, there has been a noticeable increase in the number of e-scooters in road traffic. Furthermore, they are not only appearing in the biggest cities in Serbia – Belgrade, Novi Sad and Niš, but also in smaller towns and villages.

In the world, there are already numerous research papers and studies regarding various aspects of the arrival of e-scooters in traffic in various cities. They have also been identified as a threat to the safety of pedestrians, other drivers and public transportation in general, as well as being the cause of a significant number of traffic accidents and injuries[2]. Unfortunately, as a by-product, e-scooter-related accidents have increased drastically in numerous countries[3].

In addition, with the increase in the number of e-scooters on the roads, there is still insufficient thought about the dangers that they, or the persons using them, represent on a daily basis, primarily from the aspect of traffic safety. In contrast, some domestic authors point out that one of the biggest problems with e-scooters is that the users of this means of transportation represent another group of vulnerable road users[4].

Persons who use e-scooters and thus participate in traffic have already been involved in traffic accidents in Serbia, not only as victims of other traffic participants, but also as persons who had caused injuries to others by their dangerous behavior in traffic, regardless of the status in which those persons took part in the traffic. In connection with the participation of electric scooters in road traffic and how to regard them appropriately, especially in regard to the traffic accidents in which their users were involved, the police and competent judicial authorities are also in a quandary.

The aim of the paper is to point out the possibility of protecting victims of traffic accidents caused by the dangerous behavior of those using e-scooters in traffic. It is necessary for the relevant state authorities to recognize and define electric scooters and the most important road safety regulations in the legal norms and by-law regulations as soon as possible.

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[2] L.M. Kobayashi, E. Williams, C.V. Brown, B.J. Emigh, V. Bansal, J. Badiee, J. Doucet, *The e-merging e-pidemic of e-scooters*, Trauma Surgery & Acute Care Open, 4(1), 2019, e000337.

[3] K.X. Farley, M. Aizpuru, J.M. Wilson, C.A. Daly, J. Xerogeanes, M.B. Gottschalk, et al., *Estimated Incidence of Electric Scooter Injuries in the US From 2014 to 2019*, JAMA Netw Open, 2020, 3(8), DOI: https://doi.org/10.1001/ jamanetworkopen.2020.14500.

[4] D. Graovac, M. Marković, V. Arsić, A. Josić, I. Stokić, *Research of attitudes of electric scooter drivers about traffic participations*, 15th International Conference "Road Safety in Local Community", Serbia, 2020, Vrnjačka Banja 24-27 June 2020, Serbia, pp. 195-204.

II. E-Scooters and Injuries in Europe

In August 2019, one of the world's most prestigious media outlets, the BBC, announced that since January 2018, at least 11 deaths have been linked to the scooters in cities including Paris, Brussels, Barcelona, Stockholm and London. In August 2018 in Barcelona, an e-scooter user crashed into a 92-year-old woman while she was walking, resulting in her death. In May 2019, a 27-year-old man was killed in Stockholm while using an electric scooter along a bicycle lane. In June 2019, a young man driving an e-scooter was killed in Paris in a collision with a truck. In fact, hundreds of people have been injured in road traffic incidents involving electric scooters[5]. In Britain, the Royal Society for the Prevention of Road Accidents announced that Emily Hartridge, a well-known British presenter and YouTuber, was the first person to die while using an electric scooter. This occurred on 12 July 2019 in South London in the morning hours, when a truck crashed into the electric scooter that Emily was using in a busy street[6]. In early June 2021, the driver of an electric scooter hit and killed a pedestrian in Paris and fled the scene, still was identified after 10 days and charged with manslaughter. This was the third death from electric scooters in the capital of France since 2019[7]. In addition, according to the statistics of the British Home Office, during 2021, some 223 pedestrians were injured by electric scooters, including 63 with serious injuries, which is almost four times the number of injured pedestrians than in 2020, when 57 pedestrians were injured, 13 of which received serious injuries[8]. In 2019, 7 traffic accidents involving electric scooters were reported in Montenegro, in which 7 people were injured althouth there were no fatalities, according to data from the Police Administration[9].

Recently, The DfT's annual report – *Reported Road casualties Great Britain, annual report: 2021* – reveals that there were 1,434 casualties involving e-scooters, of which 10 people were killed, 421 were seriously injured and 1,003 were slightly injured. This is in stark contrast to the DfT's 2020 statistics, which recorded 484 casualties involving e-scooters, including one death, 128 serious injuries and 355 slight injuries[10]. Almost 40% of injuries involving e-scooters across England, Scotland and Wales last year happened in London, according to new government figures. The Met Police recorded 510 casualties in the capital during 2021, more than double the number in 2020[11].

Traffic accidents in which persons using e-scooters were involved and the injuries that occurred in these traffic accidents are directly related to the issue of compensation

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[5] https://www.bbc.com/news/world-europe-49248614, Electric scooters: Europe battles with regulations as vehicles take off, Published 6 August 2019 (accessed on 3.12.2021).

[6] https://www.propisi.net/elektricni-trotineti-ce-biti-regulisani-zakonom-od-iduce-godine/ (accessed on 10.10.2021).

[7] https://www.fleeteurope.com/en/last-mile/europe/features/e-scooter-rules-still-varied-and-changing-across-europe?a=FJA05&t%5B0%5D=e-scooter&t%5B1%5D=legislation&curl=1, published 5 July 2021 (accessed on 13.11.2021).

[8] https://rs.n1info.com/auto/skoro-cetiri-puta-veci-broj-pesaka-povredjenih-u-sudaru-s-trotinetima-u-britaniji/ from Srna, 25 May 2022 (accessed on 13.08.2022).

[9] https://www.pobjeda.me/clanak/protekle-godine-sedam-nezgoda-sa-elektricnim-trotinetima, published: 29 June 2020 (accessed on 13.08.2022).

[10] https://www.smarttransport.org.uk/news/latest-news/government-report-shows-e-scooter-deaths-on-the-increase, updated: 30/09/2022 (accessed on 1.12.2022).

[11] https://www.bbc.com/news/uk-england-london-61591789, E-scooters: More than 500 injuries recorded in London last year, published: 26.05.2022 (accessed on 1.12.2022).

for damages, not only to those most often injured in those accidents, but also to third parties who suffered damages by persons who used e-scooters.

One study was conducted in Finland during 2021, including all e-scooter-related injuries presented in the three adult emergency departments in Helsinki in 2021. In total, 446 e-scooter injuries were identified and taken into the analysis. In 434 cases, the injured person was the rider, whereas in 12 cases, a pedestrian or a cyclist was injured. The median age of the patients was 26 (IQR 22–33) for riders, and 59% were male. The most common injury mechanism was a fall (n=374), followed by collision (n=40). 257 (58%) of the of the injuries were minor, whereas 155 (35%) were moderate, 30 (7%) serious, 3 (0.7%) severe, and one (0.2%) critical. Including the cost of the hospital care and follow-up and the prescribed sick leaves, the cumulative cost of the e-scooter injuries was approximately 1.71 million euros, with a median cost of 1148 € (IQR 399–4263 €) per patient[12].

III. E-Scooters and EU Regulations

Regardless of the differences in the legislation of individual countries of the European Union (hereinafter: EU) and the still insufficiently precise definition of e-scooters, there are still some regulations that at present can precisely define e-scooters.

Namely, European Union Directive no. 2009/103/EU of 16 September 2009 on civil liability insurance for damage from the use of a motor vehicle and enforcement of the liability insurance obligation determines the meaning of the term of a vehicle which must be insured[13]. This regulation defines a motor vehicle as "any vehicle intended for use on the road, which is driven by mechanical power and which does not move on rails"[14]. A member state of the European Union is obliged to take all appropriate measures to ensure that civil liability for damages caused by the use of such a defined vehicle, which is typically located on its territory, is covered by mandatory insurance[15]. From the above definition, it is clear that an electric scooter has the status of a motor vehicle given that it meets the above criteria, as well as that it moves on its own by electric power and it is intended for the transporting of people and does not move on rails.

This Directive represents the so-called Codified Directive, which combines five directives adopted in the period from 1972 (N.72/166/CEE) – 2005 (2005/14/EC). The main goal is to harmonize the rules in the field of motorist liability insurance in the EU member states. The directives also had an impact on countries that are not members of the EU (formerly the EEC), as they contributed to the protection of persons injured in traffic accidents.

Amendments to this Directive were adopted on 24 November 2021, published in the Official Journal of the European Union on 2 December 2021 (SL EU L 430/1) – EU

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[12] H. Vasara, L. Toppari, V.P. Harjola, K. Virtanen, M. Castrén, A. Kobylin, *Characteristics and costs of electric scooter injuries in Helsinki: a retrospective cohort study*, Scandinavian Journal of Trauma, Resuscitation and Emergency Medicine 30/2022, p. 57.

[13] Directive 2009/103/EC of the European Parliament and Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and enforcement of the obligation to insure against such liability, OFL 263.

[14] Directive, Article 1.1.

[15] Directive, Article 3.1.

Directive 2021/2118, and entering into force on 22 December 2021 (hereinafter: the 6th EU Directive). Amendments to Directive 2009/103/EC are in the part that relies on civil liability insurance with regard to the use of motor vehicles and the enforcement of the obligation to insure against such liability, which is important for the topic of this paper.

The first innovations introduced by the 6th Directive relate to the definition of the terms 'vehicle' and 'use of vehicle' in the context of mandatory automobile liability insurance, as well as the rights of injured parties to compensation and the possibility of regulating the resulting damages. From the 1st EU Directive in 1972 to the entry into force of the 6th Directive, and in relation to the term 'vehicle,' many new types of motor vehicles have appeared on the market. Some of them use solely electric motors and battery power, while others use hybrid power, and the 6th Directive of the European Union defines the term 'vehicle' so that it is in fact any motor vehicle that uses exclusively mechanical power on land, and yet which does not move on rails and with:

a. a maximum design speed of more than 25 km/h *or*
b. a maximum net mass of more than 25 kg and a maximum design speed of more than 14 km/h,
c. any trailer used with the vehicle from the above point, whether it is connected or not.

The definition of the term 'vehicle' within the 6th EU Directive is based primarily on the general characteristics of such vehicles, including their highest design speeds and net masses, and it includes only vehicles that use mechanical power for propulsion, regardless of the number of wheels on the vehicle.

Light electric vehicles that are not covered by the definition of the term 'vehicle' are excluded from the 6th Directive, although in fact nothing in that document prevents member states from requiring motor vehicle insurance under their national law, subject to the conditions that they determine, in respect of any motor equipment that is used on land and that is not included in the definition of the term 'vehicle' from the Directive.

The 6th Directive defines '*vehicle use'* as follows: "Vehicle use means any use of the vehicle that is consistent with the vehicle's function as a means of transportation at the time of an accident, regardless of the characteristics of the vehicle and irrespective of the terrain on which the motor vehicle is being used, or whether it is at rest or in motion." However, the 6th Directive cannot be applied if, at the time of an accident, the usual function of such a vehicle is "being used other than as a means of transport."

States are given a period of two years after the entry into force of the Directive to implement it, with a period of 18 months for harmonization and the establishment or setting up of the authority for the establishment of an Insolvency Body. This means that the Directive will start to be applied on 23 June 2023. Also, the Directive provides for the establishment of a Compensation Insolvency Body for member states. These bodies are established in order to protect the functioning of Mechanism IV of the EU directive, which stipulates that claimants can receive compensation in their home country for damages sustained while they were abroad.

After the expiration of the 18-month period, a new deadline of an additional 6 months has been approved for the full and complete implementation of all the provisions of the 6th EU Directive into the national legislation of each member state. The 24-month deadline for harmonizing the national legislation with the provisions of the Directive is considered the final deadline for establishment harmonization, for putting into

operation, and the implementation of the provisions of the Directive, but also for the conclusion of mutual agreements between the newly established Insolvency Bodies whose establishment is foreseen by this Directive as well as between the Insolvency Bodies for the protection of travelers.

IV. The Most Relevant Serbian Regulations on Road Traffic Safety

The Law on Road Traffic Safety (hereinafter: RTSA or Road Traffic Safety Act)[16], which has been in effect in Serbia since 10 December 2009, has failed to define electric scooters, due to the fact that that time they were practically unknown. All subsequent changes and additions, including the most recent ones from 2019 which followed from the beginning of the implementation of the RTSA[17], failed to recognize not only electric scooters but also not micromobile vehicles too, or to define them in any way.

This is also confirmed by the works of some domestic authors, who have analyzed valid world experiences regarding the involvement of electric scooters in traffic18. Other domestic authors in papers published in 2021 also state that electric scooters are still not legally defined in the Republic of Serbia, which has the consequence that road traffic accidents involving this means of transportation have not yet been recorded and there is no official data regarding the number of such means of transport[19].

The most important by-law relating to vehicles in Serbia is the Rulebook on the Classification of Motor and Trailer Vehicles and Technical Conditions for Vehicles in Road Traffic (hereinafter *Rulebook*)[20]. Even this Rulebook for now, regardless of all amendments and additions, fails to contain any provision which refers to any category of micromobile vehicles, and therefore, lacks to mention e-scooters as the most represented category of these vehicles in Serbia.

V. E-Scooters and Injuries in Serbia

There is scant information about road traffic accidents involving drivers of electric scooters in the Serbian media. One of the rare facts published in the media was that from the beginning of 2021 until the month of August, some 150 e-scooter users were seriously injured, that they were treated by trauma doctors almost daily for injuries

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[16] Road Traffic Safety Act, RS Off. Gazette no. 41/2009.

[17] Law on Amendments to the Road Traffic Safety Act, RS Off. Gazette nos. 53/2010, 101/2011, 32/2013 (Decision of the Constitutional Court), 55/2014, 96/2015, 9/2016 (Decision of the Constitutional Court), 24/2018, 41/2018 (other law), 41/2018, 87/2018, 23/2019 – cf. Article 7.

[18] D. Bogićević, M. Vujanić, K. Lipovac, N. Čergić, *Electric scooters in traffic – overview of current experience worldwide with suggestions for higher traffic safety*, 15th International Conference "Road Safety in Local Community" Serbia, 2020, Vrnjačka Banja 24-27 June 2020, Serbia, pp. 185-194.

[19] F. Živković, I. Velić, *Analysis of attitudes of road users on the use of electric scooters – comparative analysis on the example of Belgrade anad Novi Sad*, 16th International Conference "Road Safety in Local Community" Serbia, Kopaonik, 16-19 June 2021, pp. 59-68; D. Obradović, G. Krstajić, Z. Belencan, *Electric scooters – challenges of the new time for the judiciary of Serbia,* XX Symposium "Expertise of Traffic Accidents and Insurance Fraud" Belgrade, University of Belgrade – Faculty of Transportation, Traffic Safety Group d.o.o. Divčibare, 18-20 November 2021.

[20] Rulebook on the Classification of Motor Vehicles and Technical Conditions for Vehicles in Road Traffic, RS Off. Gazette no. 40/2012, ... 64/2021, Article 6 and 15.

caused by falls, and that the most common cause of injuries was that they use their e-scooters without protective equipment[21].

For now, in Serbia, there are no official data on the number of casualties involved with electric scooters, although injuries have been recorded in road traffic accidents involving users of electric scooters. One of those cases happened on 8 September 2021, when a 30-year-old man crashed into a vehicle with an electric scooter at 10:54 p.m. in Voždovac, Vojvode Sime Popovića Street, and was taken to the ER for resuscitation due to his serious injuries[22]. The last reported traffic accident involving a female user of an e-scooter took place on 10 November 2022, in the evening hours in Banatsko Novo Selo, when a woman in her eighth month of pregnancy, while using an e-scooter, was involved in a traffic accident with a passenger vehicle driven by a driver with a probationary driver's license[23].

Based on the request for free access to information of public importance to obtain data regarding, the author received on 11 January 2022 from the RS MIA the response that until the adoption of the new RTSA, which will define the concept of a scooter as well as the rights and obligations of e-scooter users, a e-scooter user in accordance with the current regulations is considered a pedestrian, given that the RTSA has no definition for an electric scooter, nor does it prescribe the rights and obligations of e-scooters users.

In accordance with the definition of a road traffic accident by the binding RTSA, an e-scooter user is// logged in road traffic accident records only in the event that, while using an e-scooter, the user had participated in an event that occurred on the road or started on the road and in which another road traffic user had participated with one of the vehicles prescribed by the Law (passenger vehicle, cargo vehicle, bus, etc.), but even in such cases// it is logged that the user had participated in a traffic accident as a pedestrian (without any data on the e-scooter itself). The MIA keeps no separate records of events in which users of e-scooters were injured or had caused injuries to another person[24].

It was recently announced in the media that a proposal to amend the Law on Traffic Safety has been prepared, which could soon be in the parliamentary procedure, which act will regulate the usage of the means of transport which experts call "micromobility". According to to the proposal, e-scooters will be defined as a light means of transportation, whose maximum speed on the road will be 25 kilometers per hour, and they will use the same paths and lanes as cyclists. Only in special situations will they be able to use the road[25].

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[21] https://www.b92.net/automobili/aktuelno.php?yyyy=2021&mm=08&nav_id=1909331 How (un)safe are electric scooters?, Thursday, 19 August 2021 (accessed on 3.08.2022).

[22] https://www.rts.rs/page/stories/sr/story/135/hronika/4505720/beograd-trotinet-muskarac-nesreca.htmlhttps://www.rts.rs/page/stories/sr/story/135/hronika/4505720/beograd-trotinet-muskarac-nesreca.htmlčetvrtak, 9 September 2021, Source: Tanjug, RTS, Turbulent night in Belgrade – scooter runs into vehicle, stabbing, cyclist with 4.8 blood alcohol level (accessed on 3.10.2021).

[23] https://www.politika.rs/scc/clanak/524561/saobracajna-nesreca-trudnica-elektricni-trotinet-vozac-probna-dozvola-banatsko-novo-selo, Thursday, 10.11.2022, Driver with a probationary license hits a pregnant woman – woman loses baby.

[24] The RS MIA of the RS Police Directorate Traffic Police Directorate response by the person authorized for acting on the request for free access to information of public importance 03.4 no. 07-422/21, dated 30 December 2021.

[25] https://www.novosti.rs/drustvo/vesti/1174645/elektricnim-trotinetom-kolovozu-25-sat-mikrovozila-struju-konacno-zakonski-okvir, Speed Limit up to 25 Km/Hour For Electric Scooters on the Roads: Micromobile vehicles using electricity finally regulated by law, S. Vidačković 21.11.2022, uploaded on 3.12.2022.

VI. The Need for the Regulation of E-Scooter Usage in Serbian Law

In the media and on social networks in Serbia, there is much discussion about e-scooters and their users. In this connection, the papers of individual authors have appeared, who have explored the connection between the use of e-scooters and the challenges of urban security, viewed in the light of newspaper reporting, as well as the views of Twitter users in Serbia[26].

Bearing in mind the response of the RS MIA and the data on the different categories of road users as reported by TSA in the last published annual report on the state of road traffic safety in Serbia for the year 2020[27] and before, as well as the mentioned data from the media about the casualties of users of electric scooters during the first eight months of 2021, the only appropriate conclusion is that there is an inaccurate and imprecise way of keeping data on certain categories of traffic road users in Serbia, as well as any injuries or casualties therein. The fact that there are no data on the injuries of e-scooter users for 2019 and for 2020 may be acceptable as their emergence in road traffic throughout Serbia is just beginning and in effect, spreading. However, the number of injured and killed users of electric scooters in less than eight months of 2021 – some 150 persons – deserves that in the 2021 RS MIA annual report, these road users should be labelled correctly and not as pedestrians.

According to the current regulations, it is not possible or acceptable to treat e-scooter users as pedestrians according to the meaning of the term *pedestrian* from Article 7 (69) of the RTSA.

The provision of Article 7 (69) of the RTSA, defines a *pedestrian* as a person who travels on the road, i.e. who pulls or pushes a vehicle on the road under his own power, or a handcart, a child's pram, a wheelchair for disabled persons or a child in a pram or a person in a wheelchair who move under their own power or by the power of an engine, not including persons on the road who skate, ski, use a sled or skate on roller skates, skateboards etc.

The current position of the RS MIA that the user of the electric scooter belongs to the pedestrian category, as road traffic participants, is unacceptable. An electric scooter user does not travel using his/her own power but rather, stands on a vehicle with two wheels which is driven by the power of its own engine and can move at different speeds depending on the power of the engine, which vehicle also has certain mechanisms for steering, braking, light signaling devices and which can travel on the road as well as on different surfaces off the road.

Also, it is not acceptable that in the case of an event in which the user of an electric scooter and another participant, regardless of who it was (if that event is a criminal offense by its consequences) the user is considered to be within the category of road traffic accident with the participation of a pedestrian pursuant to Article 7 (82) of the RTSA, as stated by the RS MIA in its response.

This is also valid when bearing in mind the definition of the term *traffic accident* from the RTSA, as follows: an accident that occurred or started on the road, in which

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[26] For more data about this research, see: Kolaković-Bojović, Milica, and Ana Paraušić, *Electric Scooters – Urban Security Challenge or Media Panic Issue*, Teme 43, no. 4, 2019, in press.

[27] Road Traffic Safety Agency, *Statistical report on the state of road traffic safety in the Republic of Serbia in 2020 – Representation of different categories of participants in road traffic accidents*, Republic of Serbia, from 2016 to 2020, p. 15, published on 24 December 2021.

at least one moving vehicle was involved and in which at least one person was killed or injured, or material damage had occurred (Article 7 (82)). In the case of such an event in which the user of an electric scooter had been involved, *such an event cannot be considered and recorded in official statistics as a traffic accident involving a pedestrian.*

VII. Some Possibilities of Protecting Traffic Accident Victims Involving E-Scooters

Due to their speed, e-scooters are difficult to stop in time, and due to their size, it is difficult to notice them soon enough. Most often, injuries occur to persons using e-scooters. However, the number of cases in which injuries to third parties have occurred is not negligible. For now, in Serbia, however, the ultimate consequence of all traffic accidents in which an electric scooter user appears as one of the participants is the discrimination of other participants who were using other means of transportation. In this way, the second participant in the traffic accident, even though essentially a victim, is fundamentally discriminated against due to the basic constitutional principle that everyone is equal before the Constitution and thus, the law is violated[28].

This is so especially bearing in mind that after the concluded criminal proceedings, two more proceedings await the injured party in order to eventually be able to collect damages resulting from the criminal proceedings[29]. These involve non-litigation proceedings in an attempt to reach an agreement with the competent insurance company without court proceedings or litigation proceedings before the competent court if no agreement is reached with the insurance company.

The possibility of the e-scooter injuring a third party, e.g. pedestrian, raises the issue of liability for damages caused by such a scooter and the obligation to insure against that liability. The most significant feature of e-scooters, from the point of view of mandatory insurance and a guarantee fund, is the fact that e-scooters are powered by their own motor.

Due to this fact, an e-scooter can qualify as a motor vehicle in the sense of the Serbian Law on Road Traffic Safety. Such a solution would be in accordance with the current 2009 Directive. The issue of insurance for an e-scooter and compensation for damages caused by it depends on the legal qualification of that means of transportation – a vehicle or a motor vehicle, that is, a light means of transport (as stated in the proposal for amendments to the above Law).

The Law on Compulsory Traffic Insurance of the Republic of Serbia defines that for every motor vehicle that uses the roads, a liability insurance contract must be concluded. Therefore, liability insurance would have to be taken out for e-scooters as well[30]. If an uninsured e-scooter causes damages, the injured party has the right to compensation from the Guarantee Fund of the Association of Serbian Insurers[31].

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[28] The Constitution of the Republic of Serbia, RS Off. Gazette 98/06, Article 21.1.

[29] D. Obradović, *Respect fot the right to human dignity of victims of criminal offenses during criminal proceedings in Serbia*, Republic of Serbia Autonomous Province of Vojvodina Provincial Protector of Citizens – Ombudsman Institute of Criminological and Sociological Research, Yearbook human rights protection the right to human dignity, No. 3, Novi Sad, 2020, p. 229.

[30] The Law on Compulsory Traffic Insurance of the Republic of Serbia, Official Gazette RS, 51/2009, 78/2011, 101/2011, 93/2012 i 7/2013, Article 2, Article 18.

[31] *Ibid.,* Article 74, para. 1.

It is realistic to expect that e-scooters, after the adoption of amendments to the Law on Road Traffic Safety, will become an equal participant in traffic, and just like all other participants, it will have to have mandatory liability insurance, so that in the event of a traffic accident, the injured third party has the right to adequate compensation for the damages suffered. In this way, this obligation would be transferred from the Guarantee Fund to the insurance company. While waiting for the aforementioned amendments to the Law on Road Traffic Safety, the question arises as to whether a mandatory liability insurance policy for an e-scooter can be concluded within the existing conditions and tariffs of mandatory liability insurance. The technical characteristics of the e-scooter place it in the category of a moped or a motorcycle. According to the valid tariff system, there is a possibility of mandatory insurance for both mopeds and motorcycles. Therefore, we believe that it is not necessary to change the regulations on mandatory traffic insurance.

In the judicial practice in the Republic of Serbia, there are still no verdicts on compensation for damages caused by e-scooters.

VIII. Conclusion

The regulations of the European Union stipulate that electric scooters belong to the category of motor vehicles, although in most European countries there are still significant differences when it comes to the usage of electric scooters, as well as the traffic user category, and the given conditions. The 6th EU Directive, the implementation of which begins in 2023, will bring somewhat different, even more precise solutions regarding the definition of the term vehicle, and therefore e-scooters.

In the current Serbian Road Traffic Safety Act, as well as in the consequent legislation in Serbia, electric scooters and electric scooter users are not yet recognized as an independent category of road traffic users, nor are the regulations that determine the rules of behavior of electric scooter users in traffic in place. In the upcoming amendments to the Law on Road Traffic Safety, which are being announced, it is proposed to regulate e-scooters as a light means of transportation, with the understanding that only after the adoption of these amendments and amendments to this law will it be possible to view all the solutions that are related to e-scooters.

In addition to the issues that currently exist in Serbia when it comes to e-scooters and which relate to the participation of persons using them on public roads, the participation of these persons in certain traffic accidents as injured persons, i.e. as persons who have caused the traffic accident in that way causing damage or caused injuries to third parties, and therefore the issue of criminal liability of persons using e-scooters, another problem is also mentioned more and more often: the issue of compensation for damages and responsibility for compensation of damages caused to third parties by persons using e-scooters.

Due to an absence of judgments from the domestic judicial practice, the author's opinion is given in the paper as to how this issue can be resolved in accordance with the currently valid regulations in the field of compensation for damages.

References

1. Bogićević, D., Vujanić, M., Lipovac, K., Čergić, N., *Electric scooters in traffic – overview of current experience worldwide with suggestions for higher traffic safety*, 15th International Conference "Road Safety in Local Community" Serbia, Vrnjačka Banja 24-27 June 2020, Serbia.

2. Farley K.X., Aizpuru, M., Wilson, J.M., Daly, C.A., Xerogeanes, J., Gottschalk, M.B., et al. *Estimated Incidence of Electric Scooter Injuries in the US From 2014 to 2019*, JAMA Netw Open, 2020/3(8), DOI: https://doi.org/10.1001/jamanetworkopen. 2020. 14500.

3. Graovac, D., Marković, M., Arsić, V., Josić, A., Stokić, I., *Research of attitudes of electric scooter drivers about traffic participations*, 15th International Conference "Road Safety in Local Community"Serbia, 2020, Vrnjačka Banja 24-27 June 2020, Serbia, pp. 195-204.

4. https://rs.n1info.com/auto/skoro-cetiri-puta-veci-broj-pesaka-povredjenih-u-sudaru- s-trotinetima-u-britaniji/ from Srna, 25 May 2022, (accessed on 13.08.2022).

5. https://www.b92.net/automobili/aktuelno.php?yyyy=2021&mm=08&nav_id =1909331_How (un)safe are electric scooters?, Thursday, 19 August 2021, (accessed on 3.08.2022).

6. https://www.bbc.com/news/uk-england-london-61591789, E-scooters: More than 500 injuries recorded in London last year, published: 26.05.2022 (accessed on 1.12.2022).

7. https://www.bbc.com/news/world-europe-49248614, Electric scooters: Europe battles with regulations as vehicles take off, Published 6 August 2019, downloaded 3 December 2021.

8. https://www.fleeteurope.com/en/last-mile/europe/features/e-scooter-rules-still-varied-and-changing-across-europe?a=FJA05&t%5B0%5D=e-scooter& t%5B1%5D= legislation&curl=1, published 5 July 2021, (accessed on 13.11.2021).

9. https://www.novosti.rs/drustvo/vesti/1174645/elektricnim-trotinetom-kolovozu-25-sat-mikrovozila-struju-konacno-zakonski-okvir, Speed Limit Up To 25 Km/Hour For Elecriuc Scooters On the Roads: Micromobile vehicles using electricity finally regulated by law, S. Vidačković 21.11.2022.

10. https://www.pobjeda.me/clanak/protekle-godine-sedam-nezgoda-sa-elektricnim-trotinetima, Published 29 June 2020, (accessed on 13.08.2022).

11. https://www.politika.rs/scc/clanak/524561/saobracajna-nesreca-trudnica-elektricni-trotinet-vozac-probna-dozvola-banatsko-novo-selo, Thursday, 10.11.2022, Driver with a probationary license hits a pregnant woman – woman loses baby.

12. https://www.propisi.net/elektricni-trotineti-ce-biti-regulisani-zakonom-od-iduce-godine/ (accessed on 10.10.2021).

13. https://www.rts.rs/page/stories/sr/story/135/hronika/4505720/beograd-trotinet-muskarac-nesreca.htmlhttps://www.rts.rs/page/stories/sr/story/135/ hronika/ 4505720/beograd-trotinet-muskarac-nesreca.htmlčetvrtak, 9 September 2021, Source: Tanjug, RTS, Turbulent night in Belgrade – scooter runs into vehicle, stabbing, cyclist with 4.8 blood alcohol level, (accessed on 3.10.2022).

14. https://www.smarttransport.org.uk/news/latest-news/government-report-shows-e-scooter-deaths-on-the-increase, updated: 30.09.2022, (accessed on 1.12.2022).

15. Kobayashi, L. M., Williams, E., Brown, C. V., Emigh, B. J., Bansal, V., Badiee, J., Doucet, J. *The e-merging e-pidemic of e-scooters*, Trauma Surgery & Acute Care Open, 4(1), 2019, e000337.

16. Kolaković-Bojović, M., Paraušić, A., *Electric Scooters – Urban Security Challenge or Media Panic Issue*, Teme 43, no. 4, 2019, Niš, Serbia.

17. Obradović, D., Krstajić, G., Belencan, Z., *Electric scooters – challenges of the new time for the judiciary of Serbia*, XX Symposium "Expertise of Traffic Accidents and Insurance Fraud", Belgrade, University of Belgrade – Faculty of Transportation, Traffic Safety Group d.o.o. Divčibare, 18-20 November 2021.

18. Obradović, D., *Respect for the right to human dignity of victims of criminal offenses during criminal proceedings in Serbia*, Republic of Serbia Autonomous Province of Vojvodina Provincial Protector of Citizens – Ombudsman Institute of Criminological and Sociological Research, Yearbook human rights protection the right to human dignity, Number 3, 2020, Novi Sad.

19. Paraušić, A. *Bezbednost u gradovima van granica nacionalnog i lokalnog – Politike urbane bezbednosti evropskih organizacija [Security in the cities beyond national and local: Urban security policies of European organizations],* Revija za kriminologiju i krivično pravo [Journal of Criminology and Criminal Law], 57/2, 2019.

20. Vasara, H., Toppari, L., Harjola, V.P., Virtanen, K., Castrén, M., Kobylin, A., *Characteristics and costs of electric scooter injuries in Helsinki: a retrospective cohort study*, Scandinavian Journal of Trauma, Resuscitation and Emergency Medicine vol. 30, 2022.

21. Živković, F., Velić, I., *Analysis of attitudes of road users on the use of electric scooters – comparative analysis on the example of Belgrade and Novi Sad*, 16th International Conference "Road Safety in Local Community" Serbia, Kopaonik, 16 – 19 June 2021.

Theoretical and Practical Analyssiss on Abuse of Minors

Nagy Melania[*]

Motto

„Anyone who can tell the difference between a slap in the face and a punch already knows what violence against children is."
Henry Kempe

Abstract

The protection of our children is the cornerstone of our society. However, the protection of minors was not always so clear and certain. The most striking example of this was the issue of infanticide, since it was not punished at all until the Middle Ages. A sick, underdeveloped child was worthless to the family. Nowadays, however, homicide against minors is one of the most serious crimes[1].

In my study, I deal with abuse of minors from the perspective of theory and practice. In connection with the topic, it is essential, among other things, to examine the family as the basis of national survival. Within this unit, the children play a vulnerable role, they are in a dependent position, which is related to the behavior of their parents. The minor can assert himself properly and develop only if he receives the necessary care, concern and love from the other members of the family. However, sometimes this internal unity breaks down. The reasons for this cannot be exhaustively listed, so there are a few cases: financial crisis, emergence of various addictions: alcohol addiction, drug problems, and different degrees and types of aggression. All of these can lead to the fact that the minor's physical, intellectual, emotional and moral development is endangered by the persons whose duty it is to do the exact opposite.

Keywords: *children, abuse, protection, criminal law, duty*

I. Basic Definitions

„Abuse of adults is physical abuse. Abuse of animals is animal cruelty. Abuse of children is "for their benefit"[2]. Nowadays, corporal punishment, inhumane treatment and humiliation are prohibited behaviors towards all people and unacceptable behaviors in the society. We must pay particular attention to the protection of children. Young people are in a vulnerable situation, their families and relatives are often the dangerous

[*] PhD, University of Pécs. Contact: nagy.melania@ajk.pte.hu.

[1] I. Komlósiné, *A kiskorú veszélyeztetés bűntettének fogalmi meghatározása, szabályozásának fejlődése [The conceptual definition of the crime of endangering minors and the evolution of its regulation]*, Magyar Jog, 7-8/2017, p. 481.

[2] http://www.europatanacs.hu/pdf/Key_points-H.pdf (accessed on 9.01.2023).

factors in their lives. The world has been changed a lot. In the past, corporal punishment was an accepted method of discipline in school rules, and it was no different for families. Where is the limit of the discipline and what constitutes a crime? There are many definitions of corporal punishment, according to some authors "punishment of a child in any way that, if done to an adult, would legally constitute physical injury." Parents tend to invent words to hide the seriousness and severity of physical abuse[3].

The UN Committee on the Rights of the Child defines corporal punishment as follows: "physical by applying force any penalty which intended to cause even the slightest pain or discomfort cause Its most common form is hitting children (ears, wedding feast, neck soup) by hand or with some tool – whip, stick, belt, shoe, wooden spoon, etc. But may this is, for example, kicking, shaking, throwing the child, scratching, pinching, biting, pulling hair, slapping, uncomfortable forcing into body positions, burning, scalding or forcing various things into the mouth (for example, the child's mouth washing with soap or forcing hot spices to swallow)"[4].

For many centuries, children could not participate as legal entities in various legal transactions, the reason for this being that minors were considered the property of the father[5]. There was no sensitivity towards children either, child mortality was very high in the Middle Ages number, so the parents showed a kind of distance towards them. The little ones were already treated the same as adults after they turned 6 or 7[6]. The artistic depictions also support the spirit of the age, as children are mostly presented as young adults. Infanticide was classified more lightly in the previously Hungarian Penal Code (Act IV of 1978). 166/A §.: A woman who kills her unborn child during childbirth or immediately after childbirth commits a crime and is punishable by imprisonment from two to eight years".

In 1989, the UN General Assembly unanimously adopted the Convention on the Rights of the Child (Resolution 44/25), according to which a child is a person who has not reached the age of eighteen, unless he or she has already reached the age of majority according to national legislation[7]. Despite the creation of the concept, there is still no unity on this issue in all parts of the world. Even today, there is a huge difference between a child living in Europe and a minor living in an African tribe.

While in Western civilization we uniformly consider an adult under the age of 18 as a child, this is not so clear in other societies (e.g. Africa, Asia). Tribal customs are very strongly present in the countries here, which serves as the basis for a 12-13-year-old offspring they grow up. Typically, they become breadwinners, get married and found a family at a very young age. Another reason for the difference can be mentioned is the different expected life expectancy around the world. An 18-year-old has a different status in a society where 40-50 years is the norm than in a society where life expectancy is 70-80 years[8].

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[3] http://www.europatanacs.hu/pdf/Key_points-H.pdf (accessed on 9.01.2023).

[4] http://www.europatanacs.hu/pdf/Key_points-H.pdf (accessed on 9.01.2023).

[5] E. Végh, *Gyermekkatonák – a Sierra Leone-i polgárháború igazi áldozatai [Child soldiers – the real victims of the civil war in Sierra Leone]*, https://btk.ppke.hu/uploads/articles/6414/file/veghesztер.pdf (accessed on 14.11.2020).

[6] N. Faix, *A gyermeki jogok kialakulása a nemzetközi jogban és az igazságszolgáltatásra gyakorolt hatásuk [The development of children's rights in international law and their impact on justice],* Eljárásjogi szemle, 4/2016, p. 1.

[7] Convention on the Rights of the Child; http://www.unicef.hu/gyermekjog-egyezmeny.jsp (accessed on 14.11.2020).

[8] E. Végh, *cited.*

The significance of age in Hungarian criminal law is dominant in several aspects, one is the perpetrator's side and the other is the victim's side. If we are talking about the offender, we must first determine the minimum age of criminal liability, based on this, the Hungarian Criminal Law Code defines the following:

Persons under the age of fourteen years at the time the criminal offense was committed shall be exempt from criminal responsibility, with the exception of:

a) homicide [Subsections (1)-(2) of Section 160],
b) voluntary manslaughter (Section 161),
c) battery [Subsection (8) of Section 164],
d) assault on a public official [Subsections (1)-(3) of Section 310],
e) assault on a person entrusted with public functions [Section 311, where Subsections (1)-(3) of Section 310 apply],
f) assault on a person aiding a public official or a person entrusted with public functions [Section 312, where Subsections (1)-(3) of Section 310 apply],
g) acts of terrorism [Subsections (1)-(2) of Section 314],
h) robbery [Subsections (1)-(4) of Section 365], and
i) plundering [Subsections (2)-(3) of Section 366], if over the age of twelve years at the time the criminal offense was committed, and if having the capacity to understand the nature and consequences of his acts at that time[9].

The minimum age is 14. in criminal liability. However, in connection with certain delicts, the legislator allows criminal liability upon reaching the age of 12, but here one more condition must be met, namely that the perpetrator has the insight necessary to recognize the consequences of the crime, i.e. the discretionary power. The regulation of juvenile is basically based on the regulation of childhood10. Juvenile offender' shall mean any person between the age of twelve and eighteen years at the time of committing a criminal offense11. When prosecuting juveniles, the goal of the legislator is to educate and steer the child in the right direction. Therefore, compared to adults, legislator imposes lighter sanctions. Therefore, the order in which the sanction is applied is as follows:

– non-custodial measure,
– non-custodial sentence,
– measure involving deprivation of liberty,
– penalty involving deprivation of liberty.

Age is also important on the part of the victim. From the point of view of our study, the definition of a minor is necessary. *A minor is someone who has not reached the age of eighteen, unless he or she is married*[12]. In the following, a crime committed against a minor will be analyzed.

II. Analyzing the Crime

The legal definition of the Abuse of a minor is provided as follows:

(1) A person who is given custody of a minor to maintain and care for the person in his charge – including the domestic partner of the parent or guardian exercising

[9] Hungarian Criminal Law Code 2012, § 16.

[10] http://projektjeink.birosag.hu/sites/default/files/allomanyok/e-learning/btk/buntetojog1.1/lecke6_lap1.html (accessed on 21.07.2022).

[11] Hungarian Criminal Law Code 2012, 105. §.

[12] http://projektjeink.birosag.hu/sites/default/files/allomanyok/e-learning/btk/buntetojog1.1/lecke6_lap1.html (accessed on 21.07.2022).

parental custody, as well as any parent who has been deprived of the right of parental custody, if living in the same household or in the same home with the minor – and who seriously violates the obligations arising from such duty and thereby endangers the physical, intellectual, moral or mental development of the minor, is guilty of a felony punishable by imprisonment between one to five years.

(2) Any person over the age of eighteen years who:

a) persuades or makes any attempt to persuade a person under the age of eighteen years to commit a criminal or misdemeanor offense, or to engage in immoral conduct,

b) offers a person under the age of eighteen years for the commission of a crime, is punishable in accordance with Subsection (1), insofar as the act did not result in a more serious criminal offense[13].

It is a sensitive and complex area, and due to its investigation and proof difficulties, endangering a minor is one of the most complex crimes in the criminal case[14]. It was formulated by a Hungarian criminal judge. The prosecuting authority is not in an easy situation in relation to the crime, it is necessary to shed light on life situations that happen behind closed doors. It should be noted that the situation of the person concerned is extremely special, which may be further damaged during a criminal proceeding. The detection of the crime is also made more difficult by the fact that the group of perpetrators consists of persons whose primary duty is to protect, support, and care for minors. The facts have two basic cases, so they are analyzed separately during the analysis.

1. The first case of the crime (Section 208 (1))

The first aspect of analysis is the legal subject of the crime. In this case, the value to be protected is the minor's physical, mental and moral development. The victim of the crime will be the minor discussed above. The act of committing the crime is serious breach of duty[15]. Everyone makes mistakes, even the most careful parent. Therefore, it is important to emphasize that endangering a minor will only occur if it is a serious breach of duty. Above all, a distinction must be made between whether something is one-off, random or regular[16]. Duties falling within the scope of parental duty are the following: education, supervision and care. If the parent makes a mistake in these responsibilities so seriously that it endangers the minor's physical, intellectual, and moral development, then the crime can be established[17].

Child abuse, domestic violence is not synonymous with this crime, it includes child abuse, but the crime can include not only physical abuse, but also behavior that endangers the mental development of the minor. (the child does not go to school)[18] Another characteristic of perpetrating behavior is that it is usually carried out by omission. „*In practice, this mostly appears as a series of different types of misconduct,*

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[13] Hungarian Criminal Law Code 2012, 208.§

[14] https://birosag.hu/hirek/kategoria/magazin/meg-legaprobb-jelzesek-arulkodok-lehetnek-jogkerdes -kiskoru-veszelyeztetese (accessed on 21.07.2022).

[15] M. Tóth, Z. Nagy, *Magyar Büntetőjog. Különös rész [Hungarian Criminal Law. Special Part],* Osiris Kiadó, Budapest, 2014, p. 154.

[16] https://birosag.hu/hirek/kategoria/magazin/meg-legaprobb-jelzesek-arulkodok-lehetnek-jogkerdes -kiskoru-veszelyeztetese (accessed on 21.07.2022).

[17] M. Tóth, Z. Nagy, *cited,* p. 154.

[18] I. Komlósiné Sógor, *cited*, p. 481.

but their common feature is that they usually affect both the physical and mental development of minors"[19].

Some examples from judicial practice:

- Demonstrating immoral behavior in the presence of minors, leads a regular drinking lifestyle, as a result of which he or she abuses the family.
- The parent does not provide the medicines prescribed by the doctor. They do not provide the necessary care for the sick child.
- The offender obstructs the minor for a long period of time in order to complete his school studies[20].
- The parent does not feed the child.
- The parents do not provide the child with clothing suitable for the season[21].

In general, minor acts of misconduct add up to a serious act of misconduct that constitutes a crime. Hungarian judicial practice does not establish the endangerment of minors in the situation of children brought up in a broken marriage or in a toxic relationship[22]. In fact, the behavior was not factual even in the case when the parent did not ask for the vaccination for his child. The condition for this was that the lack of vaccination should not hinder the minor's healthy physical development[23]. In my opinion, the vaccination against Covid is not necessary for the healthy physical development of the young child, so based on the established Hungarian judicial practice, the endangerment of the minor is not realized. „*The perpetrator is only responsible for the physical, mental, and moral endangerment of the minor if it is causally related to the serious breach of duty"*[24].

The perpetrator of the crime is special because it is only the person responsible for the education and supervision of the minor and the spouse of the parent or guardian exercising parental supervision, and also the parent deprived of the right of parental supervision if he or she lives in the same household or in the same apartment as the minor. The crime can only be committed intentionally[25]. The number of female offenders in abuse of a minors is high, but according to a summary study, the gender ratio is 40%-60% in favor of men[26].

2. The second case of the crime (Section 208 (2))

The legal object of the crime is the moral development of the minor. The passive subject of the crime can be a person who has not reached the age of 18, even if he or she has otherwise reached the age of majority through marriage. The act of committing the crime is the act of inducing or attempting to induce a person to commit a crime, rule violation, disorderly lifestyle, or offering to commit a crime[27].

According to BH 1985.51., the continuation of a depraved lifestyle is a lifestyle that lasts for a long time and is morally highly objectionable (e.g. begging, regular drug

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[19] M. Tóth, Z. Nagy, *cited,* p. 154.
[20] I. Komlósiné Sógor, *cited*, p. 484.
[21] M. Tóth, Z. Nagy, *cited,* p. 155.
[22] Penal decision no. 1491/2006.
[23] Penal decision no. 2029/2009.
[24] M. Tóth, Z. Nagy, *cited,* p. 155.
[25] *Ibidem.*
[26] A. Solt, *Bírói ítélkezési gyakorlat a kiskorú veszélyeztetése tárgyában [Case-law in the matter of endangering a minor]*, http://tamogatoweb.hu/olvasnivalo/soltagnestanulmany.pdf (accessed on 25.07.2022).
[27] M. Tóth, Z. Nagy, *cited,* p. 155.

consumption, drinking lifestyle, prostitution, regular vagrancy). In the case of coercion, the victim's moral development is exposed to actual damage (there is not only a risk of this), while in the case of coercion, the perpetrator's intention is directed towards this[28].

The perpetrator of the crime can be a person who has reached the age of eighteen, so it is not only persons who are responsible for the education, supervision and care of the minor. This form of abuse of minors is subsidiary in nature and can only be established if a more serious crime is not committed[29].

III. Practical Difficulties

During the decision the judge must examine quantitative and qualitative criteria. After establishing that the victim is a minor and the perpetrator is a special person, i.e. a person obliged to educate, supervise, and care for the minor, he must consider whether the act or omission is considered a breach of duty in education, supervision, or care. (qualitative criterion) Several circumstances for this, the victim's age, personality, and health must be taken into account[30]. The Court took the position that when establishing a delict, it is sufficient that the task is well known[31]. The quantitative criterion indicates whether the breach of duty was serious. If the serious nature cannot be determined, it can be assessed as a minor educational error, which is outside the scope of criminal law, although it may justify a child protection measure. The same conduct is judged differently in different age stages of the victim. A parent who leaves a child unattended is responsible for committing a delict, even if he/she leaves him/her alone once and only for a few hours, if the child is a minor. In the case of a preschool-age child, a repetitive nature is necessary for implementation[32]. It cannot be identified as an educational error for children in elementary school, nor can it be established for older children[33]. It has been a long-standing principle that a parent has the right to discipline their child at home, and this is no different nowadays, because according to the current regulations, discipline can be considered a reason for excluding criminal liability. Over the years, its boundaries have changed significantly. According to the Csemegi Codex, discipline extended to the infliction of light bodily harm, however, this is covered by Article III. It was repealed in 1948 by a penal novel. Nowadays, judicial practice recognizes defamation by act and short-term restriction of personal freedom as a disciplinary right, if it is done for the purpose of education[34]. Furthermore, practicing this cannot be abusive, because then it exhausts the fact of endangering the

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[28] I. Komlósiné Sógor, *cited*, p. 484.

[29] M. Tóth, Z. Nagy, *cited,* p. 156.

[30] A. Balogh, *Kiskorú veszélyeztetésének bűntette a bírósági határozatok kritikai tükrében – különös tekintettel a fizikailag bántalmazott gyermekekre – II. rész: A cselekmény és az eredmény [The crime of endangering a minor in the critical light of court decisions – especially with regard to physically abused children - II. part: The act and the result],* in: Ügyészek Lapja 6/2018, http:// ugyeszeklapja.hu/?p=2277 (accessed on 29.09.2022).

[31] Penal decision no. 1560/2012/5.

[32] BJD 8895.

[33] A. Balogh, *cited.*

[34] E. Csemáné Váradi, I. Görgényi J. Gula, T. Horváth, J. Jacsó, M. Lévay, F. Sántha *Magyar büntetőjog – általános rész. Digitális kiadás [Hungarian criminal law – general part. Digital edition]* Budapest, Wolters Kluwer, 2017, https://doi.org/10.55413/9789632956282 Letöltve: https://mersz.hu/hivatkozas/wk83_141_p1/#wk83_141_p1 (accessed on 30.09.2022).

minor[35]. Court practice is wide-ranging and the decision of the Supreme Court BH 1992 No. 623 is often still a reference today, despite the fact that it could be understood more as a case of legal history. In this decision, the Supreme Court found that the fact of endangering a minor does not occur if the perpetrator, in some cases, physically disciplined the minor to an excessive extent, as it did not endanger the minor's physical, intellectual, or moral development, nor is it considered a serious breach of the duty of education[36].

Some examples from practice: Budapest II. and III. District Court 5.B.797/2011. from judgment no.: a mother raising an 11-year-old minor slapped her daughter on one occasion because she was disobedient. The child's face was slightly swollen and suffered an injury that healed within 8 days. According to the court's opinion, a blow to the face, which caused redness, is not considered a crime. The activity is behavior that falls under parental disciplinary authority, it did not exceed it, so the act does not pose a danger to society.

According to PKKB 13.B.23.574/2013. in the judgment no. This form of educational abuse took place on another occasion. As a result, he suffered injuries that healed within 8 days. According to the court's opinion, the breach of duty was not considered so serious that it could be determined that the minor was endangered.

Although the same advice of this court 13.B.X.28.049/2011. In his judgment no. 1, in connection with an almost identical situation, regarding abuse with a trouser belt, he explained how painful it is and how much fear it causes in children, so in this case he established the fact of endangering a minor[37]. The Pest Central District Court 2.B.32.579/2014. According to the facts contained in his judgment no. Based on the reasoning of the first-instance court, the foster father's behavior is factual, as it endangered the mental and emotional development of the minor. However, the Capital Court as a court of second instance 22.Bf.12.261/2015. came to a position contrary to his judgment no[38].

It can be seen from the above that the judicial practice is not consistent in when certain acts of perpetration are considered factual. It should be taken into account that some reference bases are out of date and priority should be given to the requirements contained in newer conventions.

IV. Conclusion

In the above, abuse of a minor was analyzed as a crime based on the Hungarian criminal code. It can be seen that it is a crime involving a very rich criminal behavior. Despite the fact that the family must provide the protection function for children, this is often not realized. Hungarian judicial practice is consistent in that it does not establish abuse of minors in the event of not administering the Covid vaccine. The shortcomings of the system must be remedied because the fate of the future generation is in our hands.

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[35] A. Horváth, *Mi jár egy pofonért? [What's a slap in the face?],* https://arsboni.hu/mi-jar-egy-pofonert/#_ftn10 (accessed on 29.09.2022).

[36] A. Balogh, *cited*.

[37] *Idem.*

[38] *Idem.*

References

1. Komlósiné, I., *A kiskorú veszélyeztetés bűntettének fogalmi meghatározása, szabályozásának fejlődése [The conceptual definition of the crime of endangering minors and the evolution of its regulation],* Magyar Jog, 7-8/2017.

2. Végh, E., *Gyermekkatonák – a Sierra Leone-i polgárháború igazi áldozatai (Child soldiers – the real victims of the civil war in Sierra Leone)*, https://btk.ppke.hu/uploads/articles/6414/file/vegheszter.pdf (accessed on 14.11.2020).

3. Faix, N., *A gyermeki jogok kialakulása a nemzetközi jogban és az igazságszolgáltatásra gyakorolt hatásuk [The development of children's rights in international law and their impact on justice],* Eljárásjogi szemle, 4/2016.

4. http://projektjeink.birosag.hu/sites/default/files/allomanyok/e-learning/btk/buntetojog1.1/lecke6_lap1.html (accessed on 21.07.2022).

5. https://birosag.hu/hirek/kategoria/magazin/meg-legaprobb-jelzesek-arulkodok-lehetnek-jogkerdes-kiskoru-veszelyeztetese (accessed on 21.07.2022).

6. Tóth, M., Nagy, Z., *Magyar Büntetőjog. Különös rész [Hungarian Criminal Law. Special Part],* Osiris Kiadó, Budapest, 2014.

7. Solt, A., *Bírói ítélkezési gyakorlat a kiskorú veszélyeztetése tárgyában [Case-law in the matter of endangering a minor],* http://tamogatoweb.hu/olvasnivalo/soltagnestanulmany.pdf (accessed on 25.07.2022).

8. Balogh, A., *Kiskorú veszélyeztetésének bűntette a bírósági határozatok kritikai tükrében – különös tekintettel a fizikailag bántalmazott gyermekekre – II. rész: A cselekmény és az eredmény [The crime of endangering a minor in the critical light of court decisions – especially with regard to physically abused children – II. part: The act and the result],* in: Ügyészek Lapja 6/2018, http://ugyeszeklapja.hu/?p=2277 (accessed on 29.09.2022).

9. Csemáné Váradi, EGörgényi, I., Gula, J., Horváth, T., Jacsó, J., Lévay, M., Sántha F., *Magyar büntetőjog – általános rész. Digitális kiadás [Hungarian criminal law – general part. Digital edition]* Budapest, Wolters Kluwer, 2017, https://doi.org/ 10.55413/9789632956282 Letöltve: https://mersz.hu/hivatkozas/wk83_141_p1/ #wk83_141_p1 (accessed on 30.09.2022).

10. Horváth, A., *Mi jár egy pofonért? [What's a slap in the face?],* https://arsboni.hu/mi-jar-egy-pofonert/#_ftn10 (accessed on 29.09.2022).

11. http://www.europatanacs.hu/pdf/Key_points-H.pdf (accessed on 9.01.2023).

Protection of Victims of Psychological Abuse as Type of Domestic Violence in Criminal Procedure

Jasmina Igrački[*]
Marina Brašovan Delić[**]

Abstract

Nowadays, domestic violence is a generally recognized and widespread phenomenon in every society. In this paper, the authors analyzes psychological abuse as a type of domestic violence. Available statistical data in the Republic of Serbia for 2019. show a high frequency of psychological violence by partners. Emotional abuse is reported equally by women and men. Thus, out of 62% of different forms of violence against women, even 44% is psychological violence by an intimate partner. In 2019., 48% of women aged between 26-64 suffered some form of psychological violence, compared to 50% of men in the same age category. In terms of the consequences that a person experiences, psychological abuse can be as harmful as physical violence or even more. Recognizable forms of physical violence are hitting, pushing, arm twisting, etc., while psychological violence uses other methods and is often difficult to recognize as it is challenging to prove its manifestation.

As one of the goals of criminal law is to provide legal protection to the victim of a criminal act, that goal can be adequately achieved only when psychological abuse is determined and proven as such within criminal proceedings, and the perpetrator convicted. Proving psychological abuse in practice is quite a challenge, as there is an issue with what type of evidence can be used in criminal procedure to determine that the victim suffered psychological abuse. Psychological abuse is an act that, from objective point of view, involves the willful infliction of mental or emotional harm. A victim's subjective notion of their emotional distress is not a sufficient indicator of domestic violence, therefore the victim's statement before court does not suffice as evidence of emotional abuse.

In this paper, the authors will attempt to answer the question of how and with what evidence can it be demonstrated within criminal procedure that the victim suffered psychological abuse, as this is one of the prerequisites in providing adequate legal protection to the victims of this form of domestic violence.

Keywords: *victim, domestic violence, psychological abuse, evidence, criminal procedure*

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[*] PhD, research associate, Institute for Criminological and Sociological Research, Belgrade. Contact: jasminaigracki@yahoo.com.

[**] Judge, Basic Court in Pancevo, Phd candidate, Faculty of Law, University of Belgrade, Serbia. Contact: marinabrasovan@yahoo.com.

I. Introduction

The cohabitation of two persons is two-way street in every intimate relationship. The popular saying "*All's fair in love and war*", does not obliged when it comes to violence between partners. Protecting victims of domestic violence is an important goal in criminal policies that must be achieved to ending domestic violence as widespread behavior pattern and the major public health problem. Violent behavior is most often explained by the psychopathology of the abuser or as a consequence of a learned pattern of behavior in the family[1]. According to social learning theory, violent behavior is learned by observing the aggressive behavior patterns of individuals who serve as role models[2].

In all victimization, domestic violence takes a high place when it comes to participation in all crimes rate. *National Crime Survey for 2021* showed that from 2017 to 2021 there were no statistically significant changes in rates of domestic violence and intimate partner violence, with stranger violence and violence including injury and weapon[3]. In estimated period, the rate is from 4,5 to 3,3 per 1,000 persons age 12 and older. Thus, a similarity between victimization in number and rate in domestic violence and stranger violence (for exp., rate was from 7,5 to 7,4 per 1,000 persons age 12 and older) showed great importance to answer how we can protect victims of domestic violence. Furthermore, with the Explanatory Report to the Istanbul Convention it was estimated that between 12% and 15% of women across Europe have been in a relationship involving domestic violence after the age of 16[4]. Children are most often victimized psychologically – in 29% of cases, physically in 22%, and 4% are forced to work.

This data indicates high frequency of reported victimization, even there is a high dark rate in reported crimes such as domestic violence, because victims may be too frightened or too ashamed to report.

Violence can manifest in many forms, but one thing that is specific are consequences that victim suffer. In terms of consequences, domestic violence has its own distinctive character of generally violence behavior, because it affects family as unity, although consequences in narrow sense person experiences as an individual. In theory, domestic violence has its own definition, recognizable forms of manifestation, subjects of violence as its victims and perpetrator and its legal frame. But when it comes to criminal proceedings and the protection of the victim in criminal court, the first question is which forms of behavior are considered under criminal act of domestic violence and the second is which evidences are strong enough to proven that violence has occurred. This is particularly when domestic violence appears in form of psychological abuse, which is often difficult to recognize as it is challenging to prove its manifestation.

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[1] I. Igracki, *The police as a subject in the prevention of child abuse*, in Journal of the Institute of Criminological and Sociological Research, Belgrade, 2012/1, pp. 264-265.

[2] *Ibidem.*

[3] The Bureau of Justice Statistics of the U.S. Department of Justice, *Criminal Victimization 2021,* September 2022, https://bjs.ojp.gov/content/pub/pdf/cv21.pdf (accessed on 04.12.2022).

[4] *Explanatory Report to Council of Europe Convention on preventing and combating violence against women and domestic violence*, Council of Europe, https://rm.coe.int/CoERMPublic Common SearchServices/DisplayDCTMContent?documentId=09000016800d383a (accessed on 04.12.2022).

Proving psychological abuse in practice is quite a challenge, as there is an issue with what type of evidence can be used in criminal procedure to determine that the victim suffered psychological abuse. Before answering at this question, it is important previous to understand how does the legislation define psychological abuse as criminal act as a type of domestic violence, how does it manifests, what are consequences on victims mental health and is there some connection between harmful consequences that occur and liability of victims testimony in criminal court.

As one of the goals of criminal law is to provide legal protection to the victim of a criminal act, that goal can be adequately achieved only when psychological abuse is determined and proven as such within criminal proceedings and the perpetrator convicted.

II. Domestic Violence

1. Definition

As it was written above, domestic violence has its own definition, recognizable forms of manifestation, subjects of violence as its victims, perpetrator and its legal content.

It is not easy to define domestic violence. The current focus on a criminal justice response, relies on legal definitions to determine what actually is considered to be an act of domestic violence. In order to prove psychological abuse as domestic violence in criminal proceedings, it is primary to determine which violent behaviors are considered domestic violence. There is different theoretical approaches about domestic violence. Some of these approaches are based on the terms that domestic violence is violence between intimate partners[5]. This mean that domestic violence is every violent act that conduct among intimate partners who are or who were in some type of emotional, sexual or intimate relationship. The point is that one partner uses threats and violence to control the other partner. Some authors use the term *intimate partner violence* and it is becoming increasingly common and does seem more successful in at least alluding to the fact that this type of abuse is inflicted by an intimate, not a stranger[6].

In another sense, domestic violence is every violent act between partners with one more component. The specific context in which violence occur is domestic relations. Domestic violence is defined as a process of coercion and control that occurs in a specific context[7]. These definitions also include coercive and control as one of the main characteristics of domestic violence. Controlling behavior consists in: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behavior[8]. Coercive behavior is: an act or a pattern of acts of assault,

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[5] P.B. Bishop, *The Limitations of the Legal Responce to Domestic Violence in England and Wales: A critical Analysis*, Submitted to the University of Exeter, as a thesis for the degree of Doctor of Philosophy in Law, 2013, p. 23.

[6] *Ibidem.*

[7] J.P. Jenkis, P.B Davidson, *Stopping Domestic Violance- How A Community Can Prevent Spousal Abuse*, Springer Science+Business Media, New York, 2001, p. 56.

[8] Information for Local Areas on the change to the Definition of Domestic Violence and Abuse, Home Office, 2013, p. 2.

threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim[9].

Domestic violence is also defined as "any incident or pattern of incidents of controlling, coercive, threatening behavior, violence or abuse between those aged 16 or over who are, or have been intimate partners or family members regardless of gender or sexuality. The abuse can encompass, but is not limited to psychological, physical, sexual, financial, or emotional"[10]. Typically, people think of domestic violence simply as assaults between intimate or prior intimate partners. However, current legal definitions usually cover a broad range of relationships. These often include assaults involving siblings, parents, and adult children; parents and teenagers; grandparents and grandchildren; teenaged and adult daters and ex-daters; among others[11].

For example, in the Great Britain, in the substantive criminal law predominantly was focused on isolated incidents of physical violence or criminal damage up until 2015., when an offence of 'controlling or coercive behavior' was introduced under the Serious Crime Act, criminalizing for the first time the non-physical abuse which so often occurs in the domestic context[12]. Regardless of diversity in legislative rules, important is that nowadays there is unique normative approach that recognize that domestic violence isn't just physical injury.

2. The Istanbul Convention

Domestic violence as criminal act is governed by definition set by the Istanbul Convention. Definition of domestic violence that is adopted by the Istanbul Convention can be found in Article 3 (b) which defines domestic violence as encompassing "all acts of physical, sexual, psychological or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim"[13]. It is obviously that Convention identifies physical and psychological violence, and other forms of violence, as etc. sexual and economic violence. The Council of Europe adopted Istanbul Convention as a Convention on preventing and combating violence against women and economic violence that occur within the family or domestic unit or between former or domestic violence which entry in force 01.08.2014[14]. The purposes of this Convention are defined in Article (1) and one of the main goals is to "protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence".

The domestic violence in the sense of the term takes the places at home. In narrow sense domestic means home and family. Thus, the Convention clearly departs from the

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/142701/guide-on-definition-of-dv.pdf (accessed on 05.10.2022.)

[9] *Ibidem.*

[10] *Ibidem.*

[11] E. Buzawa, C. Buzawa, *Global Response to Domestic Violence–Springer International Publishing*, 2017, p. 63.

[12] C. Bishop, V. Bettinson, *Evidencing Domestic Violence,including behaviour that falls under the new offence of 'controlling or coercive behaviour'*, in: International Journal of Evidence and Proof, 2017, Sage Publications, pp. 1-27.

[13] Council of Europe Convention on preventing and combating violence against women and domestic violence, https://www.coe.int/en/web/conventions/full-list?module=treaty-detail& treatynum=210 (accessed on 05.10.2022).

[14] *Ibidem.*

ordinary usage of the term, while uses terms as it does not require that partners ever lived together, or that the violent act in question was at the victim's home. If the offender assaults his partner at her workplace or stalks her, this, in the terminology of the Istanbul Convention, constitutes domestic violence. In any case, any form of partner violence is domestic violence in the meaning of the convention[15]. Therefore, some researchers advocates are far more accurate when they conceptualize domestic violence as a range of behaviors, some obviously criminal in nature, others more manipulative, which in total are intended to exercise coercive control including physical, sexual, psychological, and verbal behaviors used to dominate another person[16].

Additionally, The Council of the European Union establishing minimum standards on the rights, support and protection of victims of crime adopted Victims' Rights Directive (25.10.2012) and under Paragraph 18 prescribe: "Where violence is committed in a close relationship, it is committed by a person who is a current or former spouse, or partner or other family member of the victim, whether or not the offender shares or has shared the same household with the victim. Such violence could cover physical, sexual, psychological or economic violence and could result in physical, mental or emotional harm or economic loss"[17].

3. Definition in the Republic of Serbia

Beside theoretical approach and the similarity between definition of domestic violence, many states today have adopted legal definitions of domestic violence, among them the Republic of Serbia. These are some of the important issue when it comes to defining domestic violence from the aspect of the Criminal Code in Serbia.

The Criminal Code of the Republic of Serbia in its Article 112 (28) prescribes who is family member in the terms of domestic violence[18]. The following are considered family members: spouses, their children, spouses' ancestors in the direct line of blood kinship, extramarital partners and their children, adoptive parents and adopted children, breadwinners and breadwinners. The family members are also considered brothers and sisters, their spouses and children, ex-spouses and their children and parents of ex-spouses, if they live in a joint household, as well as persons who have a child together or a child is about to be born, even though they have never lived together in the same family household[19]. In the context of domestic violence offence the circle of family members is extended to those persons who were partners or who had lived in the same household. The importance of widely considered circle of the family members in the terms of legislation rules is in favor of adequate protection of victims and the right to family life, according to the Article 8 European Convention on Human Rights[20].

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[15] European Union Agency for fundamental rights, *Women as victims of partner violence* – Justice for victims of violent crime – Part IV, p. 29.

[16] *Idem.,* p. 63.

[17] Minimum standards on the rights, support and protection of victims of crime 2012, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029 (accessed 01.10.2022).

[18] *The Criminal Code of Republic of Serbia: "Official Gazette of RS" no.* 5/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019.

[19] *Ibidem.*

[20] Guide on Article 8 of the European Convention on Human Rights, *Right to respect for private and family life,* home and correspondence, 2022, https://www.echr.coe.int/documents/guide_art_8_eng.pdf. (accessed on 05.10.2022).

The domestic violence as criminal offence is prescribed by Article 194 of the Criminal Code. As a criminal act, exists when the perpetrator endangers the peace, physical integrity or psychological state of a member of his family by using violence, threatening to assault life or body, insolent and reckless behavior. Therefore, Article 194. Paragraph 1[21] provides the act of committing a criminal offense and the consequences that must occur in order for the perpetrator to be conduct for the crime he committed. Unlike other legislative rules, for example, in England and Wales until very recently there was no specific criminal offence relating to domestic abuse, since the adoption of the current Criminal Code (in 2005), the Republic of Serbia has considered domestic violence as a separate criminal offense. From perspective of The Criminal Code of the Republic of Serbia domestic violence is every coercive and violent act in narrow sense which results in physical and psychological consequences on victim. In that part, the Criminal Code of the Republic of Serbia relies on the Istanbul Convention which has created a legal framework at pan-European level to protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence.

Therefore, from the legislative rules, there is no doubt that existing normative framework, recognize domestic violence as physical act and psychological abuse between partners in specific context which will be discussed further as a types of domestic violence. Of particularly importance is to distinguish physical and psychological form of violence on the ground of the existence of domestic violence as a criminal act under Article 194 Criminal Code of Republic Serbia. In this context, to prove that physical violence has occurred it is sufficiently that violent act and its consequences happened only once. On the contrary, in order to prove that psychological abuse as a crime of domestic violence exists under Article 194, it is necessary to repeat episodes of criminal behavior over a period of time. The way this can be proven will be discuss in following, but it is based on the consequences that victim experienced.

4. Types of domestic violence

Violent behavior has many forms. When there are visible physical consequences on victim's body, it is easily to conclude that someone has been victimized. Typically, when one person has body injury we are talking about physical violence. Recognizable forms of physical violence are hitting, pushing, arm twisting or choking, while psychological violence uses other methods and is often difficult to recognize as it is challenging to prove its manifestation. Psychological abuse is an act that, from an objective point of view, involve the willful infliction of mental or emotional harm.

5. Psychological abuse

Acknowledge psychological abuse as type of domestic violence means protection of victims when there are no visible physical consequences on the victim's body. For adequate protection this is very important for every victim of domestic violence. The main reason is in its nature of psychological abuse and its consequences. In terms of consequences that a person experiences, psychological abuse can be as harmful as

[21] *The Criminal Code of Republic of Serbia: "Official Gazette of RS" no.* 5/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019.

physical violence or even more. Psychological abuse involves trauma to the victim caused by verbal abuse, acts, threats of acts or coercive tactics. Perpetrators use psychological abuse to control, terrorize and denigrate their victims. It frequently occurs prior to or concurrently with physical or sexual abuse. Behaviors that are common in abusive situations including emotional abuse, isolation, abuse and use of children, economic abuse, use of coercion and threats, intimidation, and blaming the victim. The combination of abusive behaviors and the severity of abuse varies with each relationship. At the center of any abusive situation is the necessity for coercion and control[22].

Coercive behavior is constituted by an act or pattern of acts of assault, threats, humiliation, intimidation or other abuse that is used to harm, punish, or frighten their victim. This includes so called "honour" based violence, female genital mutilation and forced marriage[23]. The authors explain that controlling behavior is defined as: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape, and regulating their everyday behavior[24].

Unlike separated terms of physical violence and psychological abuse, some authors define both behaviors as a battering. Battering describes the most devastating context of social partner assault, in which repeated episodes of physical abuse, usually by a spouse, ex-spouse, lover, or dating partner, are accompanied by sexual assault, threats, verbal abuse, the destruction of property, child abuse, stalking, degradation, isolation from friends and family, and a pattern of coercive control over key aspects of the victim's life, including money, food, sexuality, physical appearance, social life, transportation, work, religion, and access to help[25]. It is clear that the offence includes behaviors that do not threaten or cause physical injury, in clear recognition of the emotional and psychological harm that results from controlling or coercive behavior[26].

Psychological research on trauma makes it clear that severe and enduring traumatic reactions can occur even in the absence of physical violence, and thus there need not be bodily injury. Such psychological trauma is coupled with physiological upheaval and changes in the brain, which arise in the same way whether the threat is verbal, emotional, psychological or physical[27]. What is common is a perception of psychological violence witch necessarily implies solid evidence in court that victim suffer consequences witch, are as before said, they are not visible at first glance.

The OSCE Survey conducted in 2018. in the Republic of Serbia among a representative sample of women between 18 to 74 aged, and a total of 2,023 interviews, showed high prevalence of different forms of violence against women, 44% of interviewees were victims of intimate partner psychological violence while 22% of

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[22] J.P. Jenkis, P.B. Davidson, *Stopping Domestic Violence*, How A Community Can Prevent Spousal Abuse, Springer ScienceBusiness Media, New York; 2001, p. 54.

[23] J.A.R. McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*, by Routledge, Oxon, 2017.

[24] *Ibidem.*

[25] D.E. Stark, A. Flitcraft, *Women at Risk, Domestic Vilence and Womens Health*, London, Sage Publications, 1996, p. 203.

[26] C. Bishop, V. Bettinson, *Evidencing Domestic Violence,including behaviour that falls under the new offence of 'controlling or coercive behaviour'*, in: International Journal of Evidence and Proof, 2017, Sage Publications, pp. 1-27.

[27] *Ibidem.*

them experience physical or sexual violence from intimate partner. The survey showed that intimate partner psychological violence is the most widespread form, in particular controlling behavior (35%), abusive behavior (29%), economic violence (12%), blackmail with/abuse of children (8%)[28]. The numbers show how important is to recognize psychological abuse as a severe form of violence, especially in the terms of consequences that victims experience.

6. Who can be a victim?

Anyone can be a victim of domestic violence. If we accept that domestic violence is the process of coercion and control that occurs in a specific context among intimate partner, family member or former intimate, emotional or sexual partner, there is a wide circle of persons who may became a victim. Regarding to the psychological abuse, as a type of domestic violence, men as same as women can be a victim. For the purpose of protecting victims of the domestic violence an important question that arises is does The Istanbul Convention applies in situations where victim is male. Although Article 2(2) asserts that 'parties are encouraged to apply this Convention to all victims of domestic violence', this provision also emphasizes that 'parties shall pay particular attention to women victims of gender-based violence implementing the provisions of this Convention'.

In addition, it is stated in Article 2(1): 'This Convention shall apply to all forms of violence against women, including domestic violence, which affects women disproportionately.' Therefore, although states are 'encouraged' to apply the provisions of the Convention to male victims of domestic abuse, the focus remains primarily on the prevention of violence against women, encompassing *inter alia* such violence that takes place in the home[29]. Feminist approach that the majority of domestic violence is commissioned by heterosexual males as a result of conforming to cultural norms that support male dominance[30], in that way linking domestic violence to male power and control, has no support in statistical data. Some data showed that 48.4% of women and 48.8% of men have experienced at least one psychologically aggressive behavior by an intimate partner[31]. The paramount problem is the dark rate particularly when it comes to report psychological abuse by male victims.

Furthermore, intimate partner violence is not just a problem for heterosexuals, homosexual partners may also experience violence in dating or cohabiting relationships although homosexuality became of a great importance as a topic at the end of the 19th century[32]. It is likely that the true incidence of lesbian or gay partner violence is masked by the reluctance of victims to seek outside help[33]. Social status or incomes does not prevent women to become a victim of some form of domestic violence. Public hearing that domestic violence is reserved only for lower status victims it isn't a well-founded.

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[28] *OSCE–Led Survey on Violence against Women*, Well-Being and Safety of Women, Serbia Results Report, Belgrade, OSCE 2019, p. 10.

[29] J.A.R. McQuigg, *The Istanbul Convention, Domestic Violance and Human Rights*, by Routledge, Oxon, 2017, p. 75.

[30] C. Bishop, V. Bettinson, *cited*.

[31] OSCE – Led Survey on Violence against Women, *Well-Being and Safety of Women,* Serbia Results Report, Belgrade, OSCE 2019, p. 10.

[32] L. Cimburovic, Z. Stevanovic, E. Saljić, J. Igracki, *Victimology*, Belgrade, 2013, pp. 146-147.

[33] J. P. Jenkis, P.B. Davidson, *cited*, p. 56.

Women with higher incomes may have access to resources that allow them to keep their victimization private: private attorneys, private physicians, private therapists, or resources to afford an alternate housing situation. Often, abuse of women with these resources is not documented by law enforcement, hospital emergency rooms, social service agencies, or battered women's shelters34. Also, there are no age limits for women victimization. Adolescent girls are at high risk for battering; so are women over 60. Between 50% and 75% of battered women in the hospital are single, separated, or divorced. Pregnancy is a high-risk period during which violence may begin or escalate, harming the fetus as well as the mother[35].

Children are a particularly sensitive category of victims. The consequences of child abuse are multiple, permanent and threaten the normal quality of life, while at the same time leaving serious consequences for psychophysical development[36]. According to research, around eight million children in the world are in some form of abuse and slavery[37].

III. Victim in Criminal Proceedings

As noted above, anyone can be a victim of domestic violence, especially psychological abuse as a form of coercive and controlling behavior. Therefore, someone who is victimized can become a participant in criminal procedure only when report the criminal act or initiate charges. Without statement of the victims abuse there is unlikely that criminal procedure and criminal low could provide protection from domestic violence.

1. Reporting psychological abuse

Reporting psychological abuse by victim is the first step. In this stage, there is an obstacle which is connected with the nature of emotional abuse as controlling and coercive behavior. The first problem is that victims often feel responsible, guilty or ashamed to report abuse. Victims may perceive the criminal proceedings as a further serious interpersonal conflict with the perpetrator[38]. The long delay between reporting a crime to the police and the beginning of the trial represents a further source of psychological stress for crime victims[39]. One factor that makes it more difficult for women who are victims of partner violence to report it is their own emotional responses to their victimization.

Of women who had experienced physical violence by a partner, 21 % said that the most serious incident left them feeling shame over what had happened, while the percentage goes up to 47 % among women victims of sexual violence. Furthermore, 32 % of victims of sexual violence said that they experienced feelings of guilt, 34 % felt

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[34] *Ibidem*, p. 60.

[35] D.E. Stark, A. Flitcraft, *cited,* p. 203.

[36] Z. Stevanovic, J. Igracki, *Child trafficking as a form of organized crime, in:* Combating organized crime, legal framework, international standards and procedures*, Criminal Police Academy & Hans Seidel Foundation, Scientific expert meeting with international participation,* Tara, 2013, p. 33.

[37] *Ibidem.*

[38] U. Orth, *Secondary Victimization of Crime Victims by Criminal Proceedings*, in Social Justice Research, Vol. 15, No. 4, 2002, p. 316.

[39] *Ibidem.*

embarrassed and close to two in three (64 %) were fearful following the incident. These points to the very real threat of repeat victimization that women face[40]. Also, previous it is mention that men equally as women can be a victim of abuse. When it comes to reporting violent incident, men are less likely to call the police and report the abuse unless medical attention is needed. Since men are expected to be able to defend themselves, especially against women, they are embarrassed to report and fear that they will not be believed[41].

It is well known that the victim, because of fear of perpetrator revenge, often denies that abuse happened in order to protect the abuser at court. This is especially the case of psychological violence that has been going on for many years. Consequences for the victim are such that he/she is often unable to be the witness in the proceedings. For example, if victim suffered high levels of fear and anxiety result is that this person is avoiding people, places or circumstances that he/she relates to past abusive incidents. If visiting her friends was the trigger for her husband's violence, she may decide not to visit her friends again. For this reason, their friends and family may have no awareness of the batterer's abusive behavior, so additionally they could not be the witness at court[42].

Second, a perpetrator often actively restricts communications between the victim and those formerly close to her, in effect commanding her total attention and allegiance. In that way, power and control over the victim's behavior is gained in order to prevent victim to report abusive behavior. Also, isolating the victim makes it more difficult for her to leave, and all the less likely that the abuse will be discovered. Enforced isolation may be the cause of her failure to seek needed help, her lack of any apparent familial support, or her unexplained absence from scheduled meetings and appointments[43]. Victim's non-complaints of repeated abuse some authors explain with psychological theory that specifically addresses violence against women – Walker's cycle theory of violence and the concept of "Battered Women's Syndrome".

This theory describes how violence against women occurs in three stages: tension-building, trigger and violent incidents, and the honeymoon phase[44]. The victim's expectations that abusive behavior will never happen again disables victim from reacting and reporting the perpetrator opportunely. The reason for such victim's non-reaction, authors see in nature of psychological abuse. Although the abusive behavior is recurring, it rarely happens every day. There may be periods in the relationship that are relatively calm and even loving. Abusers can be charming, funny, intelligent, successful, kind and caring between violent incidents. These nonviolent periods reinforce the abused woman's hope that the abuse has ended and increase her ambivalence about leaving the relationship[45]. Additionally, victims refuse to live the perpetrator leads to recidivism of abusive behavior. From the point when the abusive behavior is repeated, the consequences on the emotional and psychological state of the victim are severe and directly affect the victim's ability and the possibility to report violence. In addition, the credibility of the victim's testimony depends on the emotional and mental health of the victim.

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[40] European Union Agency for Fundmental Rights, *Women as Victims of partner Violence*, Justice for victims of violence crimes Part IV, 2019, p. 34.

[41] A.N. Jackson, *Encyclopedia of Domestic Violence*, Routledge, Oxon, 2007, p. 88.

[42] J.P. Jenkis, P.B. Davidson, *cited*, p. 61.

[43] *Ibidem,* p. 54.

[44] *Ibidem*, p. 47.

[45] *Ibidem*.

2. The consequences of psychological abuse

The consequences victims of psychological abuse suffer are important for defining what is actually the psychological abuse and how does its manifest, second in criminal procedure for proving that violence has occurred. As mentioned above, continues and repeated abuse of the victim makes significant changes on her emotional and mental health in way that causes trauma and fear of recurring violent behavior. Therefore, the constant fear of the perpetrator revenge might unable the victim to give a testimony in front of the court. Many authors advocated that victim's trauma is responsible for victims withdraw their support[46].

The trauma can be as much harmful as every physical injury and frequently have consequences on victim's memory. Such psychological trauma is coupled with physiological upheaval and changes in the brain, which arise in the same way whether the threat is verbal, emotional, psychological or physical[47]. Other authors suggest that the greatest proportion of medical visits by battered women involves general medical, behavioral, and psychiatric problems that follow from the isolation, fear, and stress of a violent relationship, evidence that coercion and control are the most salient features[48].

3. Victim's statement

In light of the evidence in the criminal proceedings, mental state of mind of the victim is increasingly important for credibility of victim's statement. Without victim's statement of her emotional distress in lack of any other evidence, there is light chance for public prosecution to prove allegations that psychological abuse has occur. This is especially in situation of victim reluctances to testify in court. If there is not any other evidence that victim has suffered abuse, it may outcome in an acquittal. In situation when victims withdraw their support for the prosecution for domestic-violence cases public prosecutors should respond in a way that constitutes the effective prosecution of domestic violence. Additionally, the public prosecutor must consider another evidence to present before the court.

The question is what evidence is solid enough to prove that psychological abuse happened. The point is that prosecution of domestic violence is generally difficult in codified legal systems on the European continent because (a) criminal codes are not well able to handle course-of-conduct offenses in which the harm is cumulative, and the single acts for which there may be evidence often draw a low penalty; (b) the evidentiary basis is often weak or is considered not strong enough to stand up to critical questioning; (c) procedural law often requires the testimony of the victim in court, and many victims decide not to make a statement; and (d) there is little confidence that sanctions will have a salutary effect[49].

In criminal procedure of the Republic of Serbia, according to Criminal Procedure Code[50], usually both participants in the proceedings can propose that the judge

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[46] M.M. Dempsey, *Prosecuting Domestic Violance,* Oxford University Press, New York, 2009, p. 208.

[47] C. Bishop, V. Bettinson, *Evidencing domestic violence, including behaviour that falls under the new offence of 'controlling or coercive behaviour'*, in The International Journal of Evidence and Proof, Sage Publications UK, p. 9.

[48] D.E. Stark, A. Flitcraft, *cited,* p. 204.

[49] S.E. Buzawa, G.C. Buzawa, D.E. Stark, *Responding to Domestic Violance*, Sage Publications, London, 2017, p. 95.

[50] *The Criminal Procedure Code of the Republic of Serbia: "Official Gazette of RS" no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021, 62/2021.*

examine the victim. From that point there is two different obstacles from which depends final verdict. First, victim could refuse to testify in court. In practice, this is not so rare situation. In criminal procedure in the Republic of Serbia, police, public prosecutor and the judge can examine victim. This means that in every phase of criminal proceeding state authority (police, prosecutor and judge) has jurisdiction to question victim. Beside negative aspect of the secondary victimization that victim experiences, there is the significance of the length of time between the event and the making of the statement, and thus making of the statement in another phase of procedure. In the case of a traumatized victim of perpetuate coercion and control, the time interval is significant factor that may cause victim to withdraw her testimony or to change her statement.

This is especially with threats, as an extremely effective form of control. The abuser is often able to threaten the victim with a look, tone of voice, or gesture that evokes fear and compliance. Threats can be signaled by the abuser in presence of family members, advocates, or even the police[51]. In this way, the perpetrator continues to control the victim even during the testimony, which may also affect the validity of the statement.

Therefore, if victim's statement is only a prove in the case, public prosecutor could only dismiss charges, or the case could end up with acquittal. The reason for this is in situation where perpetrator doesn't confess the accusation. To overcome this, the prosecution may alternatively submit another evidence.

4. What is the alternative to statement of the victims?

As previously noted, there is no doubt that every violent act is a traumatic experience for the victims. Also, repeated testimony of the victim in front of the police, prosecutor and the judge, undoubtable could deteriorate impact of trauma upon witness credibility to testify. There are authors who suggests that as the witness can suffer a traumatic response before and during a court appearance, it may in fact be less traumatic for them to recount evidence and be questioned about their story prior to trial[52]. It considered that this would reduce the prospect of details coming out at trial for the first time, which, given the ways in which trauma impacts upon memory and recall, seems likely, and with the witness ill-prepared for how to respond to cross-examination[53]. Regardless, questioning the witness before trial can't prevent the witness from requested dismissal or to recanted her prior statements.

Specifically, this is the often case in the terms of Criminal Procedure Code in the Republic of Serbia, where for example, the spouse of perpetrator, who is most often a victim of domestic violence can use her right not to testify according to the privilege which give her the legislative rule. Therefore, the public prosecutor has a difficult task, if victim withdraw her support for prosecution, or refuses to testify in the trial, there must be other evidence to prove that psychological abuse had occurred. Some authors advocate that it is possible for public prosecutor to enable a statement made by a

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[51] J.P. Jenkis, P.B. Davidson, *Stopping Domestic Violance*, *How A Community Can Prevent Spousal Abuse*, Springer Science Business Media, New York, 2001, p. 54.

[52] C. Bishop, V. Bettinson, *Evidencing domestic violence, including behaviour that falls under the new offence of 'controlling or coercive behaviour',* in The International Journal of Evidence and Proof, Sage Publications UK, pp. 1-27.

[53] *Ibidem.*

witness who is so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded[54].

Additionally, this solution could overcome the obstacle where witness appears at trial and took the witness stand, but her statement is different from previous. In addition, some authors explain this through consequences of psychological abuse that victims typically remember that the traumatic event happened but describe blanks or periods during which their memory for the details of the event is vague and unclear[55]. These factors make a traumatized witness the antithesis of a 'good witness', who has been described as a person who gives a clear and sufficiently detailed account of events which they repeat in court and under cross-examination[56]. The general literature suggests that attacks on the victim's credibility are a key part of defense strategies, so it should not be overlooked that the defense usually invokes the effects of the victim's trauma in order to avoid testifying or to deny the validity of the statement[57].

Finding other means to protect the victim as a witness in a criminal proceeding, such as using a written statement, some prosecutors rightly disapprove. Prosecutors would not seek to rely on the complainant's written statement because of the difficulties of proving that the reason she refused to testify were fear, and the defendant's due process rights. Compulsion was almost always rejected because pragmatically prosecutors felt the chances of a conviction were low given that a hostile witness was very likely to be a 'worthless' witness[58].

This explains how a victim may be able to describe an event with little evidence of distress or emotion and may have trouble explaining how she felt at the time of the attack; the emotions may be stored separately from the details, with no thoughts or cognitions attached to them[59]. In building a case, victim's subjective notion of their emotional distress is not a sufficient indicator of psychological abuse. The victim's statement before court does not suffice as evidence of emotional trauma.

Statement of traumatized victim can be tricky and unstable, specially where there is testimony given repeated. Procedure rules allow the number of victim's testimony to be limited in order to protect witnesses in the proceedings. Also, the European Court of Human Rights, in order to protect particularly sensitive categories of a witnesses, such as women and children as victims of domestic violence or rape, consider that it is enough to question the victim once, and that the previously given testimony can also be used at the trial[60]. Such proceedings are often conceived of as an ordeal by the victim, in particular when the latter is unwillingly confronted with the defendant. In the assessment of the question whether or not in such proceedings an accused received a fair trial, account must be taken of the right to respect for the victim's private life[61].

The rule that a witness should not be re-examined applies in terms of the consenting defense. But, in order to prove the perpetrator's innocence, the defense usually requests that the victims be called for questioning in the trial.

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[54] *Ibidem.*

[55] *Ibidem.*

[56] *Ibidem.*

[57] M. Burton, *Legal Responses to Domestic Violence*, by Routlegde, Oxon, 2008, p. 106.

[58] M. M. Dempsey, *Prosecuting Domestic Violance,* Oxford University Press, New York, 2009, p. 208.

[59] C. Bishop, V. Bettinson, *cited.*

[60] *Case of Baegan v. The Netherlands*, Application No 16696/90, Judgement date 27.10.1995.

[61] *Case of Finkensieper v. The Netherlands*, Application No 19525/92, Judgement date 17.05.1995.

In order to prove allegation, there is also a rule which obtain possibility to use another evidence in the trial. It is known as rules on the admission of hearsay evidence and it can be conducted under the Criminal Justice Act 2003 in UK. Hearsay evidence can be admitted where the victim is unable to attend for physical or psychological reasons, where there is a previous inconsistent statement and where the incident has been reported to a third party. As with the earlier hearsay evidence provisions, decisions as to whether the court is likely to admit evidence under these provisions will remain a matter of discretion for the prosecutor[62].

Therefore, if there is no other evidence in the case and the prosecutor has not proved beyond a reasonable doubt that the perpetrator committed a crime, the prosecutors had to drop the charges against alleged abusers or the trial could end in an acquittal.

Although this doesn't mean abusing behavior didn't happen, as a consequence criminal procedure didn't give support and didn't protect the victim. Consequently, another evidence that could support victim's subjective notion that the psychological abuse has occurred, or otherwise in the absence of her statement, it remains for the expert opinion of a neuropsychiatrist and psychologist to give opinion about emotional and mental health of victims. Victims of psychological abuse often experience depression, post-traumatic stress disorder, suicidal thoughts, low self-esteem and difficulty trusting others. Therefore, these are one of the many consequences as stated before that must be considered as evidence that victims suffer emotional abuse. Medical report about body injury is solid evidence when there is a physical act of violence. In case of emotional trauma, this must be proven with medical expertise about victim's mental, emotional and psychological condition. Despite the possibility that victim could withdraw her support for prosecution or not to recall her previous statement in order to continue with prosecution, without victim's statement, the expert opinion is sufficient evidence to prove allegations that abused has occurred.

Psychologists have traced the profile observed among battered women to the violent nature of the relationship. In addition to eliciting some of the more dramatic behavioral problems identified in the medical records (such as addiction and suicidality), the trauma of repeated assault can cause severe psychological distress or dysfunction, including major depression; sexual and dissociative disorders; cognitive changes in how one views oneself, the world, and the occurrence of violence; and relational disturbances[63]. This prove that in the victimless trial, or where victims take a stand as a witness, but her mental state is disrupted due to constant repeated domestic violence, there is a strong evidence which contains the picture of the consequences that victim experiences[64].

Thus, the opinion that the traumatization model has been applied mainly to cases, such as stranger rape or war trauma, in which the traumatic episode and the posttraumatic reaction can be clearly demarcated. This is often impossible in domestic violence situations, in which intimidation and control over material resources and social supports may be ongoing even with court orders in place. As a result, in traumatic fears, feelings, and behaviors appropriate to current entrapment can easily be mistaken for posttraumatic paranoia, depression, or powerlessness[65]. Therefore, expertise of

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[62] M. Burton, *cited,* p. 101.
[63] E. Stark, A. Flitcraft, *cited*, p. 168.
[64] *Ibidem.*
[65] *Ibidem.*

victim's conditions can be done before the critical event, when victim self-initiated to seek help, which is rare, or more often after the critical event, to obtain expert opinion as evidence for the purposes of the procedure. The expertise can be performed on the basis of an examination or compulsory medical treatment.

Authors suggest that expert opinion introduce in accordance with the rules of science and profession can to a certain extent support the victim's testimony about her emotional distress or even replace witness statement. This is very important. Regardless of unsolid statement or unless the defendant pleads guilty, there is strong supporting evidence to prove that domestic violence happened.

Unlike the other suggested solution which relays on victims repeated testimony, or hearsay evidence of the third parties as etc. family member, friend or neighbor, expert opinion has its own privileges. First, it must be given in accordance with the rules of neuropsychiatry and psychology science. Therefore, it is difficult for the defense to challenge its validity in the trial. Second, when it comes to negative consequences of the secondary victimization their effect is less severe when victims are questioned by the doctor and in circumstances outside the court room. For example, psychological stress by criminal proceedings is another crucial variable of the procedure.

The testimony situation, the confrontation with the perpetrator and the presence of spectators are often cited as being especially stressful[66]. Therefore, the statement in front of a specialist in psychology is undoubtedly less stressful. Third, if a victim withdraws her support for the prosecution, or does not recall her previous statement, the expert opinion about victim's condition as a witness and her liability to testify, can avail prosecutor to continue the trial and not to dismiss the prosecution. The advantage of expert opinion about the victim's traumatic condition is undoubtedly strong evidence in the proceedings, which can significantly help in proving that psychological violence occurred. Especially in order to prove the harmful consequences of psychological abuse.

IV. Conclusion

Domestic violence is a serious and often hidden social problem which causes systematic psychological and physical trauma with severe consequences on victims emotional, mental and physical health. There is no doubt that economic or social status, skin color or religion, gender or sexual diversity do not exclude domestic violence. Anyone can be a victim of psychological abuse. The offender is a person whom the victim should be able to trust. In that surrounding, coercion and controlling behavior appear to be an extremely effective form of violence. Thus, this can be a problem when reporting abuser, because the victims often feel frightened, or even responsible, guilty and ashamed to report abuse. This is especially the case of psychological violence that has been going on for many years. Some victims feel or actually are blamed by the perpetrator or defense attorney for being partially or fully responsible for the criminal offense. When it comes to court and criminal procedure, often it is not easy to prove public prosecution, as there is an issue with what type of evidence can be used in criminal proceedings to determine that the victim suffered psychological abuse.

Consequences for the victim are such that he/she is often unable to be the witness in the proceedings. Still, when victims decide to take a stand and give a testimony there

[66] U. Orth, *cited*, p. 4.

is no doubt that her statement is crucial evidence. Regardless, victim's subjective notion of her emotional distress is not enough to prove that violence has occurred. There must be some other evidence which will support the victim's statement or at least to replace the victim's testimony in situation when she or him withdraw their support for prosecution or refuse to testify. Accordingly, in order to allow the prosecutor not to dismiss the charges, public prosecution will most often propose questioning the victim. Victim's subjective notion of their emotional distress is not a sufficient indicator of domestic violence. Therefore, victim's statement before court does not suffice as evidence of emotional abuse. Victims of psychological abuse often experience depression, post-traumatic stress disorder, suicidal thoughts, low self-esteem and difficulty trusting others.

Therefore, expertise of victim's conditions can be done before the critical event, when victim self-initiated to seek help, which is rare, or more often after the critical event, to obtain expert opinion as evidence for the purposes of the procedure. It is of great importance to all participants in criminal procedure to help the victim in a way that at the appropriate moment acknowledges such behavior as psychological violence. Moreover, in order to obtain strong and solid evidence, which will undoubtedly confirm that abuse has happened. Additionally, it will lead to conviction of the abuser and as a consequence to help protect the victim, and to stop such behavior in the future.

References

1. Bishop, C., Bettinson, V., *Evidencing domestic violence, including behaviour that falls under the new offence of 'controlling or coercive behaviour',* in The International Journal of Evidence and Proof, Sage Publications UK.

2. Bishop, P.B., *The Limitations of the Legal Responce to Domestic Violence in England and Wales: Acritical Analysis*, submitted to the University of Exeter, as a thesis for the degree of Doctor of Philosophy in Law, 2013.

3. Burton, M., *Legal Responses to Domestic Violence*, by Routlegde, Oxon, 2008.

4. Buzawa, S.E., Buzawa, G.C., Stark, D.E., *Responding to Domestic Violance*, Sage Publications, London, 2017.

5. Cimburovic, L., Stevanovic, Z., Saljic, E., Igracki, J., *Victimology,* Belgrade, 2013.

6. Council of Europe Convention on preventing and combating violence against women and domestic violence, https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=210 (accessed on 05.10.2022).

7. Dempsey, M. M., *Prosecuting Domestic Violance,* Oxford University Press, New York, 2009.

8. *Explanatory Report to Council of Europe Convention on preventing and combating violence against women and domestic violence*, Council of Europe, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a (accessed on 04.12.2022).

9. Guide on Article 8 of the European Convention on Human Rights, *Right to respect for private and family life,* home and correspondence, 2022, https://www.echr.coe.int/ documents/guide_art_8_eng.pdf (accessed on 05.10.2022).

10. Igracki, J., *The police as a subject in the prevention of child abuse*, in Journal of the Institute of Criminological and Sociological Research, Belgrade, 1/2012;

11. Information for Local Areas on the change to the Definition of Domestic Violence and Abuse, Home Office, 2013, https://assets.publishing.service.gov.uk/government/

uploads/system/uploads/attachment_data/file/142701/guide-on-definition-of-dv.pdf (accessed 05.10.2022).

12. Jackson, A.N., *Encyclopedia of Domestic Violence*, Routledge, Oxon, 2007.

13. Jenkis, J.P., Davidson, P.B., *Stopping Domestic Violance*, *How A Community Can Prevent Spousal Abuse*, Springer Science Business Media, New York, 2001.

14. McQuigg, J.A.R., *The Instanbul Convention, Domestic Violance and Human Rights*, by Routledge, Oxon, 2017.

15. Minimum standards on the rights, support and protection of victims of crime 2012, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029 (accessed 01.10.2022).

16. Orth, U., *Secondary Victimization of Crime Victims by Criminal Proceedings, in:* Social Justice Research, Vol. 15, No. 4, 2002.

17. OSCE –Led Aurvey on Violence against Women, *Well-Being and Safety of Women,* Serbia Results Report, Belgrade, OSCE 2019.

18. Stark, E., Flitcraft, A., *Woman at Risk – Domestic Violance and Women s Health*, by Sage Publications, London, 1996.

19. Stevanovic, Z., Igracki, J., *Child trafficking as a form of organized crime, in:* Combating organized crime, legal framework, international standards and procedures*,* Criminal Police Academy & Hans Seidel Foundation, Scientific expert meeting with international participation*,* Tara, 2013.

20. The Bureau of Justice Statistics of the U.S. Department of Justice, *Criminal Victimization 2021,* September 2022, https://bjs.ojp.gov/content/pub/pdf/cv21.pdf (accessed 04.12.2022).

21. *Women as Victims of partner Violence*, Justice for victims of violence crimes Part IV, European Union Agency for Fundmental Rights, 2019.

Varia

Cybercrime and Cyber Security and the Legislative Complience in Transitional Countries Compared to EU and China

Elena Tilovska-Kechedji*

Abstract

With the expend of internet, online networks and technology in all spheres of life and the dependence on it, so did cybercrime begun to rise. Countries, institutions, companies are all fearing this new threat. Therefore the actors, policy makers and policies, compliance regulations that are created need to consider all the threats from cyber crime and take actions in regards to cybersecurity. Therefore, in this research we will consider what cyber security measures and legislative compliance's are taken by transitional countries in comparison to EU and China and whether they are enough or there are needed more changes in future.

Keywords: *cybercrime, cyber security, transitional countries, EU and China*

I. Introduction

Today, there are 4.66 billion people or 59.9 % internet users in the world[1] and in 2011, there were around 2.3 billion people in the world, who had access to the internet, so the numbers have increased more than double. In this world of connectivity and increase in the use of technology we have to acknowledge that the crime will not be conducted in the old fashion way, but it will be digitalized as well[2]. The high connectivity is very important for the global development, but it is also important to be protected while conducting the online activities and sharing confidential data which means that there should be increase in the cyber protection. According to the ITU Connect, it is estimated that there will be 70 % Internet breaches by 2023, especially theft of personal data and specific infrastructure breaches. Also, there is a huge gap between countries in terms of implementation of legislation, adoption of national cybersecurity strategies (NCS), and creation of computer emergency response

* Associate professor, Vice Dean for International Cooperation and Science, Faculty of Law, University "St. Kliment Ohridski" – Bitola. Contact: elena-tilovska-kechegi@hotmail.com.

[1] "Global digital population as of January 2021", https://www.statista.com/statistics/617136/digital-population-worldwide/.

[2] Comprehensive Study on Cybercrime. United Nations Office on Drugs and Crime, Vienna 2013, retrieved from: https://www.unodc.org/documents/organized-crime/UNODC_CCPCJEG.4_2013/CYBERCRIME_STUDY_210213.pdf.

teams (CERTs), the same applies to the awareness, capacity and capabilities of governments and companies[3].

In order to begin in depth with discussing the cybercrime and cybersecurity in different countries first we should clarify the terms.

"Cyberspace is a global domain within the information environment consisting of the interdependent network of information systems infrastructures including the Internet, telecommunications networks, computer systems, and embedded processors and controllers"[4]. Furthermore, "cybercrime is an 'umbrella' term for lots of different types of crimes which either take place online or where technology is a means and/or target for the attack. It is one of the fastest growing criminal activities across the world and can affect both individuals and businesses"[5].

This is a term that describes criminal activities in which computers or computer networks are a tool, a target, or a place of criminal activity. It is an advanced mean used in traditional crimes. For example, the cybercrime can stop railways, it may misguide planes, it can cause military data to fall in the wrong hands, it can make any system to collapse[6].

It is also an issue that does not stop at the border, it can go over it without being detected and it can be classified in three definitions:

- crimes specific to the internet – attacks against information systems, for example: creating fake bank websites to use passwords to access bank accounts;
- online fraud and forgery – on line fraud, for example: identity theft, phishing, spam and using malicious code;
- illegal online content – *like* child sexual abuse material, racial hatred, incitement to terrorist acts and glorification of violence, terrorism, racism and xenophobia, trafficking in human beings, drugs trafficking[7].

Furthermore, Cyber security is the preventive application of technologies, processes, legislation and controls to protect the systems, the networks, programs, devices and data from cyber attacks. It aims to reduce the risk of this kind of attacks and threats and any kind of unauthorized use[8]. Cyber security together with the legal framework, is crucial to attract the economic actors and ensure them the cyber environment is safe and protected. Because, each business, institutional, government and private actor is working on a communication device, professionally or privately, and needs security and protection while working. Security should present protection and defense mechanisms against any threat, as well as protect privacy of the individual,

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[3] Global Cybersecurity Index 2018, ITU Publications, Retrieved from: https://www.itu.int/dms_pub/itu-d/opb/str/D-STR-GCI.01-2018-PDF-E.pdf.

[4] Cyberspace. Information Technology laboratory. Computer Security Resource Center. Retrieved from: https://csrc.nist.gov/glossary/term/cyberspace.

[5] "What is Cybercrime". Retrieved from: https://www.bedfordshire.police.uk/information-and-services/crime/cyber-crime-and-online-safety/what-is-cyber-crime#1e3c296b.

[6] S. Das, T. Nayak, *Impact of cyber crime: Issues and challengess*, International Journal of Engineering Sciences & Emerging Technologies, October 2013, Volume 6, Issue 2, pp: 142-153. IJESET. Retrieved from: https://www.ijeset.com/media/0002/2N12-IJESET0602134A-v6-iss2-142-153.pdf.

[7] Cybercrime. European Commission. Retrieved from: https://home-affairs.ec.europa.eu/cybercrime_en.

[8] Cyber security definition. IT governance. Retrieved from: https://www.itgovernance.co.uk/what-is-cybersecurity.

the firm or the government and the fundamental human rights. But developing security models and presenting solutions is not always enough, also technical security measures need to be implemented, as well as legal measures to prevent and stop criminals. And these steps should be presented not only nationally but globally[9]. It has to be acknowledged that Cybercrime and cyber-security have expended as international dimensions. And the threats as political conflicts, nuclear wars have lost their spotlight in the international relations arena and in the international politics arena, now the spotlight is given to the nontraditional security issues like cybercrime and cyber security[10].

II. International Legislation

The first ever international treaty to cover the cybercrime topic was the Budapest convention or the Convention of Cybercrime introduced in 2001. The treaty deals with crimes committed on the Internet and computer networks, computer fraud, child pornography, violations of network security and so on. This Treaty was introduced due to the fact that cybercrime has evolved into a threat to human rights, democracy, the rule of law as well as to international peace and stability, and it has a major impact, as well as a threat to social and economic life. To the Convention was added an additional Protocol on Xenophobia and Racism and Additional Protocol which is in preparation. Furthermore, it was created the Cybercrime Convention Committee (TCY) consisting of signatories of the Convention, who's job is to prepare legal instruments, and encourage cooperation among the members. Furthermore, there is another body, the Cybercrime Programme Office of the Council of Europe (CPROC) that helps in assisting the countries to strengthen their capacities in order to conduct proper investigation, prosecution and arbitration of cybercrime[11].

But, despite all of the efforts, International Law is still struggling to address the issue of 'cyber war'. First of all, there is the question whether International law applies whatsoever to cyberspace and in what conditions. The Tallinn Manual process from 2009 gives some instructions, and has acknowledged that the general principles of international law do apply to cyberspace, including "jus ad bellum" (the right to war) and "jus in bello" (the rules and laws governing the conduct of war). Furthermore, the Tallinn manual defines the state responsibility in cyber operations, what actions should be taken during cyber hostilities, and so on but still the rules remain open to interpretation and are open to the evolution of technology and cyber capabilities[12]. Which means that everything is general and can be interpret by different parties differently which presents a big obstacle in the application and functioning of International law.

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[9] S. Ghernaouti-Hélie, *Measures on cybersecurity*, S. Schjolberg, S. Ghernaouti-Helie, *A Global Treaty on Cybersecurity and Cybercrime* 2011, Retrieved from: https://www.cybercrimelaw.net/documents/A_Global_Treaty_on_Cybersecurity_and_Cybercrime,_Second_edition_2011.pdf.

[10] N. Kshetri, *Cybercrime and Cyber-security Issues Associated with China: Some Economic and Institutional Considerations*, Electronic Commerce Research 13 (1)/ 2013, pp. 41-69 Retrieved from: https://libres.uncg.edu/ir/uncg/f/N_Kshetri_Cybercrime_2013.pdf.

[11] Action against cybercrime. Retrieved from: https://www.coe.int/en/web/cybercrime/home.

[12] European Parliament, *Cyber defence in the EU Preparing for cyber warfare?* Briefing 2014. Retrieved from: https://www.europarl.europa.eu/EPRS/EPRS-Briefing-542143-Cyber-defence-in-the-EU-FINAL.pdf.

III. Transitional Countries (Albania and North Macedonia)

III.A. Albania

Albania is a transitional country with a transitional economy. So how does it handle the new challenges that arise from technology and the internet. As we know Albania is trying to become an EU member so not only in cybercrime but in other fields as well it is trying to incorporate EU laws into its own legislation. Its politics, strategies and documents are incorporated to fight the new problems that arise from cyberspace which is in its own sense a new warfare. It has presented documents such as: the Sectorial Strategy of Society of Information; The Document of politics for electronic communication in the Republic of Albania; the Document of politics for development of telecommunication in the Republic of Albania; The decisions of the Council of Ministers for ratification of documents of politics and strategies etc. It also introduced a law on cybercrime and in 2002 has ratified the Convention for cybercrime, while in 2004 it also ratified the additional protocol of this convention. Also, it has introduced provisions as part of the Albanian Penal Code, which are in coherence with the Convention[13]. Furthermore, in 2009, it established the Computer Crime Special Section in the Department against Organized Crime and Serious Crime, Directorate of Financial Crime[14].

Moreover, the Albanian law on cybercrime is divided into two parts. The first part consists of all illegal actions carried out in the sectors of communication technology and computer system. It covers crimes like unauthorized interference, illegal interception, unlawful and unauthorized interference in computer data; illegal and unauthorized access to computer systems. The legislation is intended to protect the integrity of the system, the security, and the privacy of the data contained in the computer systems. The second part includes all the other cybercrime types which are not covered in the first part. So, cybercrime, is considered as the use of technologies to commit crimes in new fashioned ways[15].

Although, Albania has already implemented many laws and strategies it still needs to work hard to develop policies, standards, procedures in order to guarantee cyber security, to offer protection from cyber threats and respect the principles of fundamental rights and democratic freedoms. And all of them must be adjusted to the needs of the country. The best strategy could be: 1. The completion of legal framework in the field; 2. Raising awareness about cyber security; 3. Increasing the knowledge, skills and capacities of expertise on the field of cyber security; 4. The establishment of specialized units; 5. Identification and protection of Critical Information Infrastructure (CIIP); 6. Creation and implementation of basic requirements of cyber security; 7. Increasing investments for growing the security in state networks/systems[16]. Therefore,

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[13] I. Shtupi, *The Regulation of Cyber Crime in Albania in the Framework of Harmonization of Internal Legislation with the European Legislation*, Academic Journal of Interdisciplinary Studies, MCSER Publishing, Rome-Italy, 2015. Retrieved from: https://www.researchgate.net/publication/297897401.

[14] B. Abdurrahmani, *Cybercrime in Albania: A Discourse on Law, Policy and Practice*, European Academic Research Vol. II, Issue 1/ April 2014. Retrieved from: https://www.euacademic.org/ Upload Article/424.pdf.

[15] *Idem.*

[16] A. Shkembi, I. Shtupi, A. Qafa, *The Regulation of Cyber Crime in Albania in the Framework of Harmonization of Internal Legislation with the European Legislation*, Academic Journal of Interdisciplinary

if incorporated, these strategies, there will be significant improvement in the field, as well as securing the system and offering stability and prosperity in the cyber sphere.

III.B. North Macedonia

North Macedonia is also a country in transition with a very week transitional economy. But in the cyber sphere it has accomplished a lot of progress. North Macedonia in 2017 had 73.6% homes using internet, as well as 91.2% use by companies. Therefore, it had to develop a National Cyber Security Strategy in accordance with that of the European Union. But there are obstacles in the availability of ICT, especially in relation to the Critical Information Infrastructure (CII) and other Important Information Systems (IIS). Furthermore, the growing use of social media by society and the use of face recognition algorithms, carry a risk for personal data theft and digital identity theft of individuals, theft of legal entities, companies and etc.. Also, the Macedonian society has a low level of awareness of this kind of threats, which can be detected and prevented by different defense mechanisms created by certain cyber security strategies. In order to be successful in applying these strategies there is a need of professionals, educational programs, as well as application of policies[17].

Furthermore the first legislation adopted by North Macedonia was in 2014 and were adopted the Amendments to the Law on Electronic Communications, in 2016 was created the National Computer Incident Response Team MKD-CIRT, in 2018 was adopted the Cyber Security Capacity Assessment, in March 2018 was established the National Cyber Security Working Group and in July the same year was presented the National Cyber Security Strategy for the period of 2018-2022 and at the end of 2018 was adopted the National Cyber Security Action Plan for the period of 2018-2022. The next year were established the National ICT and Cyber Security Council and in 2020 was presented a Draft Law on Security of Network and Information Systems[18]. Therefore there are a lot of bodies, strategies and policies adopted but are they enough or are they implemented properly to protect and safeguard the cyber sphere and all its users.

IV. The European Union

In recent years, in the EU cyber attacks have become a serious concern, due to the threat they can pose to national security, to foreign policy, but also to the economy. Cyberspace, is considered a fifth domain of warfare. Therefore, member states are developing cyber defence and offence capabilities to prepare for any kind of 'cyber war'. Cyber security, has become an important policy issue in many states. The economic costs of preventing cybercrime and cyber espionage are estimated to be between US$300 billion and US$1 trillion, which range from technical concerns to ensuring the

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Studies MCSER Publishing, Rome-Italy, 2016. Retrieved from: https://pdfs.semanticscholar. org/cd34/ 8906b7b5170601c731763dde70a27ed159f4.pdf.

[17] Republic of Macedonia, Republic of Macedonia National Cyber Security Strategy 2018-2022. Retrieved from: https://www.itu.int/en/ITU-D/Cybersecurity/Documents/National_Strategies_ Repository/ NS%20Cyber%20Security%202018-2022_ENG.pdf.

[18] ITU Regional Cybersecurity Forum for Europe and CIS.2020. Retrieved from: https:// wwwqa.itu.int/en/ITU-D/Regional-Presence/Europe/Documents/Events/2020/CSF/S2%20Veljanovska %20-%20Kovachevska.pdf.

security of governments or critical infrastructure and industries, to protection of citizens. The cyber space is a concern not only in the political sphere, but also in the diplomatic, economic and military spheres and at the national and international levels. Cyber attacks have become both a concern for national security and foreign policy. Major cyber incidents have happened in 2007, like the attacks against the Estonian government which led to paralysis of public services for couple of weeks. In 2010, the 'Stuxnet' computer worm, considered one of the most sophisticated cyber weapons to date damaged uranium enrichment centrifuges in Iran nuclear factory[19].

The EU is working hard in regard to this threat and it is much aware of it, opposite of the transitional countries. So far, it has established the Cyber security Act that strengthens the EU Agency for cyber security (ENISA) and establishes a cyber security certification framework. ENISA has a key role in setting up and maintaining the European cyber security certification framework, as well as to increase operational cooperation at EU level, helping EU Member States who wish to request it to handle their cyber security incidents. Companies doing business in the EU will benefit from having to certify their ICT products, processes and services and will be recognized across the European Union[20].

The Commission and the European External Action Service launched in 2013 the EU Cybersecurity Strategy which outlines the principles that will guide the EU action in this domain among which are the resilience, the reduction of cybercrime, the cyber defense policy and so on[21].

The EU also has adopted a set of legislative proposals on network and information security. The Commission in 2015 has placed cybersecurity at the heart of its political priorities and the fight against it[22]. For the period 2014-2016, the EU has invested €160 million in research and innovation in cybersecurity and it will further invest up to €450 million of H2020 funding for the period 2017-2020[23]. In December 2020, the European Commission and the European External Action Service (EEAS) presented a new EU cybersecurity strategy with aim to strengthen its protection from cyber threats. In March 2021, the Council adopted a cyber security strategy[24].

To conclude, the EU response to the problem is still with many splinters, but there is improvement. The fragmentation can be seen in the operational capabilities but also in the understanding of this domain[25]. Thus, we can see that problems do exist in the EU as well, not only in the transitional countries.

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[19] European Parliament, *Cyber defence in the EU Preparing for cyber warfare?* Briefing 2014. Retrieved from: https://www.europarl.europa.eu/EPRS/EPRS-Briefing-542143-Cyber-defence-in-the-EU-FINAL.pdf.

[20] European Commission, *Shaping Europe's digital future.* Retrieved from: https://digital-strategy.ec.europa.eu/en/policies/cybersecurity-act.

[21] European Commission, *EU cybersecurity initiatives working towards a more secure online environment,* 2017. Retrieved from: https://ec.europa.eu/information_society/newsroom/ image/ document/2017-3/factsheet_cybersecurity_update_january_2017_41543.pdf.

[22] *Ibidem.*

[23] *Ibidem.*

[24] Cybersecurity: how the EU tackles cyber threats, European Council. Retrieved from: https://www.consilium.europa.eu/en/policies/cybersecurity/.

[25] N. Van der Meulen, E.A. Jo, S. Soesanto, Directorate General for Internal Policies Policy Department C: Citizens' Rights and Constitutional Affairs, *Cybersecurity in the European Union and Beyond: Exploring the Threats and Policy Responses*, European Parliament, 2015. Retrieved from: https://www.europarl.europa.eu/RegData/etudes/STUD/2015/536470/IPOL_STU(2015)536470_EN.pdf.

V. China

In 2011 in China, 217 million Chinese became victims of virus attacks, 121 million people had their online accounts hacked, and 8 % were victims to some kind of online scam. Gu Jian of the Chinese Ministry of Public Security confirmed that many government websites experience cyber attacks. Also, in 2009 the Information Office of the State Council, said that over one million IP addresses were controlled and 42,000 websites were hacked[26].

Before its ratification of the Cyber security Law, China had already introduced some laws, rules and regulations passed and implemented covering cyber issues, such as Administrative Measures for Prevention and Treatment of Computer Viruses and Administrative Measures for Hierarchical Protection of Information Security. But it was obvious that they were not enough, so the Cybersecurity Law, indicates that China is focusing on empowering cyber security and protecting its government institutions, businesses as well as its population. The law was adopted by the National People's Congress (NPC) in 2016 after a long year of legislative proceedings and came into effect in 2017[27]. But as it is obvious from the numbers presented above, the cyber domain in China is also very fragile like in most of the countries in the world. And although it does a lot to improve its cyber security and prevent cybercrime with the laws and regulations adopted, it is still fragmented and it needs to improve either by specifying the weak points or investing more in education, experts and tools specifically in this domain. Also, the cooperation on the global level is very important.

In the Global Security Index of 2018 it can be seen that North Macedonia and China have a high national level of commitment in cybersecurity, where as Albania has a medium national level of commitment[28]. So, this commitment should continue on all levels national, international and global.

VI. Conclusion

It can be concluded that the cyber sphere is incorporated in all fields and aspect of life. It is very difficult to bypass its influence and implications on life. We saw that even though countries have implemented different kinds of legislation and even though International law is applicable to this domain still the threat of cybercrime is strong and part of everyday life. The problem should be discussed on all levels of governance and globally since it is a real global problem. With joint forces countries will be able to create a global network or a system that will safeguard and improve the cybersecurity domain.

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[26] N. Kshetri, *Cybercrime and Cyber-security Issues Associated with China: Some Economic and Institutional Considerations*, Electronic Commerce Research 13 (1)/2013, pp. 41-69. Retrieved from: https://libres.uncg.edu/ir/uncg/f/N_Kshetri_Cybercrime_2013.pdf.

[27] Overwiew of China's cybersecurity law. KPMG 2017. Retrieved from: https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2017/02/overview-of-cybersecurity-law.pdf.

[28] Global Cybersecurity Index 2018. ITU Publications. Retrieved from: https://www.itu.int/dms_pub/itu-d/opb/str/D-STR-GCI.01-2018-PDF-E.pdf.

References

1. Abdurrahmani, B., *Cybercrime in Albania: A Discourse on Law, Policy and Practice*, European Academic Research Vol. II, Issue 1/ April 2014. Retrieved from: https://www.euacademic.org/UploadArticle/424.pdf.

2. Computer Security Resource Center, *Cyberspace. Information Technology Laboratory*. Retrieved from: https://csrc.nist.gov/glossary/term/cyberspace.

3. Das, S., Nayak, T., *Impact of cyber crime: Issues and challengess*, International Journal of Engineering Sciences & Emerging Technologies, October 2013, Volume 6, Issue 2, pp: 142-153. IJESET. Retrieved from: https://www.ijeset.com/media/0002/2N12-IJESET0602134A-v6-iss2-142-153.pdf.

4. European Commission, *Cybercrime*. Retrieved from: https://home-affairs.ec.europa.eu/cybercrime_en.

5. European Commission, *EU cybersecurity initiatives working towards a more secure online environment,* 2017. Retrieved from: https://ec.europa.eu/information_society/newsroom/image/document/2017-3/factsheet_cybersecurity_update_january_2017_41543.pdf.

6. European Commission, *Shaping Europe's digital future.* Retrieved from: https://digital-strategy.ec.europa.eu/en/policies/cybersecurity-act.

7. European Council, *Cybersecurity: how the EU tackles cyber threats*. Retrieved from: https://www.consilium.europa.eu/en/policies/cybersecurity/.

8. European Parliament, *Cyber defence in the EU Preparing for cyber warfare?* Briefing 2014. Retrieved from: https://www.europarl.europa.eu/EPRS/EPRS-Briefing-542143-Cyber-defence-in-the-EU-FINAL.pdf.

9. European Parliament, *Cyber defence in the EU Preparing for cyber warfare?* Briefing 2014. Retrieved from: https://www.europarl.europa.eu/EPRS/EPRS-Briefing-542143-Cyber-defence-in-the-EU-FINAL.pdf.

10. Ghernaouti-Hélie, S., *Measures on cybersecurity*, in S. Schjolberg, S. Ghernaouti-Helie, *A Global Treaty on Cybersecurity and Cybercrime* 2011, Retrieved from: https://www.cybercrimelaw.net/documents/A_Global_Treaty_on_Cybersecurity_and_Cybercrime,_Second_edition_2011.pdf.

11. Global Cybersecurity Index 2018, ITU Publications, Retrieved from: https://www.itu.int/dms_pub/itu-d/opb/str/D-STR-GCI.01-2018-PDF-E.pdf.

12. https://www.bedfordshire.police.uk/information-and-services/crime/cyber-crime-and-online-safety/what-is-cyber-crime#1e3c296b.

13. https://www.coe.int/en/web/cybercrime/home.

14. https://www.itgovernance.co.uk/what-is-cybersecurity.

15. https://www.statista.com/statistics/617136/digital-population-worldwide/.

16. ITU Regional Cybersecurity Forum for Europe and CIS.2020. Retrieved from: https://wwwqa.itu.int/en/ITU-D/Regional-Presence/Europe/Documents/Events/2020/CSF/ S2%20Veljanovska%20-%20Kovachevska.pdf.

17. Kshetri, N., *Cybercrime and Cyber-security Issues Associated with China: Some Economic and Institutional Considerations*, Electronic Commerce Research 13 (1)/ 2013, pp. 41-69 Retrieved from: https://libres.uncg.edu/ ir/uncg/f/ N_Kshetri_ Cybercrime_2013.pdf.

18. Kshetri, N., *Cybercrime and Cyber-security Issues Associated with China: Some Economic and Institutional Considerations*, Electronic Commerce Research 13 (1)/2013, pp. 41-69. Retrieved from: https://libres.uncg.edu/ir/uncg/f/N_Kshetri_Cybercrime_2013.pdf.

19. Republic of Macedonia, Republic of Macedonia National Cyber Security Strategy 2018-2022. Retrieved from: https://www.itu.int/en/ITU-D/Cybersecurity/Documents/National_Strategies_Repository/NS%20Cyber%20Security%202018-2022_ENG.pdf.

20. Shkembi, A., Shtupi, I., Qafa, A., *The Regulation of Cyber Crime in Albania in the Framework of Harmonization of Internal Legislation with the European Legislation*, Academic Journal of Interdisciplinary Studies MCSER Publishing, Rome-Italy, 2016. Retrieved from: https://pdfs.semanticscholar.org/cd34/8906b7b5170601c731763dde70a27ed159f4.pdf.

21. Shtupi, I., *The Regulation of Cyber Crime in Albania in the Framework of Harmonization of Internal Legislation with the European Legislation*, Academic Journal of Interdisciplinary Studies, MCSER Publishing, Rome-Italy, 2015. Retrieved from: https://www.researchgate.net/publication/297897401.

22. United Nations Office on Drugs and Crime, *Comprehensive Study on Cybercrime*, Vienna 2013, retrieved from: https://www.unodc.org/documents/organized-crime/UNODC_CCPCJ_EG.4_2013/CYBERCRIME_STUDY_210213.pdf.

23. Van der Meulen, N., Jo, E.A., Soesanto, S., Directorate General for Internal Policies Policy Department C: Citizens' Rights and Constitutional Affairs, *Cybersecurity in the European Union and Beyond: Exploring the Threats and Policy Responses*, European Parliament, 2015. Retrieved from: https://www.europarl.europa.eu/RegData/etudes/STUD/2015/536470/IPOL_STU(2015)536470_EN.pdf.

Criminal Compliance and Sanctions of Terrorist Financing in Hungary

Ferenc Dávid[*]

Abstract

As a direct result of the post 9/11 period and the war on terror preventing terrorist financing had been recognized as a main objective to be achieved by cutting violent extremists off from to have access to financial institution and from the ability to transfer money. Preventing terrorist financing is a unique objective as part of which standards and regulations are indispensable. Hungarian legal system had paid attention to the challenge from the beginning and ordered both terrorist financing and the failure to comply with the reporting obligation related to combating terrorist financing to be punishable. Combating the financing of terrorism is handled together with the fight against money laundering even if any action against the former seems to be secondary and less effective compared to the latter. Even with improvements in compliance, legislation on combating terrorist financing may remain less effective due to practical considerations and due to its clear difference based on a comparison of money laundering with terrorist financing.

The presentation would give an overview of the criminal law level of terrorist financing and the failure to comply with obligations to the audience.

Keywords: *money laundering, terrorism, terrorist financing, criminal compliance*

I. Introduction

As a direct result of the war on terror, preventing terrorist financing had been recognized as a main objective to be achieved by cutting violent extremists off from to have access to financial institution and from the ability to transfer money. Preventing terrorist financing is a unique objective as part of which standards and regulations are indispensable. Hungarian legal system had paid attention to the challenge from the beginning and ordered both terrorist financing and the failure to comply with the reporting obligation related to combating terrorist financing to be punishable.

Combating the financing of terrorism is handled together with the fight against money laundering even if any action against the former seems to be secondary and less effective compared to the latter. The paper shall give an overview of the criminal law level of terrorist financing and the failure to comply with obligations to the audience.

[*] Lecturer, University of Pécs, Faculty of Law, Hungary. Contact: david.ferenc@pte.hu.

II. Same System with Differences

Criminalizing terrorist financing is a cross-problem of terrorism. Terrorism as a crime generated great interest internationally because financing criminal extremist activities has a particularly strong impact on economies. Countering the financing of terrorism and anti-money laundering are usually regulated by the same legislation considering the fact that we are facing the same phenomena, but with differences. Compared to money laundering, terrorist financing includes any form of financial action, support, or mediation in favor of terrorist groups or for their activities. We have to emphasize that money laundering is a profitable activity and terrorist financing is nearly related to it, that is why it is often referred as a converse money laundering, however with different characteristics[1]. The distinctions can be break down into at least four different fields worth to review.

The key areas of differentiation are the motivation, intention, source of financing and typology. Motivation is mostly rather violent than financial because usually hiding the source of funds, or the realization, clean washing of the profit is not an issue. The objective of terrorist financing is providing the necessary financial support for criminal activities. That is why the motivation of terrorist financing is rather ideological than profitable. Regarding intention, unlike money laundering hiding illegally realized capital, that is mostly irrelevant in the case of terrorist financing[2].

With reference to the source whether we would investigate a single person or a group the acquisition of financial resources is essential. In the event of underfunding, external sources are inevitable which may come from legal or illegal sources, using the financial system, or completely independent and invisible from it. Referring to illegally obtained revenues, terrorists usually prefer crime-types which can be obtained quickly and high in revenue[3]. These are mostly drug-related crimes, kidnapping or human trafficking etc. Legal financial sources may consist donations, government sponsorship, controlled companies etc. Large amount of support from donations or from other legal business activities are just as harmful as criminal activities. While legal business activities are important elements in terrorist financing, seemingly simple donations are typical in terrorist financing.

In addition the range of sponsors can be wide through individual persons, organizations (including other extremist groups), or states[4]. That is why the wider concept of donation considered as terrorist financing even if in exceptional cases when extremist activities had been supported by certain states, enforcement of criminal law going to be ineffective. Unfortunately supporting terrorist and extremist activities does not necessarily requires higher financial support. Noticeable that people may use their legal incomes and even a smaller amount of capital is sufficient to execute an

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[1] I. Gál, F. Dávid, *A terrorizmus büntetőjogi oldala: a terrorcselekmény és a terrorizmus finanszírozása. [The criminal law side of terrorism: the act of terrorism and the financing of terrorism],* Belügyi Szemle 2015/7-8, pp. 72-87.

[2] J.J. Rocha-Salazar, M.-J. Segovia-Vargas, M.M. Camacho-Minano, *Money laundering and terrorism financing detection using neural networks and an abnormality indicator,* Expert System with Applications 2020/4 pp. 1-5.

[3] L.V. Berry, G.E. Curtis, R.A. Hudson, N.A. Kollars, *A Global Overview of Narcotics-Funded Terrorist and Other Extremist Groups*. Library of Congress, Washington, 2002.

[4] *Ethnically or Racially Motivated Terrorism Financing,* FATF Report, 2021 pp. 8-20.

impressive terrorist attack[5]. Based on recent experiences, monitoring terrorist financing is mostly untraceable (or remains under radar) when individuals self-financing their future criminal activities. The latter also means that the privatization of financing terrorism may remain a determining factor in the future[6].

Examining the typology, we may see that the typology of persons and organizations may being involved in terrorist financing are connected to methods, techniques, characteristics and trends. Based on and summarizing the reference to terrorist financing just had been made above, these challenges are: individuals with their own resources of funding, from relatives or terrorist organizations, in which segment political or religious ideologies are important factor, in-which cases often politically exposed people are carrying out activities related to terrorist financing. If we take a shot look at their economic activity, monetary instruments and currency it may becomes apparent that these target groups are using mostly cash in Euro, Dollar, or Ruble and with direct hand-to-hand transfers, where the source of income is wide and can be considered as risky and difficult to detect[7]. Regarding nationality and, or geographic zones being relevant are in line with Financial Action Task Force lists and recommendation including source and target area[8].

III. Criminal Compliance and Sanctions of Terrorist Financing

Criminal compliance is a system of rules and methods based on countering the financing of terrorism and in line with the Hungarian and international anti-money laundering/countering the financing of terrorism regulation, that includes the necessary compliance conditions – organizational, human, cooperation, information sharing and reporting etc. The international agreement for the suppression of terrorist financing was adopted in 1999 and had been adopted by Hungary in 2002. Under the agreement national parties shall cooperate in the prevention of terrorist financing by taking all practicable measures and by adapting their domestic legislation, if necessary, including measures requiring financial institutions and other professions involved[9]. The purpose of regulation was to weaken the financial basis of terrorism and the regulations for countering the financing of terrorism had been related to money laundering in order to prevent and impede the support of terrorism with money or a thing of expressible value in money. The suspicious circumstances that refer to terrorist financing were to be reported the same as the suspicion of money laundering. The report is obligatory to

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[5] S. Costigan, D. Gold, *Terronomics*, Ashgate, Cornwall, 2007 p. 14; I. Gál, *A pénzmosással és a terrorizmus finanszírozásával kapcsolatos jogszabályok magyarázata. [Explanation of legislation on money laundering and terrorist financing].* HVGORAC Kiadó, Budapest, 2012.

[6] See: Financial Action Task Force (FATF), *FATF Public Statement on the Financing of ISIL, Al Qaeda and Affiliates.* Link: https://www.fatf-gafi.org/publications/fatfgeneral/documents/statement-isil-al-qaeda.html.

[7] J.J. Rocha-Salazar, M.-J. Segovia-Vargas, M.M. Camacho-Minano, *cited,* pp. 1-5.

[8] See: Financial Action Task Force (FATF), *Jurisdiction under Increased Monitoring, October 2021.* Link: https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-october-2021.html.

[9] UN 54/109 of 9 December 1999. *International Convention for the Suppression of the Financing of Terrorism.* Link: http://www.un.org/law/cod/finterr.htm; See: P. Polt (ed.), *Új Btk. kommentár. [Commentary for the New Criminal Code], Volume 6, Special Part,* Nemzeti Közszolgálati és Tankönyv Kiadó, Budapest, 2013, p. 18.

all kinds of service providers, which have to notify in any case of circumstances which referring to money laundering. From practical point of view banks and other financial service providers observe the transactions with electronic filter-systems and if the names of determinate persons appear they immediately report it to the Financial Intelligence Unit that has been set up in 2007[10].

Notification should be made only by those, in whose case the circumstances respond to those determinate in line with the law as financial service providers this means the following[11]: Firstly, if they become aware of a trustworthy information that financing terrorism or any other preparation of terrorist act is in progress (for example someone bought explosives) then – as every other citizen – have the obligation of denunciation that they can accomplish at any criminal law authorities (for example police, prosecution etc.). The non-accomplishment of this obligation realizes crime determined in Section 317 of the Hungarian Criminal Code. Secondly, if a data, fact or circumstance referring to terrorist financing arise regarding to someone's work then they have to report it to the Financial Intelligence Department of the National Tax and Customs Administration of Hungary. This obligation typically is formed when a transaction is started in the name of or for the interest of someone on a prohibitive list. The prohibitive lists that are obligatory to be taken into account are made available for the service providers by State Audit Office of Hungary. The omission of the obligation of notification is a delinquency determined in the criminal code, so it is also a crime. Thirdly, if a data, fact or circumstance arises regarding that the subject of a financial or asset restrictive measure disposes of resources or economic resources that are under the effect of the financial or asset restrictive measures on the territory of Hungary, then it is to be reported to the Hungarian Financial Intelligence Department, the same way as the above mentioned. The non-accomplishment of the obligation of notification is also a separate crime but with a higher item of punishment than in the case of the previous two.

With regard to the criminal sanctions of terrorist financing, two separate criminal offense in the Hungarian Act C of 2012 on Criminal Code – the (1) Failure to comply with reporting obligation related to money laundering and the (2) Terrorist financing – had to be highlighted. Terrorist financing is ranked as a crime since 2003 in Hungarian criminal law and became a separate criminal offense with the new Hungarian Criminal Code in 2012. Under the criminal offense of the failure to comply with reporting obligation related to money laundering under Section 401 comes any person who fails to comply with the reporting obligation prescribed by law in connection with the prevention and combating of money laundering and terrorist financing. This misdemeanor punishable by imprisonment not exceeding two years, while under the Section 318 in the base and qualified case under terrorist financing is that any person who provides or collects funds with the intention that they should be used in order to carry out an act of terrorism, or an act of terrorist nature, or who provides material assistance to a person who is making preparations to commit a terrorist act, or an act of terrorist nature or to a

[10] See: Law CXXXVI of 2007 on the Prevention and Suppression of the Financing of Money Laundering; Modified: Act II of 2013 on the Modification of the Act CXXXVI of 2007 on the Prevention and Suppression of the Financing of Money Laundering. Nowadays in force: Act LIII of 2017 on the Prevention and Suppression of the Financing of Money Laundering.

[11] I.L. Gál, *Új biztonsági kihívás a XXI. században: a terrorizmus finanszírozása. [New Security Challenge in the 21th Century: the Financing of Terrorism]* Szakmai Szemle 2012/1 pp. 10-11; P. Polt, *cited,* pp. 18-19.

third party on his behest is guilty of a felony shall be punishable by imprisonment between two to eight years, while in the case when any person who commits the criminal offense referred earlier in order to carry out an act of terrorism in a terrorist group, or on behalf of any member of a terrorist group, or supports the activities of the terrorist group in any other form is punishable by imprisonment between five to ten years[12].

The experience on the failure to comply with reporting obligation related to money laundering or terrorist financing is very rare. Based on the facts of the Hungarian System of Criminal Statistics, managed by Ministry of Interior and based on closed investigations only six cases of failure to comply with reporting obligation related to money laundering, but none from terrorist financing between 2009 and 2018[13]. We my emphasize that in everyday practice, no one has been condemned for financing terrorism in Hungary. That means that the Hungarian justice administration did not judge even on a legal case. Only the Office of National Security of Hungary[14] and the Immigration and Citizenship Office initiated the expulse of a Syrian doctor from Hungary. The doctor who had been working in the intensive care unit of the clinics of Pécs, transferred 105.000, – HuF (nowadays around 285 Euro) to one of the cover organizations of the Islamist Hamas. He told to the investigation authorities that he did not know that the support request and the account number he had seen on the television channel of Lebanon was in connection with a terrorist organization. In this case his protection was doubtful. Criminal procedure did not start against the doctor because of the new criminal facts of the old (and modified) Criminal Code[15]. So had Hungary a case a few years before, but it was impossible to prove a crime against him. If we would like to find the reasons then according to the optimistic view we are still a less infected area, but on the other side the pessimistic explanation states the possible latency as well. The Hungarian legal and institution system against financing terrorism is already developing, but mostly the same institutions are fighting against money-laundering as well[16].

IV. Conclusion

Summarizing the above, as a direct result of the post 9/11 period countering the financing of terrorism had been recognized as a main objective to be achieved by cutting terrorists and violent extremists off from financial institution. Preventing terrorist financing is a unique objective and the Hungarian legal system had paid attention to the challenge from the beginning and ordered both terrorist financing and the failure to comply with the reporting obligation related to countering the financing of terrorism to be punishable. In Hungarian criminal law, if someone helps them with supporting terrorist activities through financing their activity was already qualified as a crime from 2003, but it is a separate criminal offense since 2013. Following a short

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[12] See: Act C of 2012 on the Criminal Code; F. Dávid, *Terrorizmus és nemzetbiztonság az ezredforduló jogalkotásában. [Terrorism and National Security in the Legislation of the Millennium],* Szakmai Szemle 2013/1, pp. 40-52.

[13] Hungarian System of Criminal Statistics. See: Crime Statistics System, link: https://bsr.bm.hu.

[14] See nowadays as: Constitution Protection Office of Hungary.

[15] P. Polt, *cited,* p. 23.

[16] I. Gál, F. Dávid, *Short Overview of the Current Situation of the Fight Against Terrorism in Hungar,.* Pravna Rijec 14., Banja Luka, 2017, pp. 364-366.

decade and because of the effect of international legislation, financing terrorism became a separate crime in the Act C of 2012 on Hungarian Criminal Code. Even with improvements in compliance, legislation on combating terrorist financing may remain less effective due to practical considerations and due to its clear difference based on a comparison of money laundering with terrorist financing.

References

1. Berry, L.V., Curtis, G.E., Hudson, R.A., Kollars, N.A., *A Global Overview of Narcotics-Funded Terrorist and Other Extremist Groups*. Library of Congress, Washington, 2002.

2. Costigan, S., Gold, D., *Terronomics*, Ashgate, Cornwall, 2007 p. 14; I. Gál, *A pénzmosással és a terrorizmus finanszírozásával kapcsolatos jogszabályok magyarázata. [Explanation of legislation on money laundering and terrorist financing].* HVGORAC Kiadó, Budapest, 2012.

3. Dávid, F., *Terrorizmus és nemzetbiztonság az ezredforduló jogalkotásában. [Terrorism and National Security in the Legislation of the Millennium],* Szakmai Szemle 2013/1.

4. Financial Action Task Force (FATF), *Ethnically or Racially Motivated Terrorism Financing,* FATF Report, 2021.

5. Financial Action Task Force (FATF), *FATF Public Statement on the Financing of ISIL, Al Qaeda and Affiliates.* Link: https://www.fatf-gafi.org/publications/fatfgeneral/documents/statement-isil-al-qaeda.html

6. Financial Action Task Force (FATF), *Jurisdiction under Increased Monitoring, October 2021.* Link: https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-october-2021.html

7. Gál, I., Dávid, F., *A terrorizmus büntetőjogi oldala: a terrorcselekmény és a terrorizmus finanszírozása. [The criminal law side of terrorism: the act of terrorism and the financing of terrorism],* Belügyi Szemle 2015/7-8.

8. Gál, I., Dávid, F., *Short Overview of the Current Situation of the Fight Against Terrorism in Hungar,.* Pravna Rijec 14., Banja Luka, 2017.

9. Gál, I.L., *Új biztonsági kihívás a XXI. században: a terrorizmus finanszírozása. [New Security Challenge in the 21th Century: the Financing of Terrorism]* Szakmai Szemle 2012/1.

10. Hungarian System of Criminal Statistics. See: Crime Statistics System, link: https://bsr.bm.hu.

11. Polt, P. (ed.), *Új Btk. kommentár. [Commentary for the New Criminal Code], Volume 6, Special Part,* Nemzeti Közszolgálati és Tankönyv Kiadó, Budapest, 2013.

12. Rocha-Salazar, J.J., Segovia-Vargas, M.-J., Camacho-Minano, M.M., *Money laundering and terrorism financing detection using neural networks and an abnormality indicator,* Expert System with Applications 2020/4.

13. UN 54/109 of 9 December 1999. *International Convention for the Suppression of the Financing of Terrorism.* Link: http://www.un.org/law/cod/finterr.htm.

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