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Do sledećeg broja,

Prof. dr Vladimir Njegomir

U Novom Sadu, 10. jula 2024. godine

Editor's Note

Dear Readers, Colleagues, and Authors,

Welcome to the first issue of the CIVITAS Journal for 2024.

For the past 14 years, the CIVITAS journal has published articles focusing on various current developments and topics related to law, security, psychology, philology, and economics, as well as interdisciplinary research involving the above fields.

In 2021, the journal was awarded the M51 ranking by the Serbian Ministry of Education, Science and Technological Development, and classified as a leading national journal.

The journal has been also indexed in the ERIH PLUS academic journal index for the HSS (Humanities and Social Sciences) society in Europe.

The articles accepted for publication examine a wide range of topics related to social sciences and humanities, from the relationship between unemployment, coping styles, perceived social support, and life satisfaction, basic psychological needs as sources of motivation for learning anatomy, psychometric properties of the entrepreneurial inclination scale, gender-based violence, working hours as an expression of the principle of humanization of work, legal aspects of secret monitoring and recording, domestic violence, theoretical foundations of the effectiveness of using security cameras, the criminal offense of inciting national, racial, and religious hatred and intolerance, criminal law aspects of non-compliance with court decisions, and the use of English for specific purposes.

The information about the journal, instructions for authors and reviewers, editorial board members, and reviewers' names and affiliations are available on the journal website in Serbian and English.

The articles may be submitted via the journal web page http://civitas.rs/index.php/prijava-rada or via email to redakcija@civitas.rs

On behalf of the Editorial Board and myself, our sincere thanks to all the authors and contributors for the high quality of the articles in this issue.

Hoping that this issue will inspire further research, we invite all interested researchers to submit their articles for publication in CIVITAS.

Until the next issue,

Prof. dr Vladimir Njegomir, Editor-in-Chief

Novi Sad, 10 July 2024

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BAZIČNE PSIHOLOŠKE POTREBE KAO IZVORI AKADEMSKE MOTIVACIJE ZA UČENJE ANATOMIJE

Rezime: Prema teoriji samoodređenja, bazične psihološke potrebe predstavljaju osnovu motivacije i ličnog rasta pojedinca. S obzirom da je malo toga poznato o funkcionisanju ovih mehanizama pri učenju anatomije, osnovnom za uspešno bavljenje praktično svakom granom medicine, cilj ovog istraživanja je utvrđivanje uloga bazičnih psiholoških potreba u postizanju akademske motivacije u ovom kontekstu. Istraživanje je sprovedeno na uzorku od 197 studenata prve godine studija medicine (73% ispitanica, starosti od 18 do 25 godina). Sprovedeno je pet hijerarhijskih višestrukih regresionih analiza kod kojih je

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prvi model sadržao prediktorske varijable: zadovoljenje bazičnih psiholoških potreba za autonomijom, kompetencijom i povezanošću; drugi model sadržao je osujećenje ovih potreba, dok su kriterijumske varijable predstavljali različiti oblici akademske motivacije za učenje anatomije: intrinzična motivacija, identifikovana motivacija, introjektovana motivacija, spoljašnja motivacija i amotivacija. Rezultati pokazuju da je bazična psihološka potreba za autonomijom značajna kod predviđanja većine oblika motivacije, potreba za kompetencijom je značajna samo u predviđanju kontrolisanih oblika motivacije, dok značajnost potrebe za povezanošću nije utvrđena. Rezultati su razmotreni u kontekstu drugih relevantnih istraživanja kao i načini za dodatno poboljšanje optimalnih tipova motivacije pri učenju anatomije.

Ključne reči: *studije medicine, anatomija, teorija samoodređenja, akademska motivacija, bazične psihološke potrebe*

1. Uvod

Na samom početku studija medicine studenti često nailaze na brojne izazove poput susreta sa novim, kompleksnim predmetima i zahtevnim ispitima iz istih. Jedan od prvih obaveznih predmeta/ispita ovog tipa na prvoj godini studija jeste anatomija, predmet koji mnogi doživljavaju kao svojevrstan „obred prelaza", s obzirom da studenti koji ga ne polože ne uspevaju da se upišu na više godine studija. Ovakav vid neuspeha može rezultovati padom motivacije za učenje, odnosno akademske motivacije koja predstavlja jedan od najbitnijih činilaca akademskog uspeha. Stoga je ispitivanje akademske motivacije, posebno u kontekstu kompleksnih akademskih predmeta, od posebnog značaja. Razumevanje izvora motivacije koji zavise od spoljnih uticaja, poput različitih motivacionih stilova u nastavi, može pomoći nastavnicima anatomije da unaprede svoj pristup nastavi i naposletku stvore optimalnu sredinu za razvoj motivacije za učenje kod studenata.

Sa studentske tačke gledišta, savladavanje anatomije predstavlja značajan pokazatelj da li će neko postati doktor medicine (Smith & Mathias, 2011), čime se ovom predmetu pridaje velika doza ozbiljnosti

i ujedno stavlja ogromna odgovornost na nastavnike. Studenti početnih godina, za razliku od studenata treće ili četvrte godine studija, pokazuju generalno posvećeniji pristup učenju (Cebeci et al., 2013), što korelira sa autonomnim oblicima akademske motivacije (Vansteenkiste et al., 2004). Rezultati relevantnih istraživanja pokazuju da je na samom početku studija, kada je anatomija najbitniji predmet, motivacija studenata medicine na veoma visokom nivou (Shankar et al., 2013). Stoga je ključno utvrditi preduslove za ovu vrstu motivacije kako bi se ona mogla negovati i održavati čak i na višim godinama studija; ovo je pogotovo bitno znajući da motivacija s vremenom opada, a pristupi učenju postaju sve manje dubinski, odnosno sve više površni (Cebeci et al., 2013). Cilj ovog istraživanja jeste utvrđivanje preduslova za ostvarivanje različitih oblika motivacije za učenje anatomije. Među prediktorima različitih oblika motivacije odabrani su zadovoljenje i osujećenje bazičnih psiholoških potreba, koji čine osnovne izvore za razvoj optimalne motivacije. Teorijski okvir ovog rada čini teorija samoodređenja (SDT; Deci & Ryan, 1985; Ryan & Deci, 2017), jedna od vodećih savremenih teorija motivacije. U nju su, za razliku od drugih sličnih teorija, uvedene brojne podvrste motivacije i pozicionirane duž motivacionog kontinuuma.

Motivacija se, prema teoriji samoodređenja, može posmatrati kao kompleksan i slojevit psihološki fenomen. Pristup teorije samoodređenja razumevanju ovog fenomena ogleda se u odbacivanju tradicionalne dihotomije i zastupanju ideje da se motivacija ne razlikuje samo po intenzitetu, već i po tipu ili obliku (Ryan & Deci, 2017). Shodno ovome, moguće je razlikovati tri tipa motivacije: *amotivacija* (stanje potpunog odsustva motivacije), *spoljašnja motivacija* (ponašanje uslovljeno spoljnim faktorima radi postizanja nekog cilja) i *unutrašnja motivacija* (prirodna sklonost ka asimilaciji, savladavanju prepreka, interesovanjima i istraživanju). U teoriji samoodređenja postoji nekoliko vrsta *spoljašnje motivacije*. *Eksterna/spoljašnja regulacija* se odnosi na ponašanje koje nije samoodređeno i, u klasičnom smislu, predstavlja ekstrinzičnu motivaciju unutar granica nagrade ili ispunjenja spoljašnjih zahteva. *Introjektovana/usvojena regulacija* predstavlja usvajanje, ali ne i potpuno prihvatanje i samoodobravanje spoljašnjih zahteva, bilo u domenu misli, emocija ili drugih domena ponašanja (Deci & Ryan, 1985). *Identifikovana/poistovećena regulacija* je uglavnom internalizovana i samoodređena

ekstrinzična motivacija; osoba prihvata koristi koje dolaze sa određenim uverenjem ili ponašanjem, jer takvo ponašanje smatra korisnim i važnim. *Integrisana regulacija* predstavlja tip ekstrinzične motivacije sa najvećim stepenom samoregulacije (Ryan & Deci, 2000).

Postoji više zasebnih faktora koji mogu imati uticaja na motivaciju studenata medicine: varijable na koje se može uticati (kojima se može manipulisati), poput bazičnih psiholoških potreba za autonomijom, kompetencijom i povezanošću, te varijable na koje se ne može uticati (kojima se ne može manipulisati), poput starosti, pola, etničke pripadnosti (Kusurkar et al., 2012). U podteoriji unutar teorije samoodređenja, teoriji bazičnih psiholoških potreba, ističe se značaj bazičnih psiholoških potreba za *autonomijom* (potreba svakog pojedinca da bude nezavisan, da donosi sopstvene odluke i ima pravo na sopstveno mišljenje), *kompetencijom* (potreba svakog pojedinca da se oseća sposobnim za savladavanje izazova i prepreka) i *povezanošću* (potreba svakog pojedinca da ostvari sigurne i bliske odnose sa drugima, odnose koji doprinose osećaju međuljudske topline i povezanosti) kao suštinskih za optimalan ljudski rast i razvoj (Deci & Ryan, 1985; Ryan & Deci, 2017). Sve tri se smatraju organizmičkim, što znači da se njihovo zadovoljenje odvija kroz dijalektički odnos sa okolinom. U skladu sa ovom teorijom, urođena motivacija za učenje je direktno zavisna od zadovoljenja ove tri bazične psihološke potrebe, ali njen rast zavisi od toga da li je okruženje dovoljno podsticajno da bi do zadovoljenja ovih potreba i došlo (Vansteenkiste & Ryan, 2013). Umesto ranije prakse razlikovanja tri bazične psihološke potrebe kao dimenzije sa negativnim polovima koji predstavljaju osujećenje i pozitivnim polovima koji predstavljaju zadovoljenje potrebe, u skorije vreme se u literaturi razmatra neophodnost razlikovanja zadovoljenja i osujećenja potreba kao zasebnih dimenzija (Chen et al., 2015; Vansteenkiste & Ryan, 2013; Šakan, 2020). Tome su doprineli rezultati istraživanja na osnovu kojih se utvrdilo da se efekti osujećenja i nedostatka zadovoljenja potrebe veoma razlikuju po kvalitetu i intenzitetu, naime, osujećenje potrebe značajno više određuje maladaptivno funkcionisanje i neblagostanje pojedinaca nego nezadovoljenje potrebe.

Rezultati prethodnih istraživanja sa velikim stepenom doslednosti pokazuju vezu između bazičnih psiholoških potreba i različitih oblika

akademske motivacije (npr. Šakan, 2020), međutim, nisu pronađene studije koje se bave ovom tematikom među studentskom populacijom u Srbiji, posebno ne na uzorku studenata medicine, a u vezi sa jednim konkretnim predmetom. Sve dosad se na istraživanja akademske motivacije u okviru studija medicine većinski gledalo kao na implicitnu komponentu reforme medicinskog kurikuluma a fokus se obično stavljao na kognitivne i metakognitivne ishode učenja (Kursukar et al., 2012). Međutim, noviji trendovi u literaturi pokazuju pomeranje fokusa upravo ka motivaciji za učenje, pogotovo ka njenim autonomnim aspektima, kao glavnim faktorima koji utiču na planiranje promena kurikuluma i povećanje kvaliteta obrazovanja (Baldwin et al., 2012; Kursukar et al., 2012). S obzirom na sve gore navedeno, ispitivanje motivacije i njenih izvora kod studenata medicine, budućih lekara, od presudne je važnosti. Na osnovu rezultata prethodnih istraživanja i teorijskih postavki, bilo je očekivano da zadovoljenje bazičnih psiholoških potreba ostvari pozitivne relacije sa autonomnim oblicima akademske motivacije za učenje anatomije (kao što su unutrašnja i identifikovana), a da osujećenje datih potreba ostvari pozitivne relacije sa kontrolisanim oblicima motivacije (kao što su spoljašnja i introjektovana) i sa amotivacijom.

2. Materijali i metodologija

2.1. Uzorak ispitanika i postupak

Uzorkom je obuhvaćeno 197 studenata prve godine Medicinskog fakulteta Univerziteta u Novom Sadu (73% ispitanica) starosti od 18 do 25 godina (AS = 19,13; SD = ,89). Istraživanje je sprovedeno tokom redovnih časova anatomije u drugom semestru školske 2019/2020. godine. Etički odbor Medicinskog fakulteta Univerziteta u Novom Sadu odobrio je istraživanje 17. septembra 2019. godine pod brojem 01-39-111/1. Ispitanici su informisani o postupcima i svrsi istraživanja pri čemu su dobili i dodatne informacije u vezi sa zaštitom ličnih podataka.

2.2. Instrumenti i varijable

Korišćena je Skala za merenje akademske motivacije (Échelle de Motivation en Éducation; Vallerand et al., 1989) koja je prethodno prevedena sa francuskog na srpski i validirana (Šarčević i Vasić, 2013; Šarčević, 2015). Skala je modifikovana dodavanjem jednog pitanja na početku – *Zašto učite anatomiju?* – čija je svrha kontekstualizacija merenja. U istraživanju je korišćena originalna verzija koja obuhvata pet oblika akademske motivacije: *intrinzična motivacija* (npr. *…zbog zadovoljstva koje osećam kada otkrivam nove stvari*), *identifikovana motivacija* (npr. *…jer ću se dobro pripremiti za posao koji želim da radim*), *introjektovana motivacija* (npr. *…da bih dokazao samom sebi da sam sposoban da položim anatomiju*), *spoljašnja motivacija* (npr. *…da bih posle mogao da radim ugledan i poštovan posao*) i *amotivacija* (npr. *…nekada sam imao dobre razloge za učenje anatomije, međutim, sada više ne znam*). Upitnik sadrži 28 ajtema i studenti su mogli da označe svoje odgovore na petostepenoj skali (1 = uopšte se ne slažem do 5 = u potpunosti se slažem). Pouzdanost skala tipa interne konzistencije je bila zadovoljavajuća (od α = ,70 to α = ,89). Varijable su izračunate kao srednje vrednosti na skalama za merenje različitih oblika akademske motivacije za učenje anatomije, pri čemu se viši skorovi odnose na izraženiji oblik merene motivacije.

Skala za merenje zadovoljenja i osujećenja bazičnih psiholoških potreba (BPNSFS – The Basic Psychological Need Satisfaction and Frustration Scale; Chen et al., 2015) je razvijena na temeljima teorije samoodređenja i meri *zadovoljenje* i *osujećenje bazičnih psiholoških potreba za autonomijom, kompetencijom* i *povezanošću*. Upitnik je prethodno preveden na srpski jezik i validiran, pri čemu se pokazalo da ima povoljne psihometrijske karakteristike (Šakan, 2015; Šakan, 2020). Upitnik sadrži 24 ajtema i ispitanici su mogli da označe svoje odgovore na petostepenoj skali, opredeljujući se za jedan od ponuđenih odgovora (od 1 = potpuno se ne slažem do 5 = potpuno se slažem). Pouzdanost skala tipa interne konzistencije se na ovom uzorku pokazala zadovoljavajućom, sa rasponom od α = ,76 do α = ,85. Varijable su izračunate kao srednje vrednosti na skalama za merenje zadovoljenja i osujećenja tri bazične psihološke potrebe, pri čemu viši skorovi ukazuju na izraženije zadovoljenje ili osujećenje merene potrebe.

2.3. Analiza podataka

U istraživanju su korišćene metode deskriptivne statistike i izračunate su korelacije između svih obuhvaćenih varijabli. Glavni deo analize činilo je pet hijerarhijskih višestrukih regresionih analiza: u prvom bloku su bili prediktori – *zadovoljenje bazičnih psiholoških potreba za autonomijom, kompetencijom* i *povezanošću*, u drugom bloku su bile varijable osujećenja pomenutih potreba, dok su kriterijumi u svakoj od pet analiza bile vrste akademske motivacije za učenje anatomije: *intrinzična motivacija, identifikovana motivacija, introjektovana motivacija, spoljašnja motivacija* i *amotivacija*. Za analizu podataka korišćen je SPSS IBM verzija 22.

2.4. Rezultati

U Tabeli 1. prikazane su korelacije između oblika akademske motivacije i zadovoljenja i osujećenja bazičnih psiholoških potreba, kao i rezultati deskriptivne statistike.

Tabela 1. *Deskriptivna statistika i korelacije*

	Skala	1	2	3	4	5	6	7	8	9	10	11
1.	*Intrinzična motivacija*	1										
2.	*Identifikovana motivacija*	.35**	1									
3.	*Introjektovana motivacija*	.29**	.17*	1								
4.	*Eksterna motivacija*	.09*	.20**	.52**	1							
5.	*Amotivacija*	-.16**	-.29**	.13	.12	1						
6.	Zadovoljenje potrebe za autonomijom	.29**	.38**	.03	.02	-.28**	1					
7.	Osujećenje potrebe za autonomijom	-.10	-.11	.25**	.22**	.41**	-.29**	1				
8.	Zadovoljenje potrebe za kompetencijom	.18*	.26**	.09	.17*	-.16*	.41*	-.16*	1			
9.	Osujećenje potrebe za kompetencijom	-.14*	-.12	.21**	.12	.26**	-.28**	-.44**	-.34**	1		
10.	Zadovoljenje potrebe za povezanošću	.09	.18*	.13	.12	-.12	.28**	-.12	.13	-.02	1	
11.	Osujećenje potrebe za povezanošću	-.01	-.17*	.06	.03	.25**	-.25**	.40**	-.06	.30**	-.44**	1
	M	3.68	4.62	3.54	3.28	1.21	4.31	2.00	4.24	1.65	4.64	1.54
	SD	.54	.43	.95	.87	.39	.51	.75	.49	.59	.44	.52

Napomena: M – srednja vrednost; SD – standardna devijacija; * $p < .05$; ** $p < .01$.

U Tabeli 2. prikazani su rezultati hijerarhijskih višestrukih regresionih analiza u kojima prediktore *intrinzične motivacije* čine *zadovoljenje bazičnih psiholoških potreba za autonomijom, kompetencijom,* i *povezanošću,* kao i osujećenja ovih potreba. Testirani modeli su objasnili 10% varijanse intrinzične motivacije za učenje anatomije, dok uvođenje drugog modela nije izazvalo značajnije odstupanje u ovom procentu.

Tabela 2. *Koeficijent determinacije (R^2), njegova promena (ΔR^2), i statistički značaj promene (ΔF) (kriterijumska varijabla: intrinzična motivacija)*

Model	R^2	ΔR^2	ΔF
1. model: Zadovoljenje bazičnih psiholoških potreba za autonomijom, kompetencijom i povezanošću	.09	.08	6.52
2. model: Osujećenje bazičnih psiholoških potreba za autonomijom, kompetencijom i povezanošću	.10	.08	.77

Napomena: Za sve modele $p < .01$.

Jedino se *zadovoljenje bazične potrebe za autonomijom* pokazalo kao statistički značajan parcijalni prediktor (Tabela 3). Studenti kod kojih je bio prisutan veći stepen zadovoljenja *potrebe za autonomijom* su pokazali veću *intrinzičnu motivaciju* za učenje ovog predmeta.

Tabela 3. *Parcijalni doprinosi zadovoljenja i osujećenja bazičnih psiholoških potreba (kriterijumska varijabla: intrinzična motivacija)*

Prediktor	Model 1 (β)	Model 2 (β)
Zadovoljenje bazične psihološke potrebe za autonomijom	.27**	.28**
Zadovoljenje bazične psihološke potrebe za kompetencijom	.07	.03
Zadovoljenje bazične psihološke potrebe za povezanošću	.01	.06
Osujećenje bazične psihološke potrebe za autonomijom		.01
Osujećenje bazične psihološke potrebe za kompetencijom		-.09
Osujećenje bazične psihološke potrebe za povezanošću		.10

* $p < .05$; ** $p < .01$.

Testirani su isti modeli i pokazali su se statistički značajnim, objašnjavajući 17% varijanse u *identifikovanoj motivaciji* za učenje anatomije (Tabela 4), međutim, porast ovog procenta objašnjene varijanse nije bio dovoljno značajan po uvođenju drugog modela. Kada je reč o parcijalnim dorpinosima, samo se *zadovoljenje bazične psihološke potrebe za autonomijom* pokazalo statistički značajnim (Tabela 5).

Tabela 4. *Koeficijent determinacije (R^2), njegova promena (ΔR^2) i statistički značaj promene (ΔF) (kriterijumska varijabla: identifikovana motivacija)*

Model	R^2	ΔR^2	ΔF
1. model: Zadovoljenje bazičnih psiholoških potreba za autonomijom, kompetencijom i povezanošću	.16	.15	12.63
2. model: Osujećenje bazičnih psiholoških potreba za autonomijom, povezanošću i kompetencijom	.17	.15	.67

Napomena: Za sve modele $p < .01$.

Tabela 5. *Parcijalni doprinosi zadovoljenja i osujećenja* bazičnih psiholoških potreba (*kriterijumska varijabla: identifikovana motivacija)*

Prediktor	Model 1 (β)	Model 2 (β)
Zadovoljenje bazične psihološke potrebe za autonomijom	.31**	.33**
Zadovoljenje bazične psihološke potrebe za kompetencijom	.12	.14
Zadovoljenje bazične psihološke potrebe za povezanošću	.07	.03
Osujećenje bazične psihološke potrebe za autonomijom		.07
Osujećenje bazične psihološke potrebe za kompetencijom		.02
Osujećenje bazične psihološke potrebe za povezanošću		-.10

* $p < .05$; ** $p < .01$.

Model korišćen u prethodnim analizama korišćen je i za predviđanje *introjektovane motivacije*. Odabrani prediktori su objasnili 13% varijanse *introjektovane motivacije*, dok je drugi model objasnio najveći deo varijanse (Tabela 6). Rezultati ove analize na nivou prediktora pokazali su da je najveći doprinos uočen kod *osujećenja bazične psihološke potrebe za autonomijom* a zatim i kod *osujećenja bazične psihološke potrebe za kompetencijom* (Tabela 7).

Tabela 6. *Koeficijent determinacije (R^2), njegova promena (ΔR^2) i statistič*ki značaj promene (ΔF) (kriterijumska *varijabla: introjektovana motivacija)*

Model	R^2	ΔR^2	ΔF
1. model: Zadovoljenje bazičnih psiholoških potreba za autonomijom, kompetencijom i povezanošću	.02	.01	1.51
2. model: Osujećenje bazičnih psiholoških potreba za autonomijom, povezanošću i kompetencijom	.13	.09	7.48

Tabela 7. *Parcijalni doprinosi zadovoljenja i osujećenja* bazičnih psiholoških potreba *(kriterijumska varijabla: introjektovana motivacija)*

Prediktor	Model 1 (β)	Model 2 (β)
Zadovoljenje bazične psihološke potrebe za autonomijom	-.04	.07
Zadovoljenje bazične psihološke potrebe za kompetencijom	.09	.16
Zadovoljenje bazične psihološke potrebe za povezanošću	.13	.11
Osujećenje bazične psihološke potrebe za autonomijom		.23**
Osujećenje bazične psihološke potrebe za kompetencijom		.19*
Osujećenje bazične psihološke potrebe za povezanošću		-.02

* $p < .05$; ** $p < .01$.

Testirani modeli su bili statistički značajni u predviđanju *spoljašnje motivacije* (Tabela 8) i objasnili su 12% *spoljašnje motivacije* za proučavanje anatomije. Najveći procenat varijanse objašnjen je drugim modelom koji je uključivao *osujećenje tri bazične psihološke potrebe*. Rezultati pokazuju da je *spoljašnja motivacija* za proučavanje anatomije predviđena *zadovoljenjem potrebe za kompetencijom* i *osujećenjem potrebe za autonomijom* (Tabela 9).

Tabela 8. *Koeficijent determinacije (R^2), njegova promena (ΔR^2) i statistič*ki značaj promene (ΔF) (kriterijumska *varijabla: spoljašnja motivacija)*

Model	R^2	ΔR^2	ΔF
1. model: Zadovoljenje bazičnih psiholoških potreba za autonomijom, kompetencijom i povezanošću	.04	.03	3.07
2. model: Osujećenje bazičnih psiholoških potreba za autonomijom, povezanošću i kompetencijom	.12	.09	5.28

Tabela 9. *Parcijalni doprinosi zadovoljenja i osujećenja* bazičnih psiholoških potreba (*kriterijumska varijabla: spoljašnja motivacija)*

Prediktor	Model 1 (β)	Model 2 (β)
Zadovoljenje bazične psihološke potrebe za autonomijom	-.09	.01
Zadovoljenje bazične psihološke potrebe za kompetencijom	.19*	.24**
Zadovoljenje bazične psihološke potrebe za povezanošću	.12	.09
Osujećenje bazične psihološke potrebe za autonomijom		.24**
Osujećenje bazične psihološke potrebe za kompetencijom		.12
Osujećenje bazične psihološke potrebe za povezanošću		-.04

* $p < .05$; ** $p < .01$.

Poslednji model je objasnio 20% varijanse *amotivacije* koja je najznačajnije objašnjena drugim blokom prediktora, tj. *osujećenjem psiholoških potreba* (Tabela 10). Pokazalo se da *zadovoljenje bazične psihološke potrebe za autonomijom* ima značajan uticaj na model u prvom delu, ali je taj značaj nestao kada su osujećenja potreba uvedene u model. U drugom modelu samo je *osujećenje bazične psihološke potrebe za autonomijom* uočeno kao značajan prediktor (Tabela 11).

Tabela 10. *Koeficijent determinacije (R^2), njegova promena (ΔR^2) i statistič*ki značaj promene (ΔF) (kriterijumska *varijabla: amotivacija)*

Model	R^2	ΔR^2	ΔF
1. model: Zadovoljenje bazičnih psiholoških potreba za autonomijom, kompetencijom i povezanošću	.08	.07	5.96
2. model: Osujećenje bazičnih psiholoških potreba za autonomijom, povezanošću i kompetencijom	.20	.17	9.27

Napomena: za sve modele $p < .01$.

Tabela 11. *Parcijalni doprinosi zadovoljenja i osujećenja bazičnih psiholoških potreba (kriterijumska varijabla: amotivacija)*

Prediktor	Model 1 (β)	Model 2 (β)
Zadovoljenje bazične psihološke potrebe za autonomijom	-.25**	-.11
Zadovoljenje bazične psihološke potrebe za kompetencijom	-.05	-.04
Zadovoljenje bazične psihološke potrebe za povezanošću	-.04	-.01
Osujećenje bazične psihološke potrebe za autonomijom		.31**
Osujećenje bazične psihološke potrebe za kompetencijom		.06
Osujećenje bazične psihološke potrebe za povezanošću		.08

* $p < .05$; ** $p < .01$.

1. Diskusija i zaključak

Cilj ovog istraživanja bio je da se ispita uloga bazičnih psiholoških potreba, osnove motivacije i ličnog rasta u predviđanju akademske motivacije za učenje anatomije na uzorku studenata medicine. Rezultati deskriptivne statistike su pokazali da kod studenata prve godine studija medicine dominiraju autonomni oblici motivacije za izučavanje anatomije, pre svega *identifikovana motivacija* a zatim *unutrašnja motivacija*. Ovo sugeriše da motivi unutrašnjeg izvora podstiču studente da izučavaju anatomiju, pre svega u pretpostavljenom prepoznavanju značaja anatomije kao predmeta, s obzirom da je ona ključna za njihovu buduću praksu, ali i radi ličnog interesovanja za suštinu samog predmeta. Kontrolisane vrste motivacije, kao što su spoljašnja i introjektovana motivacija bile su nešto niže izražene, dok je amotivacija bio najmanje izražen oblik motivacije. Ovakvi rezultati impliciraju da su studenti medicine samousmereni i prevashodno unutrašnje motivisani za izučavanje anatomije, što predstavlja solidnu osnovu za dalji razvoj ovih oblika motivacije u nastavku studija. Rezultati glavne analize pokazuju da su svi testirani modeli bili statistički značajni, i da bazične psihološke potrebe najbolje objašnjavaju amotivaciju, zatim redom identifikovanu, introjektovanu i spoljašnju motivaciju, dok najmanje objašnjavaju unutrašnju motivaciju. Ispostavilo se da je bazična psihološka potreba za auto-

nomijom značajna kod predviđanja većine oblika motivacije, potreba za kompetencijom je značajna samo u predviđanju kontrolisanih oblika motivacije, dok značajnost potrebe za povezanošću nije utvrđena.

Kod objašnjavanja autonomnih oblika motivacije (unutrašnja i identifikovana motivacija), od svih testiranih prediktora jedini značajan je bio zadovoljenje potrebe za autonomijom. Ovi rezultati ukazuju na to da studenti koji su svesni prava na sopstveno mišljenje a samim tim i prava na izbor imaju veću motivaciju za učenje iz ličnih razloga, zbog percepcije predmeta anatomije kao važnog za sopstveni rast i razvoj. Ovi rezultati su uglavnom bili očekivani, jer je potreba za autonomijom prepoznata kao važan izvor autonomne motivacije (Chen et al., 2015; Ryan & Deci, 2017). U kontekstu učenja anatomije ovaj rezultat je od posebnog značaja jer ukazuje da intenziviranjem osećaja autonomije, nastavnici mogu pomoći studentima da razviju optimalnu motivaciju. Podrška autonomiji, kao motivacioni stil nastavnika namenjen razvijanju većeg doživljaja autonomije kod studenata, jedan je od najviše istraživanih motivacionih stilova u novijoj literaturi (Reeve et al., 2002; Reeve et al., 2004; Reeve & Jang, 2006). Iako su neki nastavnici skloni ovom motivacionom stilu, tehnike i strategije koje ga karakterišu mogu se naučiti i praktikovati (Reeve, 2009). Ovaj stil se preporučuje, jer je pokazao veoma dobre rezultate u podsticanju i održavanju unutrašnje motivacije kod učenika (Neufeld & Malin, 2021).

Rezultati druge regresione analize pokazali su da se introjektovana motivacija za učenje anatomije, kao oblik kontrolisane motivacije, može objasniti osujećenjem autonomije i osujećenjem kompetencije. Do učenja anatomije radi izbegavanja krivice, kao indikatora introjektovane motivacije, dovode osujećenje autonomije, koja se ispoljava kao osećaj kontrolisanosti od strane spoljašnjih sila i unutrašnjih sukoba, ali i osujećenje kompetencije, koja se ispoljava kao osećaj lične nesigurnosti i naučene bespomoćnosti. Introjektovana regulacija proističe iz pritisaka i očekivanja društvenog okruženja, koja u ovom slučaju mogu biti očekivanja roditelja ili nastavnika nametnuta studentima upisanim na visoko konkurentne studije. Ovi nalazi su u skladu sa prethodnim studijama koje su pokazale da je ovaj oblik motivacije povezan sa manje povoljnim individualnim karakteristikama i okolnostima (Assor et al., 2009). U kontekstu predmeta anatomije, pojava introjektovane motiva-

cije se može očekivati kada se studenti suoče sa izazovnijim nastavnim materijalom koji bi mogao da izazove kognitivni umor. Introjektovana motivacija je u ovom istraživanju merena kao jednodimenzioni konstrukt, ali se u literaturi često navodi njena dvojaka priroda, odnosno da introjektovana motivacija može da se objasni kao potreba za izbegavanjem doživljaja krivice (npr. student uči da se ne oseća loše jer nije ispunio svoje obaveze) i kao intenziviranje osećaja sopstvene vrednosti (npr. student uči da bi dokazao sebi da može da prevaziđe izazovne predmete) (Assor et al., 2009). Pošto izbegavanje krivice vodi ka manje optimalnim ishodima nego drugi aspekt introjektovane motivacije, dalja istraživanja bi trebalo da budu preciznije usmerena na oba aspekta u kontekstu proučavanja anatomije.

Spoljašnja motivacija se, prema rezultatima, može objasniti zadovoljenjem kompetencije, ali i osujećenjem autonomije. S obzirom da je spoljašnja motivacija kontrolisan oblik motivacije (osoba uči zbog spoljašnjih podsticaja, kao što su nagrade, ocene i slično), može se očekivati značaj osujećenja autonomije jer podrazumeva osećaj nedostatka slobode i pojačane kontrole. Kada je u pitanju zadovoljenje kompetencije, može se tvrditi da spoljašnje motivisani studenti, oni koji studiraju medicinu da bi dobili ugledan i plaćen posao, tj. iz materijalnih razloga, moraju imati osećaj lične kompetencije za postizanje teških ciljeva. Dok su ovi studenti podjednako pod pritiskom, verovatno će obrazovanje doživeti kao niz neizbežnih obaveza koje moraju da ispune kako bi postigli svoje ciljeve, a ne kao izvor stimulacije, ličnog razvoja i rasta. Slovenačka studija (Puklek Levpušček & Podlesek, 2019) pokazala je da je spoljašnja motivacija jednako prisutna kao unutrašnja motivacija, a pošto je spoljašnja motivacija povezana sa izborom karijere, smatra se neophodnom.

Poslednji rezultat ukazuje da amotivaciju za učenje anatomije u najvećoj meri i jedino predviđa osujećenje potrebe za autonomijom. Ovaj rezultat se može objasniti time da studenti koji se osećaju izuzetno kontrolisano i pod velikim pritiskom verovatno ne žele da uče i u najvećem su riziku od odustajanja. I u prethodnim studijama je registrovan značaj osujećenja potrebe za autonomijom u amotivaciji i to kod kod mlađih adolescenata prilikom učenja matematike (Šakan, 2020). Termin *amotivacija* prvi su upotrebili Deci i Rajan (1985), da bi opisali nenamerne aktivnosti pojedinca. U svojim kasnijim radovima opisali su da se amotivacija može

pojaviti u spoljnim granicama, na primer između osobe i njenog okruženja, ali i u ličnim granicama – između neintegrisanih elemenata spoljašnjeg pritiska i selfa (Deci & Ryan, 1990; Koestner et al., 1996). Prema ovome, ekstremna amotivacija se javlja zbog nedostatka kompetencije u nekim aktivnostima određenog životnog domena i slična je Seligmanovoj naučenoj bespomoćnosti. S druge strane, unutrašnja amotivacija nastaje u slučajevima kada se pojedinac oseća neefikasno u unutrašnjem suočavanju sa nekim neintegrisanim pitanjima. Uprkos dvema mogućim varijacijama amotivacije, većina istraživanja u ovoj disciplini se fokusirala na opšti osećaj amotivacije (Koestner et al., 1996; Vallerand et al., 1989. Vallerand et al., 1999.), kao što je bio slučaj i u ovom istraživanju. Shodno tome, buduća istraživanja bi trebalo da budu usmerena ka stvaranju nijansiranijeg pristupa amotivaciji.

Jedno od pitanja koje se nameće kako na osnovu ovog istraživanja, tako i drugih istraživanja u domaćoj populaciji, prilikom predviđanja motivacije za učenje, jeste razlog odsustva potrebe za povezanošću u kontekstu obrazovanja mlađih učenika (Šakan, 2020; Šarčević, 2017) i starijih ispitanika, na primer među studentima. Na osnovu rezultata deskriptivne statistike, čini se da je ova potreba kod studenata zadovoljena, ali se u predloženim modelima nije kvalifikovala kao značajan pokazatelj u odnosu na akademsku motivaciju. Ovaj rezultat ima dvostrano objašnjenje. Prvo, moguće je da studenti u kontekstu učenja anatomije smatraju da je osećaj povezanosti sa drugima relativno nevažan. S obzirom na to da ovo nije u skladu sa velikim brojem drugih studija koje tvrde da je ova potreba jedna od najvažnijih (Jones et al., 2004; Niemiec & Ryan, 2009; Sheldon & Filak, 2008; Wellborn et al., 1988), postoji drugo objašnjenje. Drugo objašnjenje je metodološko, pri čemu su potrebe merene kao opšte, dok je motivacija merena u kontekstu predmeta anatomije, što znači da studenti osećaju povezanost i sigurnost u opštem smislu, ali da to nije povezano sa njihovim akademskim životom. U svakom slučaju treba naglasiti da je osećaj povezanosti od velikog značaja u akademskom životu, pa bi trebalo sprovesti dodatna istraživanja uz korišćenje adekvatnije istraživačke metodologije koja obuhvata merenje afektivnog funkcionisanja.

Nastava anatomije je u novije vreme doživela nekoliko promena u svom prelasku sa tradicionalnog obrazovanja na moderno obrazova-

nje koje se izvodi uz pomoć digitalizovanih sadržaja (Srdić-Galić et al., 2017). Kako bi se obezbedilo da studenti bolje savladaju nastavni materijal iz ovog predmeta, potrebno je povećati autonomnu motivaciju učenika za njegovo proučavanje. S obzirom da se pokazalo da je optimalnu motivaciju za učenje anatomije moguće razviti iz zadovoljenja pojedinih bazičnih psiholoških potreba, neke preporuke za nastavu anatomije mogu uključivati: identifikovanje i negovanje potreba i želja studenata; podsticanje odgovornosti za samostalno učenje; stvaranje optimalnih izazova u učenju; pružanje jasne strukture u nastavi; davanje pozitivnih i konstruktivnih povratnih informacija; pružanje emocionalne podrške; uvažavanje negativnih afektivnih stanja kod učenika; davanje dodatnih objašnjenja za aktivnosti koje se mogu smatrati nezanimljivim; pružanje izbora, uz slanje većeg broja poruka koje se sastoje od *trebali biste* ili *mogli biste*, a ne *morali biste* (Kursukar et al., 2011; Neufeld & Malin, 2021; Malin, 2015; Ten Cate et al., 2011).

Iako je teorija samoodređenja veoma zastupljena u proučavanju motivacije u obrazovanju, istraživanja u domenu studija medicine su ograničena, pa ovaj rad doprinosi razvoju teorije u ovoj oblasti. Konkretno, ovaj rad doprinosi razumevanju kontekstualne motivacije za izučavanje anatomije koja se često percipira kao jedan od najtežih predmeta na studijama medicine. Pored teorijskog značaja, ovaj rad se može koristiti kao pomoć pri formulisanju i unapređenju nastave i proučavanju anatomije.

Relativno nizak procenat objašnjene varijanse u svim testiranim modelima u ovom istraživanju pokazuje da je samo oko petina ukupne varijanse različitih oblika akademske motivacije pri izučavanju anatomije objašnjeno odabranim prediktorima, što znači da se druge relevantne varijable moraju razmatrati u daljem istraživanju. Među njima bi mogle biti i varijable koje Kusurkar i saradnici (2011) nazivaju „nepromenljivim", kao što su sociodemografske karakteristike i druge osobine iz domena individualnog psihološkog funkcionisanja (stilovi učenja, identitet, emocionalna regulacija stresa, osobine ličnosti i dr.). Takođe, generalizacija ovih rezultata je ograničena, imajući u vidu da su uzorak činili studenti jedne generacije, pa bi buduća istraživanja trebalo proširiti i na druge generacije.

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BASIC PSYCHOLOGICAL NEEDS AS SOURCES OF ACADEMIC MOTIVATION FOR STUDYING ANATOMY

Abstract: According to the Self-Determination Theory, basic psychological needs are the basis of motivation and personal growth. Since little is known about how these mechanisms function in the studying of anatomy, a subject in the study of medicine that serves as a cornerstone for the successful practice of virtually any medical profession, the aim of

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this research was to determine the role of basic psychological needs in attaining academic motivation in this context. This study has been carried out on a sample of 197 first year medical students (73% female participants, ages 18 to 25). Five multiple hierarchical regression analyses were performed in which the predictor variables in the first model were satisfaction of basic psychological needs for autonomy, competence and relatedness, the frustrations of these needs were placed in the second model, and the criterion variables were various forms of academic motivation to study anatomy: intrinsic motivation, identified motivation, introjected motivation, external motivation and amotivation. Obtained results indicated that the basic psychological need for autonomy had significance in predicting variance of most types of motivation, while the need for competence played a role only in controlled types of motivation, whereas any significance of the need for relatedness in studying anatomy was indicated. The results were discussed in the context of other relevant studies and the methods by which the optimal types of motivation may be further enhanced in the study of anatomy are considered.

Keywords: medical studies, anatomy, Self-Determination Theory, academic motivation, basic psychological needs

Introduction

Upon starting medical studies, students are often confronted with many significant challenges, such as encountering novel and complex subjects and the passing of corresponding complex and important exams. One of the first of these subjects and exams is anatomy, a core subject students take in the first year of their studies. This subject often functions as a critical milestone for many students, with some being unable to advance to subsequent academic years due to failure to pass the associated examination which can result in a corresponding decline in student motivation for learning. Since academic motivation is crucial for achieving academic excellence, examining it, particularly in the context

of complex subjects, is essential. Understanding the sources of motivation that are sensitive to external influences, such as the different motivational styles in teaching, can help anatomy teachers refine their educational approaches, ultimately fostering an optimal learning environment.

From the students' perspective, mastering anatomy largely determines whether a student will become a medical doctor or not (Smith & Mathias, 2011), which endows the subject with gravity, and places great responsibility on teachers. Students at the beginning of their studies, unlike third- or fourth-year students, generally have a committed learning approach (Cebeci et al., 2013) that correlates with autonomous forms of academic motivation (Vansteenkiste et al., 2004). The results of relevant studies indicate that at the beginning of their studies, when anatomy is the leading subject, the motivation for learning of medical students is at a very high level (Shankar et al., 2013). Thus, it is crucial that the preconditions for this kind of motivation be determined, so that it can be cultivated and sustained even in later years of study, especially as motivation has been shown to decline over time, with learning styles moving from deep to superficial (Cebeci et al., 2013). The aim of our research was to determine the preconditions for realizing different forms of motivation to study anatomy. Among the predictors of various forms of motivation, the satisfaction and frustration of basic psychological needs were selected, as they are fundamental determinants in the development of optimal motivation. The theoretical framework of this paper is the Self-Determination Theory (SDT; Deci & Ryan, 1985; Ryan & Deci, 2017), one of the leading current motivational theories. Unlike other motivational theories, it offers a range of motivational types systematically arranged along a motivational continuum.

According to Self-Determination Theory (SDT), motivation is a complex, multi-layered psychological phenomenon. SDT challenges the traditional dichotomy of motivation by proposing that, in addition to varying in intensity, motivation also varies in type or form (Ryan & Deci, 2017). It distinguishes three primary types of motivation: *amotivation* (a state of lacking motivation), *external motivation* (behavior driven by external factors to achieve specific goals), and *intrinsic motivation* (a natural inclination for exploration, assimilation, and overcoming challenges). SDT further identifies several forms of external motivation. *Ex-*

ternal regulation involves behavior controlled by external rewards or demands. *Introjected regulation* reflects partial internalization of external demands, resulting in behavior driven by internal pressures rather than full self-acceptance (Deci & Ryan, 1985). *Identified regulation* represents a form of extrinsic motivation where individuals adopt behaviors because they find them personally valuable and important. *Integrated regulation* is the most self-determined form of extrinsic motivation, where behaviors are fully integrated into the self (Ryan & Deci, 2000).

Several factors can influence the motivation of medical students: these are variables that can be influenced (manipulable), such as basic psychological needs for autonomy, competence, and relatedness; and variables that cannot be manipulated such as age, gender, ethnicity (unmanipulable) (Kusurkar et al., 2012). Sub-theory of SDT, Basic Psychological Needs theory points out the significance of basic psychological *needs for autonomy* (each individual's need for independence, for making their own autonomous decisions, and the right to their own opinions), *competence* (the need of every individual for a personal feeling of aptitude in overcoming challenging situations and obstacles) and *relatedness* (each individual's need for realising safe and close relationships that contribute to the feeling of warmth and affiliation) as essential for optimal human growth and development (Deci & Ryan, 1985; Ryan & Deci, 2017). All three are considered organismic, meaning that their satisfaction is realized through a dialectical relationship between the individual and one's environment. The theory suggests that the innate motivation for studying directly depends on the satisfaction of these three basic psychological needs, but its growth depends on whether the individual's environment supports the satisfaction of the three basic needs (Vansteenkiste & Ryan, 2013). Instead of the earlier practice of distinguishing three basic psychological needs as unique dimensions, with negative poles representing frustration and positive satisfaction, we now find that it is necessary to consider needs frustration and satisfaction as separate constructs (Chen et al., 2015; Vansteenkiste & Ryan, 2013; Šakan, 2020). Along with this, the effects of the need frustration and its lack of satisfaction are very different in their quality and intensity, in the sense that the frustration of a need is significantly worse for psychological functioning than lack of the satisfaction of a need.

Previous studies have consistently demonstrated the relationship between basic psychological needs and various forms of academic motivation (i.e., Šakan et al., 2020). However, to our knowledge, no research has specifically examined this relationship within the Serbian student population, particularly among medical students focusing on a single subject. Historically, research on academic motivation in medical education has predominantly addressed it as an implicit aspect of curricular reform, with a focus on cognitive and metacognitive outcomes (Kursukar et al., 2012). Recent literature, however, indicates a shift toward examining motivation itself, particularly its autonomous aspects, as key factors in curriculum development and improving educational quality (Baldwin et al., 2012; Kursukar et al., 2012). Given these trends, it is crucial to investigate motivation and its sources among medical students, who are the future practitioners in the field. Based on previous research and theory, it was expected that the satisfaction of basic psychological needs would predict autonomous types of motivation (such as intrinsic and identified), whereas the frustration of basic psychological needs would predict more controlled types of motivation (such as external and introjected) as well as amotivation.

Material and Methodology

Participant Sample and Procedure

The sample consisted of 197 first year medical students of the Faculty of Medicine University of Novi Sad (73% female) aged between 18 and 25 (AS = 19.13, SD = .89). The research was performed during regular anatomy classes during the second semester of the 2019/2020 school year. This research had been approved by the Ethical committee of the Faculty of Medicine Novi Sad, University of Novi Sad, 01-39-111/1, September 17, 2019. The participants had been informed about the research procedures and its purpose and been provided additional information about the protection of their anonymity.

Instruments and Variables

The Academic Motivation Scale (Échelle de Motivation en Éducation) (Vallerand et al., 1989) questionnaire was used. It had previously been translated from French to Serbian and had been validated (Šarčević & Vasić, 2013; Šarčević, 2015). The questionnaire was modified by the addition of one stem placed at its beginning, "*Why do you study anatomy?*," with the purpose of contextualizing the measurement. In this research the original version that captures five aspects of academic motivation: *intrinsic motivation* (ex: *…for the pleasure I experience when I discover new things never seen before*), *identified motivation* (ex. *…because eventually it will enable me to enter the job market in a field that I like*), *introjected motivation* (ex. *…to prove to myself that I am capable of passing my anatomy course*), *external motivation* (ex. *… in order to obtain a more prestigious job later on*), and *amotivation* (ex. *…I once had good reasons for learning anatomy; however, now I wonder whether I should continue*) was employed. The questionnaire contained 28 items, and the students registered their answers on a five-point scale (1 = I completely disagree to 5 = I completely agree). The internal consistency of the scales was satisfactory, ranging from α = .70 to α = .89. Variables have been calculated as mean values, with higher scores representing more pronounced characteristics.

The Basic Psychological Need Satisfaction and Frustration Scale (BPNSFS) (Chen et al., 2015) is a questionnaire that was developed on the foundations of the Self-Determination Theory, and it measures the *satisfaction* and *frustration of the basic psychological needs for autonomy, competence,* and *relatedness*. The questionnaire had already been previously translated to the Serbian language and validated, showing excellent psychometric properties (Šakan, 2015; Šakan, 2020). The questionnaire contained 24 items, and the participants could register their answers on a five-point scale by marking one of the answers (1 = I completely disagree to 5 = I completely agree). Internal consistency of the scales for this sample was satisfactory, with reliability coefficients ranging from α = .76 to α = .85. As with the first questionnaire, variables have been calculated as mean values, with higher scores indicating more pronounced characteristics.

Data analysis

First, descriptive statistics measurements were implemented and the correlations between all variables included in the study were calculated. The main body of analysis comprised five multiple hierarchical regression analyses, where: in the first block were the predictors - the *satisfaction of the basic psychological needs for autonomy, competence, and relatedness*; and in the second block variables were frustrations of the aforementioned needs; while the criterion in each of the five analyses were the types of academic motivation for studying anatomy: *intrinsic motivation, identified motivation, introjected motivation, external motivation,* and *amotivation*. In data analysis SPSS IBM version 22 was used.

Results

In Table 1 correlations between types of academic motivation and the satisfaction and frustration of basic psychological needs are presented, as well as results of descriptive statistics.

Table 1

Descriptive statistics and correlation

	Scale	1	2	3	4	5	6	7	8	9	10	11
1.	*Intrinsic motivation*	1										
2.	*Identified motivation*	.35**	1									
3.	*Introjected motivation*	.29**	.17*	1								
4.	*External motivation*	.09*	.20**	.52**	1							
5.	*Amotivation*	-.16**	-.29**	.13	.12	1						
6.	Autonomy need satisfaction	.29**	.38**	.03	.02	-.28**	1					
7.	Autonomy need frustration	-.10	-.11	.25**	.22**	.41**	-.29**	1				
8.	Competence need satisfaction	.18*	.26**	.09	.17*	-.16*	.41*	-.16*	1			
9.	Competence need frustration	-.14*	-.12	.21**	.12	.26**	-.28**	-.44**	-.34**	1		
10.	Relatedness need satisfaction	.09	.18*	.13	.12	-.12	.28**	-.12	.13	-.02	1	
11.	Relatedness need frustration	-.01	-.17*	.06	.03	.25**	-.25**	.40**	-.06	.30**	-.44**	1
	M	3.68	4.62	3.54	3.28	1.21	4.31	2.00	4.24	1.65	4.64	1.54
	SD	.54	.43	.95	.87	.39	.51	.75	.49	.59	.44	.52

Note: M – mean value; SD – standard deviation; * $p < 0,05$; ** $p < 0,01$.

In Table 2 the results of the hierarchical multiple regression analyses are presented, where the predictors of *intrinsic motivation* are the *satisfaction of the basic psychological needs for autonomy, competence,* and *relatedness*, as well as their *frustration* counterparts. The tested models were significant and explained 10% of the variance of *intrinsic motivation* to study anatomy, while the introduction of the second model did not cause any significant change in this percentage.

Table 2

Variance proportion (R^2), their change (ΔR^2), and the statistical significance of the change (ΔF) (dependant variable: intrinsic motivation)

Model	R^2	ΔR^2	ΔF
1. model: Satisfaction of the basic psychological needs for autonomy, competence, and relatedness	.09	.08	6.52
2. model: Frustration of the basic psychological needs for autonomy, relatedness, and competence	.10	.08	.77

Note. For all models $p < .01$.

Only the *satisfaction of the basic need for autonomy* was indicated as statistically significant partial predictor (Table 3). Those students whose *need for autonomy* was more satisfied demonstrated a greater *intrinsic motivation* for studying such a subject.

Table 3

Partial contributions of basic psychological need satisfaction and frustration (dependant variable: intrinsic motivation)

Predictor	Model 1 (B)	Model 2 (B)
Satisfaction of the basic psychological need for autonomy	.27**	.28**
Satisfaction of the basic psychological need for competence	.07	.03
Satisfaction of the basic psychological need for relatedness	.01	.06
Frustration of the basic psychological need for autonomy		.01
Frustration of the basic psychological need for competence		-.09
Frustration of the basic psychological need for relatedness		.10

* $p < .05$; ** $p < .01$.

The same models were tested and showed statistical significance explaining 17% of *identified motivation* for studying anatomy variance (Table 4), but the increase of the percentage of explained variance was insignificant when the second model was introduced. Out of partial predictors only the *satisfaction of the basic psychological need for autonomy* was statistically significant (Table 5).

Table 4

Variance proportion (R^2), their change (ΔR^2), and the statistical significance of the change (ΔF) (dependant variable: identified motivation)

Model	R^2	ΔR^2	ΔF
1. model: Satisfaction of the basic psychological needs for autonomy, competence, and relatedness	.16	.15	12.63
2. model: Frustration of the basic psychological needs for autonomy, relatedness, and competence	.17	.15	.67

Note. For all models $p < .01$.

Table 5

Partial contributions of basic psychological need satisfaction and frustration (dependant variable: identified motivation)

Predictor	Model 1 (B)	Model 2 (B)
Satisfaction of the basic psychological need for autonomy	.31**	.33**
Satisfaction of the basic psychological need for competence	.12	.14
Satisfaction of the basic psychological need for relatedness	.07	.03
Frustration of the basic psychological need for autonomy		.07
Frustration of the basic psychological need for competence		.02
Frustration of the basic psychological need for relatedness		-.10

* $p < .05$; ** $p < .01$.

The same model used in the above analyses was used in predicting *introjected motivation*. The chosen predictors explained 13% of the *introjected motivation* variance, while the second model explained most of the variance criterion (Table 6). The results of this analysis at the level of predictors demonstrated that the greatest impact was seen regarding the *basic psychological need for autonomy frustration*, followed by the *frustration of the basic psychological need for competence* (Table 7).

Table 6

Variance proportion (R^2), their change (ΔR^2), and the statistical significance of the change (ΔF) (dependant variable: introjected motivation)

Model	R^2	ΔR^2	ΔF
1. model: Satisfaction of basic the psychological needs for autonomy, competence, and relatedness	.02	.01	1.51
2. model: Frustration of the basic psychological needs for autonomy, relatedness, and competence	.13	.09	7.48

Table 7

Partial contributions of basic psychological need satisfaction and frustration (dependant variable: introjected motivation)

Predictor	Model 1 (B)	Model 2 (B)
Satisfaction of the basic psychological need for autonomy	-.04	.07
Satisfaction of the basic psychological need for competence	.09	.16
Satisfaction of the basic psychological need for relatedness	.13	.11
Frustration of the basic psychological need for autonomy		.23**
Frustration of the basic psychological need for competence		.19*
Frustration of the basic psychological need for relatedness		-.02

* $p < .05$; ** $p < .01$.

The tested models were statistically significant in predicting *external motivation* (Table 8) and explained 12% of *external motivation* for studying anatomy. The greatest percentage was explained by the second model that included the *frustration of the three basic psychological needs*. *External motivation* for studying anatomy was shown to be predicted by the *satisfaction of the need for competence* and by the *frustration of the need for autonomy* (Table 9).

Table 8

Variance proportion (R^2), their change (ΔR^2), and the statistical significance of the change (ΔF) (dependant variable: external motivation)

Model	R^2	ΔR^2	ΔF
1. model: Satisfaction of the basic psychological needs for autonomy, competence, and relatedness	.04	.03	3.07
2. model: Frustration of the basic psychological needs for autonomy, relatedness, and competence	.12	.09	5.28

Table 9

Partial contributions of basic psychological need satisfaction and frustration (dependant variable: external motivation)

Predictor	Model 1 (B)	Model 2 (B)
Satisfaction of the basic psychological need for autonomy	-.09	.01
Satisfaction of the basic psychological need for competence	.19*	.24**
Satisfaction of the basic psychological need for relatedness	.12	.09
Frustration of the basic psychological need for autonomy		.24**
Frustration of the basic psychological need for competence		.12
Frustration of the basic psychological need for relatedness		-.04

* $p < .05$; ** $p < .01$.

The last model explained 20% of *amotivation* variance, most significantly explained by the second block of the predictors, the *frustration of psychological needs* (Table 10). The *satisfaction of basic psychological need for autonomy* was shown to have a significant impact on the model in the first part, but this significance dissipated when needs frustrations were introduced into the model. In the second model, only the *frustration of the basic psychological need for autonomy* was observed as a significant predictor (Table 11).

Table 10

Variance proportion (R^2), their change (ΔR^2), and the statistical significance of the change (ΔF) (dependant variable: amotivation)

Model	R^2	ΔR^2	ΔF
1. model: Satisfaction of the basic psychological needs for autonomy, competence, and relatedness	.08	.07	5.96
2. model: Frustration of the basic psychological needs for autonomy, relatedness, and competence	.20	.17	9.27

Note. For all models $p < .01$.

Table 11

Partial contributions of basic psychological need satisfaction and frustration (dependant variable: amotivation)

Predictor	Model 1 (B)	Model 2 (B)
Satisfaction of the basic psychological need for autonomy	-.25**	-.11
Satisfaction of the basic psychological need for competence	-.05	-.04
Satisfaction of the basic psychological need for relatedness	-.04	-.01
Frustration of the basic psychological need for autonomy		.31**
Frustration of the basic psychological need for competence		.06
Frustration of the basic psychological need for relatedness		.08

* $p < .05$; ** $p < .01$.

Discussion and Conclusion

The aim of this research was to investigate the role of basic psychological needs, the basis of motivation and personal growth, in predicting academic motivation for learning anatomy on a sample of medical students. The initial results of the descriptive statistics indicated that autonomous forms of motivation for studying anatomy are dominant in first year medical students, foremost among them *identified motivation*, followed by *intrinsic motivation*. This suggests that motives of internal source push students to study anatomy, firstly in their likely recognition of the significance of anatomy as a subject seeing as how it is formative for their future practice, but also out of their personal interest in the substance of the subject itself. Controlled types of motivation, as *external* and *introjected* motivation were somewhat lower, while *amotivation* was the least expressed form of motivation. Such results imply that medical students are self-directed and are primarily strongly and internally motivated to study anatomy, which represents a solid basis for the further development of these forms of motivation in the continuing course of their studies. The results of the principal analysis showed that all tested models were significant, and the model explained the greatest percentage of *amotivation* variance followed by *identified*, *introjected*, and *external motivation* respectively, while the model explained *intrinsic motivation* variance the least.

In explaining autonomous forms of motivation (*intrinsic and identified motivation*), out of all tested predictors the only significant one was the *satisfaction of the need for autonomy*. These results indicate that those students who perceive that they have the right to their own opinion, thusly the right to make their own choices, have higher motivation to study because of personal reasons and because of their perception of anatomy course as important for their personal growth and development. These results were largely expected, because the *need for autonomy* is noted as an important wellspring for *intrinsic motivation* (Chen et al., 2015; Ryan & Deci, 2017). In the context of learning anatomy, this result is of special significance because it indicates the ways in which the lecturers can help students develop optimal motivation – by intensifying the feeling of autonomy. The autonomous motivational

style of a teacher is one of the most researched motivational styles in recent literature (Reeve et al., 2002; Reeve et al., 2004; Reeve & Jang, 2006). Although some teachers are themselves predisposed to use this motivational style, techniques and strategies that characterise it can be learned and practiced (Reeve, 2009). This style has exhibited very good results in intensifying and maintaining *intrinsic motivation* in students, therefore it is highly recommended (Neufeld & Malin, 2021).

The results of the second regression analysis revealed that *introjected motivation*, a form of controlled motivation, is explained by autonomy frustration and competence frustration. This suggests that when students experience autonomy frustration, feeling controlled by external forces and internal conflicts, and competence frustration, characterized by insecurity and learned helplessness, their motivation to learn anatomy becomes non-optimal. They may be driven to study primarily to avoid negative emotions like guilt or shame, or to gain self-esteem and approval from themselves or others. *Introjected motivation* stems from social pressures and expectations, which, in this case, could be parental or teacher expectations of students enrolled in highly competitive programs. These findings align with previous studies showing that this form of motivation is associated with less optimal individual outcomes (Assor et al., 2009). In the context of an anatomy course, *introjected motivation* is likely to emerge when students face more challenging material that induces cognitive fatigue. Although *introjected motivation* was measured as a one-dimensional construct in this research, its dual nature is often noted in the literature. Specifically, it encompasses both the need to avoid guilt (e.g., studying to avoid feeling bad for neglecting responsibilities) and the desire to enhance self-worth (e.g., studying to prove the ability to overcome challenging subjects) (Assor et al., 2009). Since guilt avoidance tends to lead to less optimal outcomes than self-worth enhancement, future research should examine both aspects more thoroughly in the context of studying anatomy.

External motivation, according to the obtained results, can be explained by both competence satisfaction and autonomy frustration. Since *external motivation* is a controlled form of motivation – where individuals learn primarily due to external incentives like rewards or grades – the significance of autonomy frustration is expected, as it re-

flects a sense of limited freedom and feeling controlled. Regarding competence satisfaction, we could argue that externally motivated students studying anatomy for reasons like securing a 'respectable job' or financial stability must feel personally competent to achieve such challenging goals. Although these students are also under pressure, they are likely to view education as a series of unavoidable obligations to reach their objectives, rather than as a source of stimulation, personal development, or growth. A Slovenian study (Puklek Levpušček & Podlesek, 2019) found that external motivation is as prevalent as internal motivation, and because it correlates with career choices, it is considered necessary.

Results of this study revealed that frustration of the basic psychological need for autonomy is the sole predictor of *amotivation* in learning anatomy. This may be explained by the fact that students who feel under pressure or highly controlled are often unwilling to study and at risk of disengaging. The frustration of autonomy has also been shown to significantly explain amotivation in younger adolescents studying mathematics (Šakan, 2020). The term 'amotivation' was first introduced by Deci and Ryan (1985) to describe an individual's lack of intentionality in their actions. Later, they explained that *amotivation* can arise from external factors – such as conflicts between an individual and their environment – or from internal struggles, where external pressures conflict with the self (Deci & Ryan, 1990; Koestner et al., 1996). According to this view, extreme *amotivation* results from feelings of incompetence in certain life domains, akin to Seligman's concept of learned helplessness. Internal amotivation, however, emerges when a person feels unable to resolve internal conflicts or integrate external pressures. Despite these distinctions, most research, including this study, has focused on *amotivation* as a general construct (Koestner et al., 1996; Vallerand et al., 1989; Vallerand et al., 1999). Future research should aim to develop a more nuanced understanding of *amotivation* for learning anatomy, examining its various forms in greater depth.

One question that arises when explaining academic motivation, based on both this research and other studies of the local population, is the apparent absence of the need for relatedness in the educational context for both younger individuals (Šakan, 2020; Šarčević, 2017) and

older respondents, such as college students. Results of descriptive statistics of this study suggest that this need is satisfied in students, yet it did not emerge as a significant factor in the proposed models of academic motivation. This finding may have two explanations. First, it is possible that students do not view the feeling of relatedness as important in the context of learning anatomy. However, this contradicts numerous studies that emphasize the importance of relatedness as a key factor in motivation (Jones et al., 2004; Niemiec & Ryan, 2009; Sheldon & Filak, 2008; Wellborn et al., 1988), suggesting an alternative explanation. The second explanation is methodological: while relatedness was measured as a general need, motivation was measured specifically within the context of an anatomy course. This could mean that students feel connected and secure in a general sense, but do not associate this feeling with their academic experiences. In any case, the importance of relatedness in academic life should not be overlooked, and further research using more targeted methodologies, particularly those that assess affective functioning, is needed.

In recent times, anatomy instruction has undergone several changes in its transition from traditional education to modern education performed with the help of digitalized content (Srdić-Galić et al., 2017). In order to ensure that the study material from this subject is best absorbed by the students, it is necessary to increase student autonomous motivation for its study. Due to the obtained results highlighting the importance of satisfying basic psychological needs for optimal academic motivation in learning anatomy, recommendations for teaching anatomy include: adapting material to students' needs; encouraging responsibility for independent learning; creating appropriate challenges; providing clear structure and constructive feedback; offering emotional support and recognizing negative emotions (e.g., frustration); clarifying less engaging activities; allowing sufficient choice; and using supportive language, emphasizing 'should' or 'could' over 'must' or 'demand' (Kursukar et al., 2011; Neufeld & Malin, 2021; Malin, 2015; Ten Cate et al., 2011).

Although the Self-Determination Theory is well represented in studying motivation in education, research in the domain of medical studies is limited, so this paper contributes to the development of theory

in this domain. More specifically this paper contributes to understanding contextual motivation for studying anatomy, which is often perceived as one of the most challenging subjects in medical studies. In addition to the theoretical significance of this paper, it is intended that it could be used to help formulate and improve the teaching and studying of anatomy.

The relatively low percentage of explained variance in all tested models found in this research shows that only about a fifth of the variance of different types of academic motivation in studying anatomy were explained by the selected predictors, signifying that other relevant variables must be considered in further research. Among them could be those variables that Kusurkar et al. (2011) call "unchangeable," such as socio-demographic characteristics, and other traits from the domain of individual psychological functioning (learning styles, identity, emotional regulation of stress, personality traits, and so on). Also, the general impact of these results is limited bearing in mind that the sample was drawn from only one generation of medical students, so further, similar research should be extended to other generations of students.

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ODNOS IZMEĐU NEZAPOSLENOSTI, STILOVA PREVLADAVANJA, PERCIPIRANE SOCIJALNE PODRŠKE I ZADOVOLJSTVA ŽIVOTOM KOD OSOBA SA VISOKOM STRUČNOM SPREMOM

Rezime: Osnovni cilj ovog istraživanja bio je da se ispitaju odnosi između percipirane socijalne podrške, stilova suočavanja i zadovoljstva životom, kao i da se ispita da li postoje razlike u pogledu ovih varijabli kada se uporede grupe nezaposlenih i zaposlenih osoba sa visokom stručnom spremom. Uzorak je obuhvatio 236 učesnika među kojima je 59,3% ženskog a 40,7% muškog pola (raspon godina 23–30, M = 26,86, SD = 2,24), od čega je 109 zaposlenih i 127 nezaposlenih učesnika. Rezultati ukazuju na to da je prosečan skor nezaposlenih niži na Percipiranoj socijalnoj podršci i Zadovoljstvu životom i da su percipirana socijalna podrška i strategije prevladavanja stresa usmerene na emocije zadovoljstva životom. Dobijeni rezultati su diskutovani uz osvrt na moguće intervencije.

Ključne reči: *nezaposlenost, visoka stručna sprema, zadovoljstvo životom, percipirana socijalna podrška, stil prevladavanja stresa*

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1. Uvod

Prethodna istraživanja su pokazala da nezaposlenost ima negativan uticaj na mentalno zdravlje i zadovoljstvo životom koji prevazilazi finansijske teškoće (Winkelmann, 2008). Snažno je povezan sa povećanim rizikom od morbiditeta, mortaliteta, problema sa mentalnim zdravljem i nižim nivoom zadovoljstva životom (Richter et al., 2020). Niži nivo zadovoljstva životom kod nezaposlenih nije univerzalan, pa se postavlja pitanje zašto se javlja samo kod nekih ljudi, tj. koji faktori mogu objasniti individualne varijacije.

Neki autori smatraju da dugotrajna nezaposlenost dovodi do toga da ljudi nauče kako da žive sa nezaposlenošću i da usklade svoja očekivanja (Clark, 2003; Winkelmann, 2008). Njihovo zadovoljstvo životom može čak i porasti ako bolje planiraju svoj budžet i slično (Clark, 2006). Međutim, rezultati nekih studija ukazuju na nepostojeću ili vrlo malu adaptaciju na nezaposlenost (Clark, 2006; Winkelmann & Winkelmann, 1998). Neka istraživanja su čak povezala dugotrajnu nezaposlenost sa nižim zadovoljstvom životom (McKee-Rian et al., 2005).

Istraživanja su pokazala da nezaposlenost negativnije utiče na muškarce nego na žene (Van der Meer, 2014; Winkelman, 2008). Pretpostavlja se da je to zbog toga što žene uglavnom rade poslove u domaćinstvu, što može kompenzovati neke od negativnih efekata nezaposlenosti (Ervasti & Venetoklis, 2010).

Nezaposleni koji su u braku navode da su zadovoljniji svojim životom (Mckee-Rian et al., 2005). Bračni život, takođe, može da dovede do odgovornosti i obaveza koje pružaju priliku za angažovanje u aktivnostima koje doprinose nečijoj dobrobiti (Ervasti & Venetoklis, 2010).

Godine starosti negativno koreliraju sa zadovoljstvom životom kod nezaposlenih, čak i nakon što su kontrolisane brojne socio-demografske varijable (Pavlova & Silbereisen, 2012). Neki autori smatraju da nezaposlenost, po svoj prilici, nanosi psihološki manju štetu mlađim starosnim grupama nego starijim (Ervasti & Venetoklis, 2010).

Rezultati ranijih studija su pokazali promenu nivoa percipirane socijalne podrške nakon gubitka posla, što ukazuje na to da su nezaposlenost i socijalna podrška međusobno povezani (Kong et al., 1993).

Zaposlenost je povezana s većom percepcijom socijalne podrške (Flevelling et al., 2019; Cimarolli & Vang, 2006). Nezaposleni koji navode viši nivo socijalne podrške osećali su se psihološki bolje od onih bez takve podrške (Pinkuart i Sorensen, 2000; Mckee-Rian et al., 2005; Milner et al., 2016). Takođe, postoje dokazi o uticaju sva tri oblika percipirane socijalne podrške na osećaj blagostanja kod dugotrajno nezaposlenih mladih (Lorenzini, & Giugni, 2010).

Prevladavanje usmereno na problem povezano je sa boljim socijalnim prilagođavanjem i u slučaju nezaposlenosti, kao i kod ponovnog zapošljavanja (Sojo & Guarino, 2011; Solove et al., 2015). Studije pokazuju da je zadovoljstvo životom u pozitivnoj korelaciji sa problemski usmerenim prevladavanjem i u negativnoj korelaciji sa prevladavanjem usmerenim na emocije (Soikan et al., 2019). U jednoj studiji koja se bavila korelacijama zadovoljstva životom sa strategijama prevladavanja otkrivene su različite, uglavnom pozitivne asocijacije sa akcijom usmerenom na problem i kognitivnom ponovnom procenom (Korpela et al., 2018).

Mnoga istraživanja povezuju zadovoljstvo životom sa strategijama prevladavanja (Fischer et al., 2021), kao i sa percipiranom socijalnom podrškom (Baumeister & Leari, 1995; Diener & Oishi, 2005). Imajući u vidu da je nezaposlenost snažno povezana sa povećanim rizikom od morbiditeta, mortaliteta, mentalnim problemima i nižim nivoom zadovoljstva životom (Richter et al., 2020), važno je istražiti da li nezaposleni navode niže zadovoljstvo životom, kao i koji faktori doprinose većem zadovoljstvu životom kod nezaposlenih.

2. Metodologija

2.1. Cilj istraživanja

Kako bi se bolje razumela povezanost percipirane socijalne podrške, stilova prevladavanja i zadovoljstva životom, u ovom istraživanju ispituje se da li su percipirana socijalna podrška i stilovi prevladavanja prediktori zadovoljstva životom i da li postoje razlike u nivou zadovoljstva životom kada se uporede grupe zaposlenih i nezaposlenih sa visokom stručnom spremom.

2.2. Uzorak i postupak

Istraživanje je obavljeno na prigodnom uzorku od 236 ispitanika, 59,3% žena i 40,7% muškaraca (uzrast 23–30 godina; M = 26,86, SD = 2,24), od kojih je 109 zaposleno, dok je 127 nezaposleno sa prosečnim trajanjem nezaposlenosti 1,23 godine (SD = 1,04). Osnovi kriterijumi za uzorak bili su da ispitanici imaju visoku stručnu spremu i da su mlađi od 30 godina. Podaci su prikupljeni putem onlajn upitnika. Pre nego što su prešli na sekcije pitanja, ispitanici su potvrdili da su upoznati sa svojim pravima i pravilima testiranja.

2.3. Instrumenti

Coping Orientation to Problems Experienced Inventory (Brief-COPE; Carver, 1997; Srpska verzija vidi Živanović & Vukčević-Marković, 2019) jeste upitnik koji se sastoji od skale sa četiri moguća odgovora, od 1 – Uopšte to ne radim, do 4 – Često to radim, kojima se meri kako ispitanici prevladavaju stres. Postoje tri sveobuhvatna stila prevladavanja:

- Prevladavanje usmereno na problem, koje karakterišu facete aktivno prevladavanje, traženje informativne podrške, planiranje i pozitivno restrukturisanje;
- Prevladavanje usmereno na emocije, koje karakterišu facete izražavanje emocija, traženje emocionalne podrške, humor, prihvatanje, okrivljavanje sebe i religija;
- Prevladavanje izbegavanjem, koje karakterišu facete samodistrakcija, negiranje, upotreba supstanci, izbegavajuća ponašanja.

Multidimensional Scale of Perceived Social Support (Zimet et al., 1988) sastoji se od 12 ajtema, gde se stepen slaganja izražava na sedmostepenoj Likertovoj skali, od 1 – Uopšte se ne slažem do 7 – Potpuno se slažem. Tri supskale odnose se na podršku prijatelja, podršku porodice i podršku partnera.

Satisfaction with Life Scale (SWLS; Diener et al., 1985) je kratka skala od pet ajtema kojom se meri kognitivna dimenzija subjektivnog blagostanja i zadovoljstva životom, gde se stepen slaganja izražava na sedmostepenoj Likertovoj skali, od 1 – Uopšte se ne slažem do 7 – Potpuno se slažem.

2.4. Analiza podataka

Prikupljeni podaci su obrađeni korišćenjem t-testa nezavisnih uzoraka, Pirsonove korelacije za ispitivanje odnosa između varijabli i regresione analize.

3. Rezultati

Tabela 1. sadrži deskriptivno-statističke podatke o varijablama korišćenim u istraživanju, kao i rezultate t-testa nezavisnih uzoraka koji je sproveden da bi se uporedili prosečni skorovi grupa zaposlenih i nezaposlenih. Postoji statistički značajna razlika na percipiranoj socijalnoj podršci i zadovoljstvu životom, jer su prosečni skorovi na svim varijablama veći kod zaposlenih nego kod nezaposlenih.

Tabela 1. *Aritmetička sredina, standardne devijacije i rezultati nezavisnog t-testa*

	Ceo uzorak		Nezaposleni		Zaposleni		*t*(277)	Koenova *d*
	M	*SD*	*M*	*SD*	*M*	*SD*		
PFC	*6.02*	*1.33*	*5.54*	*1.53*	*6.58*	*.76*	*-.505*	*-.066*
EFC	*5.70*	*1.49*	*5.03*	*1.68*	*6.49*	*.65*	*-.092*	*-.012*
AC	*5.54*	*1.51*	*5.16*	*1.62*	*5.98*	*1.24*	*-.609*	*-.079*
SO	*2.67*	*.47*	*2.65*	*.46*	*2.68*	*.49*	*-6.436***	*-.840*
Family	*2.31*	*.41*	*2.31*	*.41*	*2.32*	*.42*	*-4.866***	*-.591*
Friends	*2.28*	*.39*	*2.26*	*.39*	*2.31*	*.41*	*-4.305***	*-.562*
SWLS	*5.51*	*1.16*	*5.18*	*1.22*	*5.91*	*.95*	*-5.044***	*-.659*

Napomena: $^{**}p < .01$; $^{*}p < .05$; PFC = Prevladavanje usmereno na problem; EFC = Prevladavanje usmereno na emocije; AC = Prevladavanje izbegavanjem; SO = Podrška partnera; Family = Podrška porodice; Friends = Podrška prijatelja; SWLS = Zadovoljstvo životom.

Rezultati korelacione analize prikazani u Tabeli 2. ukazuju da postoji povezanost između viših skorova na prevladavanju usmerenom na problem i percipiranoj socijalnoj podršci a nižih na prevladavanju usmerenom na emocije i viših skorova na zadovoljstvu životom.

Tabela 2. *Korelaciona analiza*

	1	2	3	4	5	6	7
1 – PFC	-	.391**	.439**	.126	.139*	-.039	.156*
2 – EFC		-	.339**	-.155*	-.089	-.126	-.163*
3 – AC			-	-.012	-.001	-.073	.077
4 – SO				-	.632**	.520**	.521**
5 – Family					-	.398**	.532**
6 – Friends						-	.421**
7 – SWLS							-

Napomena: $^{**}p < .01$; $^{*}p < .05$; PFC = Prevladavanje usmereno na problem; EFC = Prevladavanje usmereno na emocije; AC = Prevladavanje izbegavanjem; SO = Podrška partnera; Family = Podrška porodice; Friends = Podrška prijatelja; SWLS = Zadovoljstvo životom.

Sprovedena je regresiona analiza da bi se utvrdilo da li varijable istraživanja značajno predviđaju zadovoljstvo životom (Tabela 3). Može se zaključiti da je model značajan i da se percipirana socijalna podrška i prevladavanje usmereno na emocije pojavljuju kao značajni prediktori zadovoljstva životom. Ovaj rezultat ukazuje da viši nivo percipirane socijalne podrške doprinosi višem nivou zadovoljstva životom, dok viši nivo prevladavanja usmerenog na emocije doprinosi nižem nivou zadovoljstva životom.

Tabela 3. *Percipirana socijalna podrška i stilovi prevladavanja kao prediktori zadovoljstva životom*

	β	*p*	*F*	*p*	*R*	R^2
Podrška partnera	.190	.010	24.796	.001	.628	.110
Podrška porodice	.305	.001				
Podrška prijatelja	.192	.002				
Prevladavanje usmereno na problem	.117	.058				
Prevladavanje usmereno na emocije	-.161	.006				
Prevladavanje izbegavanjem	.096	.101				

Rezultati t-testa nezavisnih uzoraka, kada je u pitanju pol, ne pokazuju razlike u pogledu zadovoljstva životom (t (234) = -.926, p = .356), pri čemu muškarci imaju više skorove (M = 5,60, SD = 1,20) od žena (M = 5,46, SD = 1,13). Takođe, nema značajnih razlika u pogledu bračnog statusa (t (234) = 1.360, p = .175), pri čemu ispitanici koji su u braku imaju više skorove (M = 5,61, SD = 1,21) od onih koji nisu (M = 5,41, SD = 1,09). Ne postoji značajna korelacija između zadovoljstva životom i godina starosti (r = -.11, p = .12) ili trajanja nezaposlenosti (r = -.09, p =.16).

4. Diskusija

Kako bismo bolje razumeli povezanost percipirane socijalne podrške, stilova prevladavanja i zadovoljstva životom, u ovom istraživanju ispitivali smo da li su percipirana socijalna podrška i stilovi prevladavanja prediktori zadovoljstva životom i da li postoje razlike u nivou zadovoljstva životom kada se uporede grupe zaposlenih i nezaposlenih sa visokom stručnom spremom.

Rezultati pokazuju da postoji statistički značajna razlika na percipiranoj socijalnoj podršci i zadovoljstvu životom, jer su prosečni skorovi na svim varijablama veći kod zaposlenih nego kod nezaposlenih. Ranija istraživanja su pokazala da nezaposlenost ima negativan uticaj na zadovoljstvo životom (Clark, 2006; Ervasti & Venetoklis, 2010; van der Meer, 2014; Winkelmann, 2008) i na socijalnu podršku.

Veće zadovoljstvo životom povezano je sa višim skorovima na prevladavanju usmerenom na problem i percipiranoj socijalnoj podršci, kao i sa nižim skorovima na prevladavanju usmerenom na emocije, dok su značajni prediktori percipirana socijalna podrška i prevladavanje usmereno na emocije. Viši nivo percipirane socijalne podrške doprinosi višem nivou zadovoljstva životom, dok viši nivo prevladavanja usmerenog na emocije utiče na niži nivo zadovoljstva životom. Ovi rezultati su u skladu sa prethodnim istraživanjima o zadovoljstvu životom koja su ustanovila pozitivnu korelaciju sa prevladavanjem usmerenim na problem i negativnu sa prevladavanjem usmerenim na emocije (Korpela et al., 2018; Soikan et al., 2019). Ranija istraživanja su takođe pokazala da je socijalna podrška neophodna za razumevanje zadovoljstva životom (Baumeister & Leari, 1995; Diener & Oishi, 2005).

Što se tiče zadovoljstva životom i socio-demografskih varijabli, nema razlika u pogledu starosti, pola, bračnog statusa ili trajanja nezaposlenosti, iako smo očekivali da ih bude. U ovom istraživanju nisu prikupljeni relevantniji demografski podaci tako da bi buduća istraživanja trebalo da posvete odgovarajuću pažnju ovom pitanju. Takođe, trebalo bi ispitati da li se ovi nalazi mogu potvrditi naknadnom studijom, s obzirom da je istraživanje pokazalo da postoje razlike u nivou zadovoljstva životom u odnosu na trajanje nezaposlenosti (Clark, 2003, 2006; Winkelmann, 2008; Winkelmann & Winkelmann, 1998).

Na osnovu dobijenih rezultata, možemo zaključiti da su percipirana socijalna podrška i stilovi prevladavanja značajni za programe intervencija usmerene na nezaposlena lica. Različiti programi koji nude obuku u traženju posla doveli su do kvalitetnijeg ponovnog zapošljavanja, u smislu zarade i zadovoljstva poslom, kao i veće motivacije među nezaposlenima (Caplan et al., 1989). Programi koji uzimaju u obzir faktore, kao što su percipirana socijalna podrška i strategije za rešavanje problema, mogli bi da obuhvate nezaposlene s visokom stručnom spremom. S obzirom na to da nezaposlenost negativno utiče na mentalno zdravlje i zadovoljstvo životom (Winkelmann, 2008), ovakve interventne programe za nezaposlena lica trebalo bi što pre primeniti u praksi.

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THE RELATIONSHIP BETWEEN UNEMPLOYMENT, COPING STYLES, PERCEIVED SOCIAL SUPPORT AND LIFE SATISFACTION AMONG UNIVERSITY GRADUATES

Abstract: The main aim of this research was to explore the relationship between perceived social support, coping styles and life satisfaction, as well as to test whether there are differences in levels of life satisfaction when comparing unemployed and employed university graduates. The sample consisted of 236 university graduates, 59.3% female and 40.7% male (age range 23-30; M = 26.86, SD = 2.24), from which 109 were employed, while 127 were unemployed. Results indicate that average scores of the unemployed participants are lower on Perceived Social Support and Life Satisfaction, and that Perceived Social Support and Emotion-Focused Coping are significant predictors of Life Satisfaction. The results are discussed with respect to possible intervention.

Keywords: unemployment, university graduates, life satisfaction, perceived social support, coping styles

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1. Introduction

Past research has shown that unemployment has a negative effect on mental health and life satisfaction that goes well beyond the financial difficulties (Winkelmann, 2008). It is strongly associated with an increased risk of morbidity, mortality, mental health problems, and lower life satisfaction levels (Richter et al, 2020). Lower levels of life satisfaction in individuals who are unemployed are not a universal experience, which leads to the question why does it occur for some people, i.e. what factors might explain individual variations.

Some authors believe that duration of unemployment leads to learning how to live with unemployment and downward adjusting of one's expectations (Clark, 2003; Winkelmann, 2008). Their reported life satisfaction may even rise for reasons such as better budgeting (Clark, 2006). However, some existing evidence points to non-existent or only very moderate adaptation to unemployment (Clark, 2006; Winkelmann & Winkelmann 1998). Some research has even linked longer unemployment duration to lower life satisfaction (McKee-Ryan et al, 2005).

Research has proven that unemployment negatively affects men more than women (van der Meer, 2014; Winkelman, 2008). The authors assume that this is due to domestic role of women, which may compensate for some of the negative effects of unemployment (Ervasti & Venetoklis, 2010).

Unemployed workers who were married report more satisfaction with their lives (Mckee-Ryan et al., 2005). Being married may also lead to responsibilities and commitments that provide the opportunity to engage in activities that contribute to one's well-being (Ervasti & Venetoklis, 2010).

Age was negatively related to life satisfaction in unemployed individuals, even after a number of socio-demographic variables had been controlled for (Pavlova & Silbereisen, 2012). Some authors suggest that unemployment is likely to exert relatively less psychological damage on younger age groups than upon older (Ervasti & Venetoklis, 2010).

The results of previous studies demonstrated the change in reported levels of social support after job loss, which indicates that unemployment and social support are mutually related (Kong et al., 1993). Being employed was associated with greater perceptions of social su-

pport (Flewelling et al., 2019; Cimarolli & Wang, 2006). Unemployed people who reported higher levels of social support felt better psychologically than those without such support (Pinquart and Sorensen, 2000; Mckee-Ryan et al., 2005; Milner et al., 2016). There is also evidence of an impact of all three forms of perceived social support on the well-being of long-term unemployed youth (Lorenzini, & Giugni, 2010).

More problem-focused coping strategies are associated with a better social adjustment under the experience of unemployment, as well as reemployment (Sojo & Guarino, 2011; Solove et al., 2015). Studies have shown that life satisfaction is in a positive correlation with coping focused on problem and in a negative correlation with coping focused on emotions (Soykan et al., 2019). One study that investigated the correlations of life satisfaction with coping strategies found varying but generally positive associations with problem-directed action and cognitive reappraisal (Korpela et al. 2018).

Many researchers have linked life satisfaction with coping strategies (Fischer et al., 2021), as well as perceived social support (Baumeister & Leary, 1995; Diener & Oishi, 2005). Considering that unemployment is strongly associated with an increased risk of morbidity, mortality, mental health problems, and lower life satisfaction levels (Richter et al, 2020), it is important to explore whether unemployed people report lower levels of life satisfaction, as well as what factors might contribute to life satisfaction in unemployed individuals.

2. Method

2.1. Aim of this study

To better understand the relationship between perceived social support, coping styles and life satisfaction, this study will test whether perceived social support and coping styles are predictors of life satisfaction and whether there are differences in levels of life satisfaction when comparing groups of unemployed and employed university graduates.

2.2. Sample and Procedure

A convenient sample was used in this research. The sample consisted of 236 participants, 59.3% female and 40.7% male (age range 23-30; M = 26.86, SD = 2.24), from which 109 were employed, while 127 were unemployed with average unemployment duration being 1.23 years (SD = 1.04). The basic conditions for entering the sample were that the participant had finished university and that they were below the age of 30. Data were collected through an online questionnaire. Before moving to questions sections, the participants confirmed that they were familiar with their rights and testing rules.

2.3. Instruments

Coping Orientation to Problems Experienced Inventory (Brief-COPE; Carver, 1997; for Serbian adaptation see Živanović, & Vukčević-Marković, 2019) is a self-report questionnaire that uses 4-point scale, from 1 = I haven't been doing this at all, to 4 = I have been doing this a lot, to measure the extent to which the participants were coping with stress. The three overarching coping styles are:

- Problem-Focused Coping, characterized by the facets of active coping, use of informational support, planning, and positive reframing.
- Emotion-Focused Coping, characterized by the facets of venting, use of emotional support, humor, acceptance, self-blame, and religion.
- Avoidant Coping, characterized by the facets of self-distraction, denial, substance use, and behavioral disengagement.

Multidimensional Scale Of Perceived Social Support (Zimet et al., 1988) consists of 12 items, on which the degree of agreement with the statements is expressed on a seven-point Likert scale from 1 = I completely disagree, to 7 = I completely agree. The three subscales refer to friend support, family support, and partner support.

Satisfaction with Life Scale (SWLS; Diener et al., 1985) is a short 5-item instrument designed to for measuring cognitive dimension of

subjective well-being, life satisfaction, where participants answer on a 7 point Likert scale (1 = I completely disagree to 5 = I completely agree).

2.4. Data Analysis

The collected data were processed using the Independent-Samples T Test, Pearson's correlation to examine the relationship between variables, and regression analysis.

3. Results

Table 1 shows the descriptive-statistical data of the variables that were used in this research, as well as results of Independent-Samples T Test conducted to compare average scores of unemployed and employed group. There is a statistically significant difference when it comes to Perceived Social Support and Life Satisfaction, with average scores of the employed being higher on all of these variables compared to average scores of unemployed.

Table 1
Means, Standard Deviations, and Results of Independent T-Test

	Full Sample		Unemployed		Employed		*t*(277)	Cohen's *d*
	M	*SD*	*M*	*SD*	*M*	*SD*		
PFC	6.02	1.33	5.54	1.53	6.58	.76	-.505	-.066
EFC	5.70	1.49	5.03	1.68	6.49	.65	-.092	-.012
AC	5.54	1.51	5.16	1.62	5.98	1.24	-.609	-.079
SO	2.67	.47	2.65	.46	2.68	.49	-6.436**	-.840
Family	2.31	.41	2.31	.41	2.32	.42	-4.866**	-.591
Friends	2.28	.39	2.26	.39	2.31	.41	-4.305**	-.562
SWLS	5.51	1.16	5.18	1.22	5.91	.95	-5.044**	-.659

Note. **p<.01; *p<.05; PFC = Problem-Focused Coping; EFC = Emotion-Focused Coping; AC = Avoidant Coping; SO = Significant Other Support; Family = Family Support; Friends = Friends Support; SWLS = Life Satisfaction.

Results of correlation analysis, shown in table 2, suggest that higher scores on Problem-Focused Coping and Perceived Social Support, as well as lower scores on Emotion-Focused Coping, are associated with higher scores on Life Satisfaction.

Table 2
Correlation analysis

	1	2	3	4	5	6	7
1 – PFC	-	.391**	.439**	.126	.139*	-.039	.156*
2 – EFC		-	.339**	-.155*	-.089	-.126	-.163*
3 – AC			-	-.012	-.001	-.073	.077
4 – SO				-	.632**	.520**	.521**
5 – Family					-	.398**	.532**
6 – Friends						-	.421**
7 – SWLS							-

Note. $^{**}p<.01$; $^{*}p<.05$; PFC = Problem-Focused Coping; EFC = Emotion-Focused Coping; AC = Avoidant Coping; SO = Significant Other Support; Family = Family Support; Friends = Friends Support; SWLS = Life Satisfaction.

Regression analysis was conducted to determine whether the research variables significantly predict Life Satisfaction (table 3). We can conclude that the model is significant and that Perceived Social Support and Emotion-Focused Coping emerge as significant predictors of Life Satisfaction. This result indicates that the higher level of Perceived Social Support contribute to a higher level of Life Satisfaction, while higher level of Emotion-Focused Coping contribute to a lower level of Life Satisfaction.

Table 3
Perceived Social Support and Coping Styles as predictors of Life Satisfaction

	β	*p*	*F*	*p*	*R*	R^2
Significant Other Support	.190	.010	24.796	.001	.628	.110
Family Support	.305	.001				
Friends Support	.192	.002				
Problem-Focused Coping	.117	.058				
Emotion-Focused Coping	-.161	.006				
Avoidant Coping	.096	.101				

Results of Independent-Samples T Test when it comes to gender show no differences in terms of Life Satisfaction (t(234) = -.926, p = .356), with man attaining higher scores (M = 5.60, SD = 1.20) than women (M = 5.46, SD = 1.13). There is also no significant differences in terms of marriage status (t(234) = 1.360, p = .175), with married participants attaining higher scores (M = 5.61, SD = 1.21) than unmarried (M = 5.41, SD = 1.09). There is no significant correlation between Life Satisfaction and age (r = -.11, p = .12) or duration of unemployment (r = -.09, p =.16).

4. Discussion

To better understand the relationship between perceived social support, coping styles and life satisfaction, this study tested whether perceived social support and coping styles are predictors of life satisfaction and whether there are differences in levels of life satisfaction when comparing groups of unemployed and employed university graduates.

The results indicate that there is a statistically significant difference when it comes to perceived social support and life satisfaction, with average scores of the employed being higher on all of these variables compared to average scores of unemployed. Past research has shown that individual unemployment has a negative effect on life satisfaction (Clark, 2006; Ervasti & Venetoklis, 2010; van der Meer, 2014; Winkelmann, 2008), as well as social support (Flewelling et al., 2019; Kong et al., 1993).

Higher scores on life satisfaction are associated with higher scores on problem-focused coping and perceived social support, as well as lower scores on emotion-focused coping, while significant predictors are perceived social support and emotion-focused coping. Higher level of perceived social support contributes to a higher level of life satisfaction, while higher level of emotion-focused coping contributes to a lower level of life satisfaction. These results are consistent with previous research on life satisfaction which established positive association with problem-focused and negative with emotion-focused coping (Korpela et al. 2018; Soykan et al., 2019). Previous research has also proved that social support plays a necessary role for understanding life satisfaction (Baumeister & Leary, 1995; Diener & Oishi, 2005).

When it comes to levels of life satisfaction and socio-demographic variables there are no differences regarding age, gender, marital status or duration of unemployment, even though we expected different results. This study did not collect more demographic information that could be relevant, so future research should give adequate attention to this issue. It should also be explored whether these findings can be verified with a follow-up study, considering that the research has shown that there are differences in life satisfaction with duration of unemployment (Clark, 2003, 2006; Winkelmann, 2008; Winkelmann & Winkelmann 1998).

However, current results give us a reason to conclude that perceived social support and coping styles might be important for addressing in future intervention programs aimed at unemployed individuals. Different programs that offer training in job seeking yielded higher quality reemployment in terms of earnings and job satisfaction, and higher motivation among those who continued to be unemployed (Caplan et al., 1989). Programs targeting factors such as perceived social support and problem-solving strategies could be implemented among unemployed university graduates. Considering that unemployment has a negative effect on mental health and life satisfaction (Winkelmann, 2008), implementation of intervention programs could be extremely beneficial for unemployed individuals, ideally as early as possible.

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METRIJSKE KARAKTERISTIKE SKALE SKLONOSTI KA PREDUZETNIŠTVU (SKP-6)

Apstrakt: Cilj ovog rada je konstrukcija i provera psihometrijskih karakteristika psihološkog instrumenta kojim je operacionalizovana sklonost ka preduzetništvu, odnosno preduzetničkoj orijentaciji. Glavni predmet merenja je aktivistički potencijal, kao bazična komponenta preduzetničke orijentacije. Razvoj instrumenta trajao je tri godine. Instrument je zamišljen kao jednodimenzionalni. U ovom radu provera eksplorativnom i konfirmativnom faktorskom analizom urađena je na uzorku od 400 učenika oba pola koji su pohađali četvrti razred srednje škole. Rezultati su potvrdili početnu pretpostavku o jednodimenzionalnosti skale SKP-6.

Ključne reči: test, preduzetništvo, aktivistička orijentacija, eksplorativna i konfirmativna faktorska analiza.

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1. Uvod

Autori rada zastupaju stanovište da se teorijska osnova razrade koncepta preduzetništva pronalazi u sferi ekonomije i psihologije. Fokus ekonomskog pristupa je na identifikaciji značaja i uloge preduzetništva u društvenom razvoju preko ostvarivanja materijalnih benefita. Psihološki aspekti preduzetništva mogu se razmatrati na nivou društva i tada govorimo o razvoju društvene svesti ili preduzetničke kulture, kao skupa određenih vrednosti i stavova. Takođe, psihološki pristup odnosi se na pojedinca, njegove potencijale i preferencije ka preduzetništvu.

Mada je materijalna komponenta preduzetništva važna kako za započinjanje vlastitog biznisa, tako i za njegovu samoodrživost, sve veći broj autora ističe da novac nije dovoljan motivacioni faktor za preduzetništvo. U svom radu, Njegomir (2023) daje širi pregled različitih pristupa i zaključaka pojedinih autora o karakteristikama preduzetnika. Tako, na primer, navodi i analizira liste karakteristika Parkera (2018) i Penezića (2003) koje ukazuju kako na društvenoekonomske okolnosti, poput finansijskih podsticaja i društvenog kapitala, tako i na karateristike pojedinca, kao što su vizija i posvećenost, samopouzdanje, inovativnost, optimizam i slično. U pregledu one koju je dao autor, posebno mesto ima lista karakteristika uspešnih preduzetnika Harvardske poslovne škole (HBS, 2020). Ona obuhvata: radoznalost, strukturirano eksperimentisanje, adaptabilnost, odlučnost, samopouzdanje, timski rad, toleranciju na rizik, spremnost na neuspeh, upornost, inovativnost i dugoročni fokus. Navedena lista bila je inspiracija autorima ovog rada da tragaju za sociopsihološkim konstruktima koji bi obuhvatili većinu navedenih karakteristika i koji bi bili predmet operacionalizacije za merni instrument preduzetničkog potencijala.

Autori su se bavili psihološkim pristupom preduzetništvu (Ahmet et al., 2010; Altinaz et al., 2012; Bojanović, Čizmić, & Petrović,1995; Cuervo, 2005; Jakopec, Miljković Krečar, & Sušanj, 2013), stavljajući u fokus konstrukt preduzetničke namere. U našim prethodnim istraživanjima (Franceško, Nedeljković, Njegomir, 2022) opredelili smo se za uvođenje pojma *preduzetnička orijentacija*. Pojam ukazuje u kojoj meri mladi razmišljaju o sebi i svojoj profesionalnoj ulozi u kontekstu preduzetništva, što znači opštije, okvirno i potencijalno pre nego relativno

čvrsto opredeljenje karateristično za sadašnje preduzetnike. Upotrebom pojma *orijentacija* nastojali smo objediniti psihološke dimenzije namere, samoefikasnosti i poželjnosti preduzetništva. To znači da preduzetništvo posmatramo kao potencijalnu vrednost, odnosno kao poseban sistem vrednosti koji se razvija kroz formalno i neformalno obrazovanje putem procesa socijalizacije. Krajnji ishod tog procesa je tendencija da se u ostvarivanju standarda života bude svoj gazda i posvećenost ostvarivanju sopstvenih ideja. Dalje, to znači da se sfera poslovanja i tržište prepoznaju kao socijalni kontekst u kom pojedinac nastoji ostvariti ove važne i složene motive.

Na osnovu analize karakteristika (uspešnih) preduzetnika, izdvojili smo tri ključne složene, bazične, kognitivne i socijalne potrebe koje bi definisale psihološki prostor motivacione orijentacije za preduzetništvo. Naša hipoteza uključuje motiv postignuća, motiv moći i samoaktualizaciju. Motiv postignuća (Franceško, Nedeljković, Njegomir, 2022; Franceško, Nedeljković i Kosanović, 2023) obuvata orijentaciju ka postavljanju ciljeva, tendenciju ka takmičenju, istrajnost pri ostvarivanju nekog standarda izuzetne uspešnosti koji nam je značajan i tendenciju ka planiranju, u smislu osmišljavanja konkretnih aktivnosti za realizaciju ili postignuće željenog. Motiv moći uključuje tendenciju osobe da utiče na ishode socijalnih situacija koje uključuju druge ljude i događaje i usmerava ih u željenom pravcu. Samoaktualizacija znači tendenciju ka dokazivanju i osećaj ispunjenosti, ostvarenosti, ličnog zadovoljstva i samoefikasnosti. Zajedničko za ovaj motivacioni sklop, izveden iz lista karakteristika (uspešnih) preduzetnika, jeste aktivan odnos prema životu koji možemo nazvati aktivističkom orijentacijom. Takođe, njihova zajednička karakteristika jeste da spadaju u socijalnu motivaciju, što znači da se oni dominantno oblikuju kroz proces socijalizacije.

Pored aktivističke orijentacije, liste (uspešnih) preduzetnika sadrže pojedine instrumentalne oblike ponašanja kroz koje se operacionalizuju navedeni motivacioni potencijali. Dakle, ovi oblici ponašanja imaju instrumentalnu vrednost i neophodan su preduslov da bi se osoba s aktivističkom orijentacijom približila osećaju samoaktualizacije. Neki od njih sadržani su u komponentama motiva postignuća, kao što su istrajnost i tendencija planiranja aktivnosti, koji nadalje uključuje i druge konstrukte, poput vremenske perspektive.

Dakle, početna pitanja su: da li pojedinac ima lične kapacitete za ostvarivanje preduzetničke orijentacije i na koji način nastoji da ih realizuje? Prvo od navedenih pitanja usmerava nas ka identifikovanju potencijala za aktivistički odnos prema životu i radu. Razrada drugog pitanja otvara ličnu i društvenu dilemu da li mladi svoj aktivistički potencijal nastoje realizovati kroz konstruktivne aktivnosti, kao što je preduzetništvo, ili kroz destruktivne u vidu nasilja, takmičenja i uverenja da cilj opravdava svako sredstvo delovanja.

Cilj ovog rada je konstrukcija instrumenta za merenje aktivističkog potencijala mladih, kao bazične komponente za razvoj preduzetničke orijentacije.

2. Metod

2.1. Uzorak

Uzorak je činio 400 mladih četvrtog razreda srednje škole, odnosno uzrasta 18 i 19 godina. Devojaka je bilo 233 a mladića 167.

2.2. Tok razvoja instrumenta i procedura

Test kojim je operacionalizovana preduzetnička orijentacija SKP konstruisan je 2021. godine kao jednodimenzionalna skala (Nedeljković, Franceško, Njegomir). Prva verzija testa imala je 10 stavki. Rezultati pilot-istraživanja, koje je sprovedeno 2021. i 2022. godine, pokazali su da su četiri stavke imale loše metrijske karakteristike, te su izbačene iz testa. Tokom druge polovine 2022, zatim čitave 2023. i prve polovine 2024. godine sprovedeno je obimno istraživanje sa skalom od šest ajtema SKP-6. Stavke su iskazane u formi tvrdnji sa Likertovom petostepenom skalom za davanje odgovora, s obzirom na stepen slaganja u rasponu *Uopšte se ne slažem* do *U potpunosti se slažem*. U delu o rezultatima biće prikazana detaljna analiza metrijskih karakteristika testa SKP-6.

3. Rezultati

3.1. Deskriptivna statistika

Tabela 1. Osnovni deskriptivni pokazatelji skale SKP-6

	Minimum	Maksimum	AS	SD
skp1 - Ja sam strastven/a kada je u pitanju postizanje mojih ciljeva.	1	5	3.27	.780
skp2 - Imam veliku želju za postignućem.	1	5	3.50	.719
skp3 - Siguran/a sam u sebe i imam samopouzdanja.	1	5	3.19	.801
skp4 - Ja sam orijentisan/a na postizanje ciljeva.	1	5	3.20	.767
skp5 - Ja sam istrajan/na i ne odustajem lako.	1	5	3.31	.768
skp6 - Spreman/na sam da preuzmem inicijativu.	1	5	3.31	.838

U Tabeli 1. može se videti da su aritmetičke sredine stavki oko teorijske srednje vrednosti 3.

3.2. Pouzdanost

Pouzdanost skale iskazane Kronbahovim alfa koeficijentom je odlična i iznosi 0.85 (Fajgelj, 2014). Prosečna ajtem-total korelacija iznosi 0.64 a pojedinačne ajtem-total korelacije stavki nalaze se u rasponu veoma prihvatljivih (od 0.54 do 0.74) (Nunnally & Bernstein, 1994). Rezultati na ovom nivou analize sugerišu, odnosno potvrđuju polaznu pretpostavku o jednodimenzionalnosti skale sklonosti ka preduzetništvu (SKP-6).

3.3. Eksplorativna faktorska analiza

Vrednost adekvatnosti uzorka podataka (KMO = 0.87) i Bartletov test sfericiteta χ^2 (15) = 934.217; $p < 0.01$ pokazuju da je smisleno spro-

vesti faktorsku analizu na podacima interkorelacija. Pretpostavka o jednodimenzionalnosti skale proverena je metodom glavne komponente. Dobijeni rezultati pokazuju da skala objašnjava 57,77% varijanse inicijalnog rešenja (Tabela 2).

Tabela 2. Varijansa u latentnom metrijskom prostoru upitnika SKP-6

	Inicijalno rešenje			Ekstrahovane sume kvadriranih opterećenja		
	vrednost karakterističnog korena	% varijanse	kumulativni %	vrednost karakterističnog korena	% varijanse	kumulativni %
1	3.466	57.771	57.771	3.466	57.771	57.771
2	.718	11.966	69.738			
3	.576	9.607	79.345			
4	.540	9.004	88.349			
5	.360	6.006	94.355			
6	.339	5.645	100.000			

U Tabeli 3. prikazana su faktorska zasićenja, odnosno korelacije stavki sa glavnim predmetom merenja – sklonosti ka preduzetništvu. Najveće zasićenje iznosi 0.837 (stavka broj 4) a najniže 0.708 (stavka broj 6).

Tabela 3. Faktorska zasićenja

stavke	zasićenja
skp1 - Ja sam strastven/a kada je u pitanju postizanje mojih ciljeva.	.806
skp2 - Imam veliku želju za postignućem.	.773
skp3 - Siguran/a sam u sebe i imam samopouzdanja.	.665
skp4 - Ja sam orijentisan/a na postizanje ciljeva.	.837
skp5 - Ja sam istrajan/na i ne odustajem lako.	.758
skp6 - Spreman/na sam da preuzmem inicijativu.	.708

3.4. Konfirmativna faktorska analiza

Konfirmativnom faktorskom analizom (KFA) dodatno je proveren konstrukt validnost skale korišćenjem programa EQS 6.1 za *Windows* (Bentler, 2006). Na matrici kovarijansi sprovedena je *KFA* robustnim metodom maksimalne verodostojnosti (Sattora & Bentler, 1994). Podesnost modela procenjivana je korišćenjem sledećih indikatora: Sattora – Bentler hi kvadrat (*SBχ2*), odnos Sattora – Bentler hi kvadrata i stepeni slobode (*SBχ2/df*), standardizovani koren prosečnog kvadriranog reziduala (*SRMR*), koren prosečne kvadrirane greške aproksimacije (*RMSEA*; Steiger, 2016), Bentler – Bonett normirani indeks fita (*NFI*; Bentler & Bonett, 1980) i komparativni indeks fita (*CFI*; Bentler, 1989). Indikatorima dobre saglasnosti modela smatraju se sledeće vrednosti: *SBχ2/df* manje od 3, *SRMR* i *RMSEA* od .05 ili manje i *NFI* i *CFI* iznad vrednosti od .95 (Kline, 2005).

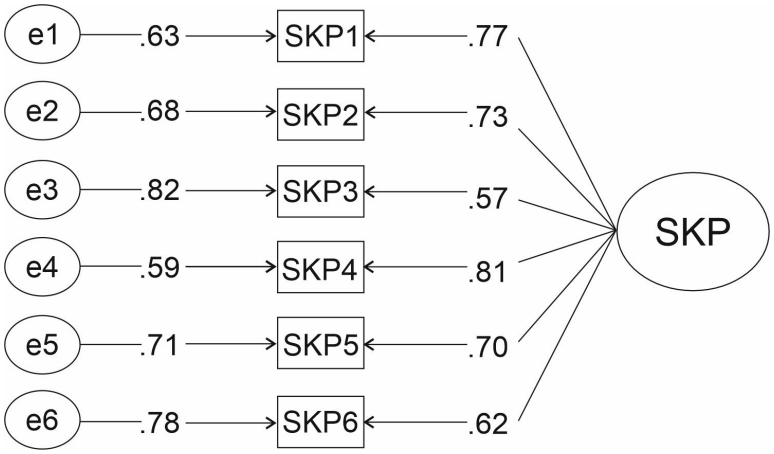
Tabela 3. Indikatori saglasnosti modela u konfirmativnoj faktorskoj analizi

model	SBχ2	ss	SBχ2/ss	RMSEA (90% CI)	SRMR	*GFI*	*CFI*	*NFI*
1	40.236	9	4.47	0.093 (.065 – .123)	0.021	0.97	0.96	0.96

Napomena: 1. = originalni model testa sa šest stavki; *SBχ2* = Satorra – Bentler korekcija χ2 statistika; *RMSEA* = koren prosečne kvadrirane greške aproksimacije; *SRMR* = standardizovani koren prosečnog kvadriranog reziduala; *GFI* = globalni indeks fita; *CFI* = komparativni indeks fita; *NFI* = normirani indeks fita.

Rezultati u Tabeli 3. pokazuju da je pretpostavljeni model dobar i da fituje podacima. Jedino je kod indikatora *SBχ2/df* primetno odsupanje koje se ne uklapa u preporučene vrednosti.

Slika 1. Struktura jednofaktorskog modela SKP-6



Napomena: skp1 – Ja sam strastven/a kada je u pitanju postizanje mojih ciljeva; skp2 – Imam veliku želju za postignućem; skp3 – Siguran/a sam u sebe i imam samopouzdanja; skp4 – Ja sam orijentisan/a na postizanje ciljeva; skp5 – Ja sam istrajan/na i ne odustajem lako; skp6 – Spreman/na sam da preuzmem inicijativu.

Na Slici 1. može se videti da su sve pojedinačne stavke celokupne skale visoko zasićene generalnim faktorom (raspon od .57 do .81).

4. Zaključak

Rezultat istraživanja je merni instrument od šest ajtema koji se sadržinski odnose na orijentaciju ka postavljanju ciljeva, iniciranje ili pokretanje realizacije. Takođe, uključeni su i ajtemi koji mere stepen posvećenosti u realizaciji ciljeva i to kroz osećaj samopouzdanja pri iniciranju realizacije uz osećaj da mi to hoćemo i da mi to možemo. Posvećenost ostvarivanju cilja i samopouzdanje posebno dolaze do izražaja u problemskim situacijama kroz spremnost da se oni prevaziđu i da se istraje u njihovom ostvarenju. Zajednički imenitelj opisanih načina reagovanja

je aktivistička orijentacija. Dakle, možemo reći da je predmet merenja ovog jednofaktorskog instrumenta aktivistička orijentacija koju možemo definisati i kao potencijal ili kao aktivistički motivacioni naboj.

Značajno je istaći da u situaciji samoprocene ispitanika dobijeni rezultati se ne mogu tumačiti kao postojanje i stepen prisutnosti aktivističkog potencijala kod pojedinca. Pre je to tendencija, njihova želja ili nastojanje. Da li i u kojoj meri je aktivistički naboj zaista prisutan kod pojedinca možemo utvrditi na osnovu kombinacije podataka dobijenih samoprocenom i praćenjem, odnosno posmatranjem onih aspekata reagovanja koji su definisani u ovom instrumentu. Stepen slaganja ova dva izvora podataka je mera objektivnosti prisustva aktivističkog potencijala kod pojedinca.

Za utvrđivanje preduzetničke orijentacije mladih neophodno je, zajedno sa dijagnostikom stepena aktivističkog potencijala, utvrditi i njihove stavove o preduzetništvu. Drugim rečima, značajno je sagledati da li i u kom stepenu razmišljaju da svoje ideje i svoj aktivistički naboj mogu i žele realizovati kroz preduzetničke mehanizme.

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METRIC CHARACTERISTICS OF THE ENTREPRENEURIAL PROPENSITY SCALE (SKP-6)

Abstract: The aim of this paper is to construct and verify the psychometric characteristics of a psychological instrument that operationalizes the propensity towards entrepreneurship, i.e., entrepreneurial orientation. The main subject of measurement is activism potential, as a basic component of entrepreneurial orientation. The development of the instrument lasted three years. The instrument is designed to be one-dimensional. This paper presents an exploratory and confirmatory factor analysis which was performed on a sample of 400 high school senior students of both genders. The results confirmed the authors' initial assumption that the SKP-6 scale is one-dimensional.

Key words: test, entrepreneurship, activism orientation, exploratory and confirmatory factor analysis

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1. Introduction

This paper presents a claim that entrepreneurship as a concept has a basis in the field of both economics and psychology. The economic approach focuses on identifying the importance and role of entrepreneurship in social development through acquiring material benefits. The psychological aspects of entrepreneurship may be examined at the community level, when they involve the development of social consciousness or entrepreneurial culture, as a set of certain values and attitudes. The psychological approach may also apply to the individual potential and preferences towards entrepreneurship.

Although the material component of entrepreneurship is important both for starting one's own business and for its self-sustainability, an increasing number of authors point out that money is not a sufficient motivating factor for entrepreneurship. Njegomir (2023) gives a broader overview of different approaches and conclusions of individual authors about the characteristics of entrepreneurs. Thus, for example, he lists and analyzes the lists of characteristics by Parker (2018) and Penezić (2003), which indicate both socioeconomic circumstances, such as financial incentives and social capital, and individual characteristics, such as vision and commitment, self-confidence, innovation, optimism and the like. In the review the author places a special emphasis on the list of characteristics of successful entrepreneurs published by the Harvard Business School (HBS, 2020). It includes curiosity, structured experimentation, adaptability, determination, self-confidence, teamwork, risk tolerance, willingness to fail, persistence, innovation and long-term focus. The above list was the inspiration for the authors to search for sociopsychological constructs that would include most of the above characteristics and that would be the subject of operationalization for a measuring instrument of entrepreneurial potential.

We adopted the psychological approach to entrepreneurship (Ahmet et al., 2010; Altinaz et al., 2012; Bojanović, Čizmić, & Petrović, 1995; Cuervo, 2005; Jakopec, Miljković Krečar, & Sušanj, 2013), focusing on the *entrepreneurial intentions* construct. In our previous research (Franceško, Nedeljković, & Njegomir, 2022) we chose to introduce the term entrepreneurial orientation. The term refers to the extent to which

young people think about themselves and their professional role in terms of entrepreneurship as a potential orientation rather than a relatively firm occupation characteristic of current entrepreneurs. By using the term orientation, we tried to unify the psychological dimensions of intention, self-efficacy, and desirability of entrepreneurship. We view entrepreneurship as a potential value, i.e., as a particular value system that develops through formal and informal education through the process of socialization. The ultimate outcome of that process is the tendency to be one's own boss in achieving the standard of living and commitment to realizing one's own ideas. Furthermore, the business and market are recognized as the social context in which the individual strives to realize these important and complex motivations.

Based on the analysis of the characteristics of (successful) entrepreneurs, we identified three key complex, basic, cognitive and social needs that define the psychological space of motivational orientation towards entrepreneurship. Our hypothesis includes achievement motive, power motive, and self-actualization. The achievement motive (Franceško et al., 2022; Franceško et al., 2023) is defined an orientation towards setting goals, a tendency towards competition, perseverance in achieving exceptional success in an area important to the individual, and a tendency towards planning, i.e., designing specific actions to achieve the desired outcome. The power motive involves a person's tendency to influence the outcomes of social situations involving other people and events. Self-actualization refers to a propensity toward self-realization and a sense of fulfillment, accomplishment, personal satisfaction, and self-efficacy. These motives are accompanied by a proactive attitude towards life, called activism orientation. Their common feature is that they belong to social motivation, which means that they predominantly arise during socialization.

Besides proactive orientation, successful entrepreneurs share some instrumental behaviors which serve to operationalize the abovementioned motivational potentials. These behaviors have an instrumental value and are a prerequisite for a person with an activism orientation to approach the feeling of self-actualization. Some of these behaviors are found in components of the achievement motive, such as persistence and the tendency towards planning, which further includes other constructs, such as time perspective.

The main research questions are thus: does the individual have the capacity to realize an entrepreneurial orientation and in what way? Answering the first question involves identifying the potential for a proactive attitude towards life and work. The second question opens a personal and social dilemma whether young people try to realize their activism potential through constructive or destructive actions, such as entrepreneurship, on the one hand, and on the other, violent acts, competition, and the belief that the ends justify the means.

The aim of the research is the construction of an instrument for measuring the activism potential of young people, as a basic component for the development of entrepreneurial orientation.

2. Method

2.1. Sample

The sample consisted of 400 high school seniors, aged 18 and 19, 233 of which were female and 167 males.

2.2. Instrument Development and Procedure

The test that operationalized the entrepreneurial orientation (SKP) was constructed in 2021 as a one-dimensional scale (Nedeljković, Franceško, & Njegomir, 2021). The first version of the test had 10 items. The results of the pilot study, conducted in 2021 and 2022, showed that four items had poor metric characteristics, so they were dropped from the test. Subsequently, an extensive survey using a six-item SKP-6 scale was conducted during the second half of 2022, in 2023 and the first half of 2024. The items are in the form of statements with a five-point Likert scale, ranging from Strongly Disagree to Strongly Agree. In the Results section, a detailed analysis of the metric characteristics of the SKP-6 test will be presented.

3. Results

3.1. Descriptive Statistics

Table 1. Basic Descriptive Indicators of the SKP-6 Scale

	Min.	Max.	Mean	SD
skp1 – I am passionate about achieving my goals.	1	5	3.27	.780
skp2 – I have a great desire for achievement.	1	5	3.50	.719
skp3 – I am self-confident.	1	5	3.19	.801
skp4 – I am goal-oriented.	1	5	3.20	.767
skp5 – I am persistent and do not give up easily.	1	5	3.31	.768
skp6 – I am ready to take initiative.	1	5	3.31	.838

Table 1. shows that the arithmetic means are around theoretic average of 3.

3.2. Reliability

The scale has an excellent reliability – 0.85, expressed by Cronbach's alpha (Fajgelj, 2014). The average item-total correlation is 0.64 and the individual item-total correlations of the items are in a very acceptable range (from 0.54 to 0.74) (Nunnally & Bernstein, 1994). The results at this level of analysis confirm the initial assumption about the one-dimensionality of the scale of propensity towards entrepreneurship (SKP-6).

3.3. Exploratory Factor Analysis

Data sample adequacy value (KMO = 0.87) and Bartlett's test of sphericity $\chi 2\ (15) = 934.217$; $p < 0.01$ show that conducting a factor analysis on the intercorrelations data is sensible. The assumption of one-dimensionality of the scale was verified by the principal component method. The obtained results show that the scale explains 57.77% of the variance of the initial solution (Table 2).

Table 2. Variance in latent metric space of the SKP-6 scale

	Initial solution			Extraction sums of squared loads		
	Characte-ristic root value	% variance	Cumu-lative %	Characte-ristic root value	% variance	Cumu-lative %
1	3.466	57.771	57.771	3.466	57.771	57.771
2	.718	11.966	69.738			
3	.576	9.607	79.345			
4	.540	9.004	88.349			
5	.360	6.006	94.355			
6	.339	5.645	100.000			

Table 3 shows factor saturations, i.e., items correlations with the main object of measurement, propensity towards entrepreneurship. The highest saturation is 0.837 (item 4) and the lowest is 0.708 (item 6).

Table 3. Factor saturations

items	saturations
skp1 – I am passionate about achieving my goals.	.806
skp2 – I have a great desire for achievement.	.773
skp3 – I am self-confident.	.665
skp4 – I am goal-oriented.	.837
skp5 – I am persistent and do not give up easily.	.758
skp6 – I am ready to take initiative.	.708

3.4. Confirmatory Factor Analysis

Using confirmatory factor analysis (CFA) we additionally checked the construct validity of the scale using EQS 6.1 for Windows (Bentler, 2006). CFA was performed on the covariance matrix using the robust maximum likelihood method (Sattora & Bentler, 1994). Model fit was assessed using the following indicators: the Sattora – Bentler chi square (SBχ2), the Sattora – Bentler chi square and degrees of freedom (SBχ2/df) ratio, standardized root mean squared residual (SRMR), root mean squared error of approximation (RMSEA; Steiger, 2016), the Bentler – Bonett normed fit index (NFI; Bentler & Bonett, 1980) and the compar-

ative fit index (CFI; Bentler, 1989). The following values are considered indicators of good model fit: SBχ2/df less than 3, SRMR and RMSEA of .05 or less, and NFI and CFI above the value of .95 (Kline, 2005).

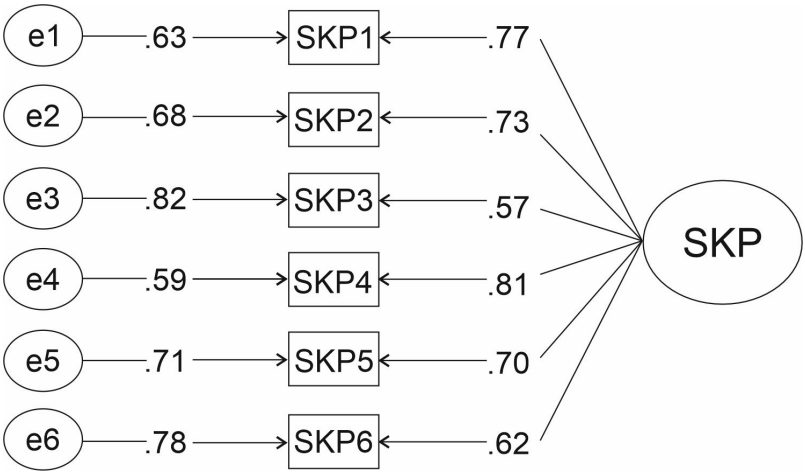
Table 4. Indicators of good model fit in CFA

model	SBχ2	ss	SBχ2/ss	RMSEA (90% CI)	SRMR	*GFI*	*CFI*	*NFI*
1	40.236	9	4.47	0.093 (.065 – .123)	0.021	0.97	0.96	0.96

Note: 1. = original 6-item test model; *SBχ2* = Satorra – Bentler correlation χ2 statistics; *RMSEA* = root mean squared error of approximation; *SRMR* = standardized root mean squared residual; *GFI* = global fit index; *CFI* = comparative fit index; *NFI* = normed fit index.

The results in Table 4 show that the hypothesized model is good and fits the data. The only noticeable deviation in the SBχ2/df indicator is that it does not fit into the recommended values.

Figure 1. SKP-6 one-factor model structure



Note: skp1 – I am passionate about achieving my goals; skp2 – I have a great desire for achievement; skp3 – I am self-confident; skp4 – I am goal-oriented; skp5 – I am persistent and do not give up easily; skp6 – I am ready to take initiative.

Figure 1 shows that each individual item of the entire scale is highly saturated with the general factor, ranging from .57 to .81.

4. Conclusion

The result of the present research is a six-item measure that assesses the orientation towards setting goals, taking initiative or realizing goals, the degree of commitment to achieving one's goals accompanied by the sense of self-confidence. This commitment and self-confidence come to the fore especially in problematic situations, when one demonstrates the willingness to overcome obstacles and to persevere in achieving one's goals. The common feature of these responses is activism orientation. Therefore, we can say that the object of measurement of this one-factor instrument is activism orientation, defined also as activism potential or activism motivational charge.

It is important to note that in self-reporting instruments, the obtained results cannot be interpreted as the existence and degree of activism potential in the individual. They rather reflect propensity, desire, or effort. Whether and to what extent the activism charge is present in an individual can be determined based on a combination of data obtained through self-assessment and monitoring, i.e., by observing responses as defined in this instrument. The degree of agreement between these two sources of data yields an objective measure of activism potential in an individual.

To determine the entrepreneurial orientation of young people, it is necessary to determine their attitudes about entrepreneurship, and to measure the degree of activism potential. In other words, it is important to look at whether and to what degree they think that they can and want to realize their ideas and their activism charge via entrepreneurial means.

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RODNO ZASNOVANO NASILJE – PERCEPCIJA MLADIH SA PODRUČJA SEVERNOG KOSOVA

Rezime: U radu su prezentovani ključni nalazi istraživanja koje je realizovano tokom oktobra i novembra 2019. godine među učenicima srednjih škola i studentima sa teritorije četiri opštine na severu Kosova (Leposavić, Zvečan, Zubin Potok i Kosovska Mitrovica). Istraživanjem je obuhvaćeno devet srednjih škola i deset visokoškolskih ustanova, tj. ukupno 748 ispitanika. Prema ciljnom usmerenju, istraživanje ima karakteristike *kontekstualnog i eksplorativnog* istraživanja, a u osnovi ima percepciju prevalence i rodne dimenzije interpersonalnog nasilja. Prepoznavanje kvantitativnih karakteristika rodno zasnovanog nasilja ukazuje na snagu i značaj tradicionalnih, kulturoloških i istorijskih uticaja u vezi sa rodnom socijalizacijom i maskulinitetom u porodičnim i partnerskim relacijama na prostoru severnog Kosova.

Ključne reči: rodno zasnovano nasilje, mladi, severno Kosovo

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1. Uvod

Do šezdesetih godina prošlog veka nasilje u školama u svetu i kod nas nije bilo prepoznato kao problem koji zahteva posebnu pažnju, istraživanja i intervencije. Da su dotadašnja „bezazlena" fizička nadmetanja, čarke i dokazivanja snage mnogo više nego obična dečja igra i neophodan uslov razvoja postalo je jasno nakon slučajeva žestokog fizičkog nasilja krajem sedamdesetih i početkom osamdesetih godina XX veka (Bergman, 1992; Rigby & Slee, 1993; Roberts, Klein & Fisher, 2003). Istraživanja pokazuju da škole u Srbiji nisu izuzetak od trendova porasta nasilja svih oblika i na svim nivoima (Plut & Popadić, 2006; Popadić & Plut, 2007; Popadić, 2009; Popadić, Pavlović & Plut, 2013). Kad su u pitanju vrste nasilja među učenicima, većina autora je saglasna da postoje fizičko, verbalno i socijalno/relaciono nasilje. Pored ovih vrsta nasilja, Popadić (2009) izdvaja elektronsko, kao i seksualno nasilje.

Treba, međutim, naglasiti da učenici srednjih škola (adolescenti), ali i studenti mogu biti žrtve i drugih oblika nasilja u lokalnoj zajednici. Osim u školskom (vršnjačkom) nasilju, oni mogu biti ili svedoci ili žrtve, ali i nasilnici, kad je u pitanju nasilje u porodici, na javnom mestu, u klubu/kafiću ili u partnerskim vezama. Svaki od ovih oblika nasilja ima svoju rodnu dimenziju.

1.1. Rodno zasnovano nasilje: konceptualni okvir i prethodna istraživanja

Rodno zasnovano nasilje među mladima, iako se dešava između vršnjaka, ne treba poistovećivati sa vršnjačkim nasiljem (Perić Prkosovački, Ileš & Trivanović, 2018). U istraživanju „Nasilje u školama u Srbiji" (Popadić & Plut, 2007) navodi se: „Terminom vršnjačko nasilje označavamo nasilne interakcije dece svih uzrasta koja pohađaju istu školu. Dakle, termin se ne odnosi samo na kalendarske vršnjake već, generalno, na učenike kao grupu". S druge strane, „rodno zasnovano nasilje je upotreba bilo kog oblika nasilja (fizičkog, psihičkog, seksualnog...) nad nekom osobom samo zato što je određenog pola (Spasić & Nikač, 2013). Istraživanja govore da su žrtve nasilja u preko 80% slučajeva oso-

be ženskog pola, dok su nasilnici uglavnom muškarci. Nasilje je jedna od taktika kojima se obezbeđuju moć i kontrola nasilnika nad žrtvom drugog pola (Perić Prkosovački i dr., 2018).

Prema rezultatima istraživanja o prisutnosti rodno zasnovanog nasilja u adolescentskim vezama Udruženja „Crvena linija" Novi Sad, mladi vide seksualno nasilje kao najteži oblik nasilja, potom emocionalna uslovljavanja, fizičko nasilje i na kraju psihološko nasilje (Batić, 2015, Perić Prkosovački i dr., 2018). Istraživanja u Kanadi su pokazala da se nasilje u adolescentskim vezama iskusi bar jednom u 12 do 20% veza (Foshee, Benefield, McNaughton, Ennett, Faris, Chang, Hussong & Suchindran, 2013; Lichter & McCloskey, 2004) i da veliki procenat mladih, oko 50%, izjavljuje da je ili činilo nasilje u vezama ili iskusilo nasilje od strane intimnog partnera (Trbojević, 2016). Svake godine 25% adolescenata budu žrtve partnerskog nasilja (fizičkog, emotivnog, psihološkog i seksualnog). Prema komparativnom istraživanju autora Makin-Byrd & Bierman, tokom 2012. godine 10% srednjoškolaca u SAD je doživelo fizičko nasilje od strane partnera (Makin-Byrd & Bierman, 2013; Trbojević, 2016).

Prvi put je u Srbiji 2013. godine realizovano istraživanje o rodno zasnovanom nasilju u osnovnim i srednjim školama. Istraživanje je realizovao Centar za studije roda i politike Fakulteta političkih nauka[3] sa ciljem da se utvrdi zastupljenost rodno zasnovanog nasilja, ali i da se predlože dobre prakse prevencije i intervencije u slučajevima istraživanih vrsta nasilja. Ovo istraživanje je specifično ne samo po obimu, već i po tome što za predmet proučavanja ima i iskustva rodno zasnovanog nasilja, kao i stavove prema rodno zasnovanom nasilju i rodnim ulogama; ovo je prvo istraživanje u Srbiji u kom je na velikom uzorku ispitivana prisutnost i učestalost različitih formi rodno zasnovanog i seksualnog nasilja u školama.[4] Uzorak su činili učenici i učenice od četvrtog

[3] http://www.fpn.bg.ac.rs/2014/06/06/predstavljeni-rezultati-istrazivanja-%E2%80%9Erodno-zasnovano-nasilje%E2%80%9C-centra-za-studije-roda-i-politike/, pristupljeno 15. 07. 2023.

[4] http://www.fpn.bg.ac.rs/2014/06/06/predstavljeni-rezultati-istrazivanja-%E2%80%9Erodno-zasnovano-nasilje%E2%80%9C-centra-za-studije-roda-i-politike/, pristupljeno 15. 07. 2023.

razreda osnovne škole do četvrtog razreda srednje škole, kao i nastavno osoblje i stručni saradnici škola (oko 25.000 ispitanika). Ukupno 69% učenika/ca osnovnih škola i čak 74% učenika/ca srednjih škola je odgovorilo da su najmanje jednom doživeli/e bar jedan oblik rodno zasnovanog nasilja od početka školske godine. Prema navedenom istraživanju, 48% učenica četvrtog razreda osnovne škole prijavljuje da su trpele neki oblik rodno zasnovanog nasilja i taj procenat se povećava sa uzrastom i dostiže 85% u osmom razredu (Ćeriman, Duhaček N., Perišić, Bogdanović, & Duhaček, D., 2015: 8–9). Na osnovu podataka dobijenih od mladića i devojaka, za većinu ispitivanih oblika rodno zasnovanog nasilja počinitelji su češće mladići/dečaci (nad drugim vršnjacima i nad devojkama/devojčicama).

U nalazima ovih istraživanja, ali i u društveno-istorijskom, kulturološkom i tradicionalnom nasleđu i sociološkom ambijentu na području severnog Kosova treba tražiti društvenu i naučnu opravdanost ovog istraživanja među mladima i adolescentima.

2. Istraživanje percepcije mladih o rodno zasnovanom nasilju

2.1. Kontekstualni okvir istraživanja

Područje severnog Kosova obuhvata nekoliko zajednica (Kosovska Mitrovica, Zvečan, Leposavić i Zubin Potok), koje, iako povezane, imaju i svoje specifičnosti. Kulturološki kontekst i društveni odnosi različiti su u ruralnim i urbanim zajednicama i od uticaja su na nivo informisanosti mladih o rodno zasnovanom nasilju i na modalitete njihovog ponašanja. Zubin Potok je, u smislu društvenih kontakata mladih, donekle teritorijalno izolovana i zatvorena zajednica. Sastoji se od manjeg urbanog i ruralnih područja. „Konzervirani su", odnosno manje izloženi globalnim trendovima stavovi o prihvatljivom ponašanju mladih u svim životnim oblastima, pa tako i kada se radi o partnerskim vezama opterećenim rodno zasnovanim nasiljem. Potpuno suprotna ovoj zajednici je Kosovska Mitrovica koja je isključivo urbana sredina sa visokoobrazovnim ustanovama a time i sa velikim brojem mladih koji nisu samo domicilno stanovništvo, već dolaze i iz drugih sredina na školovanje. Intenzivniji su društveni kontakti i međusobni uticaji različitih mikrokulturoloških

sistema. Zvečan je urbanim delom vezan za Kosovsku Mitrovicu a ruralni deo nosi karakteristike drugih ruralnih sredina na ovom području. Leposavić obuhvata urbanu sredinu s visokoobrazovnim ustanovama i velikim ruralnim područjem. Svojim karakteristikama, on predstavlja prosek svih zajednica na ovom području.[5]

2.2. Metodološki pristup

U osnovi, ovo istraživanje je imalo karakter kvantitativnog istraživanja, a prema ciljnom usmerenju, i odlike *kontekstualnog i eksplorativnog* istraživanja. Međutim, prvi put se među srednjoškolskom i studentskom populacijom sa severa Kosova sprovodi istraživanje koje u osnovi ima percepciju i sagledavanje incidence i rodne dimenzije interpersonalnog nasilja. Prepoznavanje kvantitativnih karakteristika ovog fenomena može biti pokazatelj snage i značaja tradicionalnih, kulturoloških, istorijskih uticaja u vezi sa rodnom socijalizacijom i maskulinitetom u porodičnim i partnerskim relacijama na prostoru severnog Kosova, što je bila i osnovna hipoteza istraživanja. Terensko istraživanje i anketiranje ispitanika realizovano je u srednjim školama i visokoškolskim ustanovama u opštinama na severu Kosova tokom oktobra i novembra 2019. godine.

2.2.1. Struktura i karakteristike uzorka

Prema podacima nadležnih institucija, na području severnog Kosova tokom školske 2019/2020. godine studiralo je oko 9.200 studenata. U istoj školskoj godini, u srednjim školama je bilo 2.548 učenika. Formiranje stratuma u postupku stratifikacije uzorka zasnivalo se na dva kriterijuma – prvi je bio godine starosti (15–18 i 19–24) a drugi obrazovna institucija (srednja škola i visokoškolska ustanova).

U istraživanju je učestvovalo 748 ispitanika (420 ispitanika ženskog pola ili 56,3% i 326 ispitanika muškog pola, odnosno 43,6%). Najveći broj ispitanika je bio iz Kosovske Mitrovice (39,3%) (Tabela 1).[6]

[5] https://sh.wikipedia.org/wiki/Severno_Kosovo, pristupljeno 15. 07. 2023.

[6] Kod nekih pitanja nisu svi ispitanici ostavili svoj odgovor (videti kolonu Ukupno u Tabeli 1).

Tabela 1. Raspodela ispitanika po sociodemografskim varijablama

Varijabla	Kategorija	Frekvenca	Procenat	Ukupno
Opština	Leposavić	181	24.2	748
	Zubin Potok	157	21.0	
	Kosovska Mitrovica	294	39.3	
	Zvečan	116	15.5	
Pol	Muški	326	43.6	746
	Ženski	420	56.3	
Godine starosti	15–18	278	37.2	748
	19–24	458	61.6	
	25 i više	12	1.6	
Nivo obrazovanja	Srednja škola	278	37.2	748
	Viša škola, fakultet	470	62.8	
Partnerski status	Slobodna/slobodan	420	56.7	741
	U vezi/viđam se sa nekim	289	39.0	
	Udata/ oženjen	27	3.6	
	Razvedena/razveden	2	0.3	
	Udovica/udovac	3	0.4	
Sa kim žive?	Sa roditeljima	637	85.8	742
	Sami	42	5.7	
	Sa partnerom	35	4.7	
	Sa prijateljem/kolegom	22	3.0	
	Sa babom i dedom	6	.8	
Način stanovanja	Sopstveni stan/kuća	539	79.4	679
	Podstanar	99	14.6	
	Internat/dom	41	6.0	
Mesto stanovanja	Grad	423	60.6	698
	Selo	275	39.4	

3. Rezultati istraživanja: analiza ključnih nalaza

3.1. Nasilje – pojmovno određenje i razumevanje

U određenju i razumevanju pojma *nasilje* ispitanici su imali mogućnost višestrukog izbora. Najveći broj njih poistovećuje nasilje s fizičkom agresijom (94,9%), zatim sa seksualnim zlostavljanjem (prinudom na seksualni odnos) ukupno 87,7%, odnosno s verbalnim pretnjama (68,8%) (Tabela 2). Približno isti procenat ispitanika pod nasiljem po-

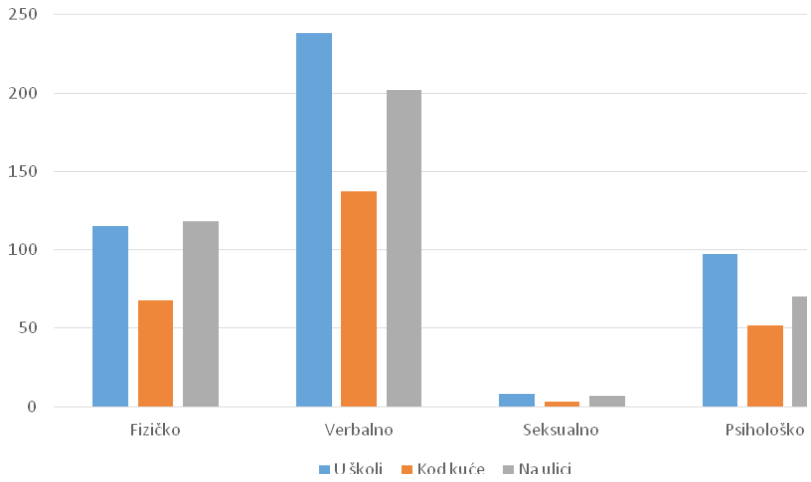
drazumeva kontrolu kretanja, uvredu i psovanje, zabranu komunikacije i druženja, a potom i ograničenje kretanja. Oko 30% ispitanika prepoznaje tzv. kontrolne taktike (zanemarivanje/uvreda/kontrola kretanja/zabrana komunikacije i druženja/proveravanje mobilnog telefona i komunikacije na mrežama) kao oblik nasilja. Ono što pobuđuje posebnu pažnju jeste 23,8% ispitanika koji ne znaju šta je nasilje i koji se nisu opredelili ni za jedan odgovor.

Tabela 2 . Po Vašem mišljenju, šta je nasilje? (N = 667)

Oblik	**Frekvenca**	**Procenat**
Fizička agresija (udaranje, prebijanje)	633	94,9
Verbalne pretnje (koristeći uvredljiv jezik)	459	68,8
Seksualno zlostavljanje (prinuda na seksualni odnos)	585	87,7
Uništavanje materijalnih dobara	245	36,7
Zanemarivanje/neosetljivost	155	23,2
Uvreda, psovanje	251	37,6
Ograničenje kretanja	241	36,1
Kontrola kretanja/praćenje	257	38,5
Zabrana komunikacije i druženja	245	36,7
Proveravanje mobilnih telefona i komunikacije na mrežama	185	27,7
Uskraćivanje džeparca, neplaćene radne dnevnice	120	18,0
Ne znam	159	23,8

3.2. Doživljeno nasilje

Pozitivni odgovori skoro trećine ispitanika o iskustvu doživljenog nasilja ukazuju da je najviše njih doživelo nasilje u školi ili na javnom mestu (ulici) a znatno manji broj kod kuće. Najprisutnije nasilje je verbalno, sledi ga fizičko (podjednako prisutno na javnom mestu i u školi, i potom kod kuće). Psihološko nasilje najviše je zastupljeno u školskom okruženju, zatim na ulici (javnom mestu). Najmanje informacija o iskustvu nasilja ispitanici daju o seksualnom nasilju, ali ga lociraju u školsko okruženje i na ulici (Grafikon 1).



Grafikon 1. Podaci o doživljenom nasilju (N = 664)

3.2.1 Sociodemografske karakteristike ispitanika i doživljeno nasilje

Pol ispitanika. Nalazi pokazuju da mladići, kao žrtve, imaju najviše iskustava sa fizičkim nasiljem na ulici (trećina ispitanika), zatim u školi (27,9%), a verbalno nasilje su doživeli najčešće na ulici (40,1%). Njih 11 svedoči o doživljenom seksualnom nasilju na ulici (?), šestorica imaju iskustvo sa seksualnim nasiljem u školi, trojica s nasiljem kod kuće, dok je psihološko nasilje najčešće doživljeno u školi (43%) a potom na ulici.

Prema strukturi odgovora, devojke, kao žrtve, imaju nešto manje iskustava sa preživljenim nasiljem. Od 375 devojaka koje su odgovorile, njih 97 (26%) doživelo je neki oblik fizičkog nasilja (najčešće kod kuće a potom u školi). Verbalno nasilje doživelo je njih 283 (najviše na ulici ili u školi). O seksualnom nasilju u školi svedočile su dve devojke a njih šest doživelo je seksualno nasilje na ulici (?). Psihološko nasilje prema devojkama najzastupljenije je u školi (trećina ispitanica svedočila je o tome) (Tabela 3).

Statistički značajna razlika postoji kod fizičkog nasilja u školi ($\chi^2(1) = 38.94$, $p < .001$) koje daleko više doživljavaju mladići, i na ulici ($\chi^2(1) = 77.08$), $p < .001$). Važan je i podatak da devojke u značajnom procentu doživljavaju fizičko i psihološko nasilje kod kuće u odnosu na druge oblike nasilja. Na celom uzorku najprisutnije je iskustvo sa verbalnim nasiljem (ukupno 574 slučaja ili 87%), slede ga fizičko nasilje (45%), psihološko nasilje (218 slučajeva ili 33%) i seksualno nasilje (28 slučajeva ili 5%).

Tabela 3. Podaci o doživljenom nasilju u odnosu na pol

Vrsta nasilja	**Mesto**	**Mladići (N = 287)**		**Devojke (N = 375)**		**Značajnost razlike**	
		N	**%**	**N**	**%**	$\chi^2(1)$	p
Fizičko	U školi	80	27,9	35	9,3	38.94	<.001
	Kod kuće	30	10,5	38	10,1	0.02	.89
	Na ulici	94	32,8	24	6,4	77.08	<.001
Verbalno	U školi	109	38,0	128	34,1	1.05	.31
	Kod kuće	63	22,0	74	19,7	0.51	.47
	Na ulici	115	40,1	85	22,7	23.35	<.001
Seksualno	U školi	6	2,1	2	0,5	3.30	.07
	Kod kuće	3	1,0	0	0,0	3.94	.047
	Na ulici	11	3,8	6	1,6	3.24	.07
Psihološko	U školi	43	15,0	53	14,1	0.09	.76
	Kod kuće	21	7,3	31	8,3	0.20	.65
	Na ulici	37	12,9	33	8,8	2.88	.09

Uzrast ispitanika. Fizičko, verbalno i psihološko nasilje srednjoškolci su najčešće doživljavali u školi, zatim na ulici, njih devetoro svedoči o iskustvu sa seksualnim nasiljem na ulici, četvoro u školi, a jedan ispitanik o iskustvu kod kuće (ukupno 14 ispitanika/ca). Najprisutnije nasilje je verbalno (ukupno 80%), zatim psihološko (122 ispitanika) i fizičko nasilje (117 ispitanika).

Studenti su fizičko nasilje najčešće doživljavali na ulici, verbalno i psihološko u školi, a seksualno na ulici (njih osmoro), u školi (njih četvoro) i dvoje kod kuće (Tabela 4). Najprisutnije nasilje kod ove po-

pulacije je verbalno (ukupno 361 ispitanik ili 91%), zatim fizičko (184 ispitanika ili 46%), psihološko (ukupno 97 ispitanika ili 24%) i seksualno nasilje (3%).

Tabela 4. Podaci o doživljenom nasilju u odnosu na uzrast

Vrsta nasilja	**Mesto**	**SŠ (N = 269)**		**Studenti (N = 395)**		**Značajnost razlike**	
		N	**%**	**N**	**%**	$\chi^2(1)$	p
Fizičko	U školi	49	18,2	66	16,7	0.25	.61
	Kod kuće	30	11,2	38	9,6	0.41	.52
	Na ulici	38	14,1	80	20,3	4.11	.04
Verbalno	U školi	95	35,3	143	36,2	0.05	.82
	Kod kuće	40	14,9	97	24,5	9.07	.003
	Na ulici	81	30,1	121	30,6	0.02	.88
Seksualno	U školi	4	1,5	4	1,0	0.30	.58
	Kod kuće	1	0,4	2	0,5	0.06	.80
	Na ulici	9	3,3	8	2,0	1.12	.29
Psihološko	U školi	57	21,2	40	10,1	15.70	<.001
	Kod kuće	28	10,4	24	6,1	4.16	.043
	Na ulici	37	13,8	33	8,4	4.95	.026

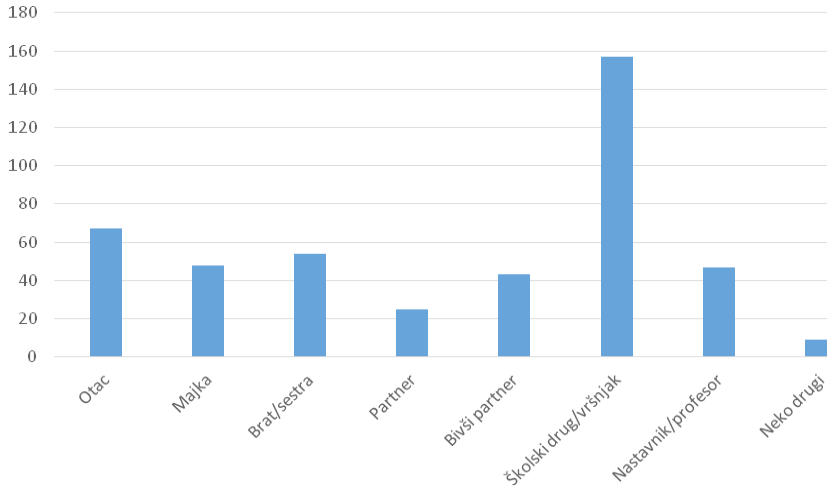
Mesto prebivališta ispitanika. Na gradskom području ispitanici su sve oblike nasilja doživljavali uglavnom u školi ili na ulici, mada je uočljiv i veći procenat ispitanika sa iskustvom nasilja kod kuće, pri čemu posebnu pažnju treba obratiti na slučajeve seksualnog nasilja u školi (4), na ulici (9) i kod kuće (jedan slučaj) (Tabela 5). Na području gradskih opština najprisutnije nasilje je verbalno (89%), zatim fizičko (44%), psihološko (33%) i seksualno (2%). Na seoskim područjima najprisutnije je verbalno nasilje (85%), slede fizičko (46%), psihološko (33%) i seksualno (3%).

Tabela 5. Podaci o doživljenom nasilju u odnosu na mesto prebivališta

Vrsta nasilja	Mesto	Grad (N = 387)		Selo (N = 260)		Značajnost razlike	
		N	%	N	%	$\chi^2(1)$	p
Fizičko	U školi	63	16,3	48	18,5	0.52	.47
	Kod kuće	43	11,1	23	8,8	0.87	.35
	Na ulici	66	17,1	48	18,5	0.21	.65
Verbalno	U školi	141	36,4	93	35,8	0.03	.86
	Kod kuće	80	20,6	54	20,8	0.02	.96
	Na ulici	124	32,0	74	28,5	0.94	.33
Seksualno	U školi	6	1,6	2	0,8	0.77	.38
	Kod kuće	3	0,8	0	0,0	2.03	.15
	Na ulici	11	2,8	6	2,3	0.17	.68
Psihološko	U školi	55	14,2	41	15,8	0.30	.59
	Kod kuće	32	8,3	19	7,3	0.20	.66
	Na ulici	41	10,6	27	10,4	0.07	.93

3.3. Nasilnici

U strukturi nasilnika dominiraju školski drug/vršnjak (23,6%), zatim otac (10,1%), brat/sestra (8,1%), majka (7,2%), nastavnik/profesor (7,1%), bivši partner (6,5%), sadašnji partner (3,8%), neko drugi (1,4%) (Grafikon 2). U kategoriji *neko drugi* ispitanici navode: uличne tuče (3), nepoznate osobe (2), policajca (1), vozača autobusa (1), navijače drugog tima (1) i narkomane (1). Sa ovom raspodelom korespondiraju kao nasilnici i otac, brat/sestra, majka (u vezi sa verbalnim, fizičkim ili psihološkim nasiljem kod kuće), odnosno nastavnik/profesor u školi. Rodnu dimenziju nasilja potvrđuje i iskustvo s bivšim partnerom, odnosno aktuelnim partnerom, kao nasilnikom.



Grafikon 2. Od koga ste doživeli nasilje? (N = 664)

Ovakva raspodela u strukturi nasilnika potvrđena je i kod mladića i kod devojaka (Tabela 6). Statistički značajna razlika postoji samo kod školskog druga/vršnjaka, $\chi^2(1) = 31.49$, $p < .001$ koji se češće javlja kao nasilnik kod mladića nego kod devojaka. Zanimljiv je i nalaz gde se bivši partner javlja kao nasilnik u većem procentu kod devojaka (ovaj nalaz se u studijama rodno zasnovanog nasilja uglavnom dovodi u vezu sa psihološkim nasiljem ili tzv. proganjanjem).

Tabela 6. Nasilnik u odnosu na pol

	Mladići		**Devojke**		**Razlika**	
Nasilnik	**N**	**%**	**N**	**%**	$\chi^2(1)$	p
Otac	37	12,9	30	8,0	4.23	.039
Majka	20	7,0	28	7,5	0.06	.81
Brat/sestra	21	7,3	32	8,5	0.33	.57
Partner	13	4,5	12	3,2	0.78	.38
Bivši partner	16	5,6	27	7,2	0.73	.39
Školski drug/vršnjak	98	34,1	58	15,5	31.49	<.001
Nastavnik/profesor	27	9,4	19	5,1	4.74	.030
Neko drugi	9	3,1	0	0,0	11.92	.001

Analiza ključnih nalaza percepcije rodno zasnovanog nasilja kod ispitanika oba pola ukazuje na dominantan uticaj tradicionalno-patrijarhalnog obrasca rodne socijalizacije i snažan uticaj kulturološko-istorijske matrice na porodične, bračne i partnerske relacije (Spasić, Radovanović, Kekić, & Krstić-Mistridželović, 2022). Percepcija nasilja je pojednostavljena i jednostrana – nasilje se najvećim delom poistovećuje sa fizičkom agresijom, verbalnim pretnjama i seksualnim zlostavljanjem. Neprepoznavanje kontrolnih taktika, kao forme psihološkog nasilja, uslovljava, onemogućava ili otežava percepciju njegove rodne dimenzije. Nerazumevanje pojma nasilje posredno ukazuje i na pogrešnu percepciju njegovih dimenzija, uzroka i faktora, konteksta, formi njegovog ispoljavanja, neprepoznavanje njegove viktimološke dimenzije.

Svi oblici nasilja najprisutniji su u školi i na ulici/javnom mestu, a u nešto manjem procentu kod kuće, što potvrđuju korelacije kod svih sociodemografskih faktora (pol, uzrast, škola, mesto stanovanja). Među ispitanicima oba pola nalaze se žrtve svih oblika nasilja. Fizičko i verbalno nasilje doživela je skoro trećina ispitanika oba pola. Važan je podatak da devojke kod kuće doživljavaju značajan procenat fizičkog i psihološkog nasilja u odnosu na druge oblike nasilja, što potvrđuje prisutnu matricu rodne socijalizacije (Ignjatović, 2011; Spasić, 2012).

Poseban značaj pružaju nalazi o preživljenom seksualnom nasilju kod ispitanika oba pola (11 mladića svedočilo je o doživljenom seksualnom nasilju na ulici, trojica o doživljenom seksualnom nasilju kod kuće a šestorica imaju iskustvo sa seksualnim nasiljem u školi; o seksualnom nasilju u školi svedočile su dve devojke, njih šest doživelo je seksualno nasilje na ulici). U ovom slučaju jako je važno i neophodno diferencirati, odnosno dodatno kvalitativno razjasniti sve oblike, kontekst, karakteristike i učestalost seksualnog nasilja. Ovaj oblik nasilja je najteže otkriti i o njemu žrtve retko obaveštavaju, zbog čega je ovaj nalaz izuzetno značajan.

Sa druge strane, među nasilnicima posle vršnjaka/školskih drugova ili profesora dominiraju otac, brat, sestra, što je kontradiktorno u odnosu na činjenicu da je nasilje najprisutnije u školi i na ulici/javnom mestu. Ovaj nalaz se može objasniti činjenicom o snažnom uticaju tradicionalno-patrijarhalnih odnosa u porodičnom okruženju koji nalažu da se sve što se dešava u kući, u porodici ne iznosi javno, odnosno da ostaje „u kući".

4. Umesto zaključka

Rezultati istraživanja ukazuju na prisutnu racionalno prihvaćenu, moralno opravdanu, tradicionalno generisanu opštu kulturu nasilja prema ženama, odnosno nasilja u porodici i u partnerskim vezama, ali i nasilja u školama, među vršnjacima i od strane nastavnika/profesora. Pri tome se rodna diferenciranost uzima kao podrazumevani način društvenog funkcionisanja. U svakom delu uzorka, formiranom na osnovu pojedinih sociodemografskih karakteristika, može se uočiti određeni (približno isti) broj ispitanika oba pola koji izražava pozitivan stav prema nasilju prema ženama (čak i ispitanici ženskog pola). Ovakav nalaz ukazuje na duboko ukorenjene tradicionalno-patrijarhalne obrasce rodne socijalizacije i snažan uticaj kulturološko-istorijske matrice na porodične, bračne i partnerske relacije na severu Kosova.

Društvene norme i patrijarhalni mentalitet, koji još vladaju na području istraživanih lokalnih zajednica, doveli su do toga da devojke i žene koje doživljavaju nasilje ne prepoznaju njegove forme i dinamiku i ne traže pomoć na koju imaju zakonsko pravo. Tradicionalne rodne uloge i dalje se promovišu u školskoj literaturi, gde su žene predstavljene kao domaćice, majke koje su mudre i nežne i pažljivo slušaju naređenja koja im se daju, dok se muškarci čine snažnima i preuzimaju različite uloge u društvu – lekara, policajca, vatrogasca itd. Takva promocija rodnih uloga utiče na kontinuirano reprodukovanje ovih rodnih stereotipa, što takođe utiče na intenzitet i trajanje rodno zasnovanog nasilja a prevashodno nasilja u porodici. U slučajevima kada žele da prijave nasilje, devojke i žene se suočavaju sa značajnim pritiscima unutar svoje zajednice i svojih porodica.

U nedostatku ekonomske nezavisnosti ili usled ograničenja u ostvarivanju prava na imovinu i nasledstvo zbog preovlađujućih kulturnih normi koje vrše pritisak na vlasništvo ili nasledstvo u patrilinealnoj liniji, mnoge devojke i žene su prisiljene da nastave da žive u okruženju opterećenom nasiljem. Na taj način su model kulture siromaštva i strategija golog preživljavanja u situaciji marginalizovanosti racionalnosti i svesnosti potpora modelu kulture nasilja. U kontekstu međusobnog uslovljavanja napetosti i neusklađenosti između privatne i javne sfere,

porodična zajednica se u privatnoj sferi ističe kao osnovna jedninica koja generira nasilje nad ženama, ali istovremeno pruža mladima model ponašanja u okvirima interpersonalnih relacija. Na taj način su postojeća koncepcija svakodnevice i koncepcija ljudskog blagostanja međusobno nespojive, ali se, kao takve, održavaju i jačaju u okvirima snažne tradicionalne patrijarhalne matrice.

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GENDER-BASED VIOLENCE PERCEPTION AMONG YOUTH IN NORTHERN KOSOVO

Abstract: This paper presents the key findings of research conducted in October and November of 2019 among high school and university students from four municipalities in northern Kosovo (Leposavić, Zvečan, Zubin Potok, and Kosovska Mitrovica). Nine high schools and ten higher education institutions, with a total of 748 respondents, participated in the research. Given its intended focus, the research possesses both a *contextual* and *exploratory* character, with the perception of the prevalence and gender dimension of interpersonal violence at its core. The identification of quantitative characteristics of gender-based violence underscores the strength and significance of traditional, cultural, and historical influences related to gender socialisation and masculinity in family and partner relationships in northern Kosovo.

Keywords: gender-based violence, youth, northern Kosovo

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1. Introduction

Until the 1960s, violence in schools, both globally and in the Balkans, was not recognized as a problem requiring special attention, research, or interventions. It was only in the late 1970s and early 1980s, following cases of severe physical violence, that it became evident that previously perceived "harmless" physical rivalries, minor scuffles, and displays of strength transcended mere childhood play and did not constitute integral aspects of development (Bergman, 1992; Rigby & Slee, 1993; Roberts, Klein & Fisher, 2003). Research shows that schools in Serbia are not immune to the upward trends in all forms of violence across all educational levels (Plut & Popadić, 2006; Popadić & Plut, 2007; Popadić, 2009; Popadić, Pavlović & Plut, 2013). Regarding types of violence among students, most authors agree on the existence of physical, verbal, and social/relational violence. In addition to these forms, Popadić (2009) distinguishes digital and sexual violence.

However, it is important to emphasise that both high school students (adolescents) and university students can become victims of various forms of violence within their local community. Beyond school-based (peer) violence, they may also witness, experience, but also perpetuate, violence in family settings, public spaces, nightlife venues, or intimate relationships. Each of these forms of violence has its gender dimension.

1.1. Gender-based violence: conceptual framework and previous research

Although it occurs among peers, gender-based violence among youth should not be equated with peer violence (Perić Prkosovački, Ileš & Trivanović, 2018). According to the study "Violence in primary schools in Serbia: Forms and prevalence," the term peer violence refers to violent interactions among children of all ages that attend the same school; therefore, it includes all students as a group, not just chronological peers (Popadić & Plut, 2007). On the other hand, Spasić & Nikač (2013) define gender-based violence as the use of any form of violence (physical, psychological, sexual, etc.) against an individual based solely

on their gender. Research indicates that in over 80% of cases, the victims of violence are female, while the perpetrators are predominantly male. Violence serves as one of the tactics perpetrators employ to assert power and control over victims of the opposite sex (Perić Prkosovački et al., 2018).

According to research on the presence of gender-based violence in adolescent relationships conducted by the "Crvena linija" association in Novi Sad, youth perceive sexual violence as the most severe form of violence, followed by emotional manipulation, physical violence, and, at the end, psychological violence (Batić, 2015; Perić Prkosovački et al., 2018). Studies in Canada show that violence occurs in adolescent relationships in 12% to 20% of cases (Foshee, Benefield, McNaughton, Ennett, Chang, Hussong & Suchindran, 2013; Lichter & McCloskey, 2004). Additionally, a substantial portion of youth, around 50%, reported either having perpetrated or experienced violence from an intimate partner (Trbojević, 2016). Each year, 25% of adolescents experience intimate partner violence (including physical, emotional, psychological, and sexual forms). According to a comparative study by Makin-Byrd & Bierman, 10% of high school students in the United States experienced physical violence from a partner in 2012 (Makin-Byrd & Bierman, 2013; Trbojević, 2016).

In Serbia, the first study on gender-based violence in primary and secondary schools was conducted in 2013. The study was conducted by the Center for Gender and Policy Studies at the Faculty of Political Sciences[3] to determine the prevalence of gender-based violence and propose best prevention and intervention practices in cases of the studied forms of violence. This study is distinctive not only in its scope but also in its examination of experiences of gender-based violence and attitudes toward both gender roles and gender-based violence; it is the first extensive research in Serbia to investigate the prevalence and frequency of various forms of gender-based and sexual violence in schools on

[3]http://www.fpn.bg.ac.rs/2014/06/06/predstavljeni-rezultati-istrazivanja-%E2%80%9Erodno-zasnovano-nasilje%E2%80%9C-centra-za-studije-roda-i-politike/, accessed 15/07/2023

a large scale[4]. The sample included students from the fourth grade of primary school to the fourth grade of high school, as well as teaching staff, and school psychologists and pedagogues (approximately 25,000 participants). In total, 69% of elementary school students and as many as 74% of high school students reported experiencing at least one form of gender-based violence since the start of the school year. According to the cited study, 48% of fourth-grade elementary school girls reported experiencing some form of gender-based violence; this percentage was found to increase with age and it reaches 85% in the eighth grade (Ćeriman, Duhaček N., Perišić, Bogdanović, & Duhaček, D., 2015: 8–9). Based on the data obtained from young males and females, perpetrators in the majority of studied forms of gender-based violence are predominantly young males / boys (targeting both other peers and young females / girls).

The findings of these studies, along with the socio-historical, cultural, and traditional heritage, and the sociological context of the northern Kosovo region, provide both social and scientific justification for examining these issues among young people and adolescents.

The findings of these studies, along with the socio-historical, culturological, and traditional context of northern Kosovo, provide the social and scientific rationale for conducting this research among youth and adolescents.

2. Research on youth perception of gender-based violence

2.1. Contextual framework of the research

The northern Kosovo region includes multiple municipalities (Kosovska Mitrovica, Zvečan, Leposavić, and Zubin Potok), which, although interconnected, all possess unique characteristics. Culturological context and social dynamics vary between rural and urban communities and influence both behavioural patterns of youth and their informed-

[4]http://www.fpn.bg.ac.rs/2014/06/06/predstavljeni-rezultati-istrazivanja-%E2%80%9Erodno-zasnovano-nasilje%E2%80%9C-centra-za-studije-roda-i-politike/, accessed 15/07/2023

ness on gender-based violence.In terms of social interactions among youth, Zubin Potok is somewhat territorially isolated and closed-off, it consists of one small urban area and several rural ones. Attitudes towards acceptable behaviour among youth in all aspects of life, including relationships affected by gender-based violence, are "conserved," i.e., less influenced by global trends. Kosovska Mitrovica, an entirely urban area with higher education institutions that draw a substantial number of young people from both the local population and beyond, presents a stark contrast. Social interactions and mutual influences among diverse microcultural systems are notably more intense there. Zvečan is connected to Kosovska Mitrovica through its urban zone, while its rural parts exhibit characteristics typical of other rural areas in the region. Leposavić is an urban centre with higher education institutions alongside expansive rural areas, thus it is a composite of typical attributes found across communities in this region.[5]

2.2. Methodological approach

Although fundamentally quantitative, this research also displays elements of *contextual* and *exploratory* approaches, which is in line with its intended focus. However, this is the first study among high school and university students in northern Kosovo to fundamentally focus on their perception and understanding of the incidence and gender dimension of interpersonal violence. Identifying the quantitative characteristics of this phenomenon can serve as an indicator of the strength and significance of traditional, cultural, and historical influences related to gender socialisation and masculinity in familial and partnership relations in northern Kosovo, which was the primary hypothesis of the study. Field research and data collection were conducted in secondary schools and higher education institutions in the municipalities in northern Kosovo during October and November of 2019.

[5] https://sh.wikipedia.org/wiki/Severno_Kosovo accessed 15/07/2023

2.2.1. Structure and characteristics of the sample

According to data from relevant institutions in northern Kosovo, approximately 9,200 students were enrolled in higher education institutions and 2,548 students attended secondary schools during the 2019-2020 academic/school year. The sample was stratified based on two criteria: age groups (15–18 and 19–24) and type of educational institution (secondary school vs. higher education institution).

A total of 748 participants took part in the study, comprising 420 females (56.3%) and 326 males (43.6%). The majority of participants were from Kosovska Mitrovica, which accounted for 39.3% of the sample (see Table 1).

Table 1. Distribution of participants in relation to sociodemographic variables

Variable	**Category**	**Frequency**	**Percentage**	**Total**
Municipality	Leposavić	181	24.2	748
	Zubin Potok	157	21.0	
	Kosovska Mitrovica	294	39.3	
	Zvečan	116	15.5	
Sex	Male	326	43.6	746
	Female	420	56.3	
Age group	15–18	278	37.2	748
	19–24	458	61.6	
	25 and over	12	1.6	
Education	Secondary school	278	37.2	748
	Post-secondary school, university	470	62.8	
Partnership status	Single	420	56.7	741
	In a relationship / seeing someone	289	39.0	
	Married	27	3.6	
	Divorced	2	0.3	
	Widowed	3	0.4	

Living situation	With parents	637	85.8	742
	Alone	42	5.7	
	With a partner	35	4.7	
	With a friend/colleague	22	3.0	
	With grandparents	6	.8	
Current accommodation	Own property	539	79.4	679
	Renting from private landlords	99	14.6	
	Boarding home	41	6.0	
Place of residence	City/town	423	60.6	698
	Countryside	275	39.4	

3. Results: analysis of key findings

3.1. Violence – defining and understanding the terminology

To define and understand the term *violence*, respondents were given several options to gauge their perceptions. The results revealed that the majority associated violence with physical aggression (94.9%), followed by sexual abuse (coercion into sexual acts) (87.7%), and verbal threats (68.8%) (see Table 2). A similar percentage of respondents associated violence with controlling freedom of movement, as well as with employing insults and swearing, preventing communication and socialisation with others, and, subsequently, restricting movement. Approximately 30% of respondents were able to recognise the so-called control tactics (neglecting, insulting, restricting freedom of movement, preventing communication and socialisation, and monitoring mobile phones and online interactions) as forms of violence. Notably, 23.8% of respondents were uncertain about the concept of violence and did not select any of the provided options.

Table 2 . What is violence, in your opinion? (N = 667)

Form	Frequency	Percentage
Physical aggression (hitting, beating)	633	94.9
Verbal threats (with the use of offensive language)	459	68.8
Sexual abuse (coercion into sexual acts)	585	87.7
Destruction of property	245	36.7
Neglect / lack of care and attention	155	23.2
Insults, swearing	251	37.6
Restriction of movement	241	36.1
Movement monitoring / surveillance	257	38.5
Preventing communication and socialising	245	36.7
Monitoring mobile phones and online communication	185	27.7
Withholding allowance, unpaid work	120	18.0
I do not know.	159	23.8

3.2. Experiences of violence

Nearly one-third of respondents reported experiencing violence primarily in schools or public spaces (such as on the street), whereas a significantly smaller proportion reported experiencing violence at home. The most frequently reported form of violence is verbal violence, followed by physical violence (occurring with equal frequency in public spaces and schools, and to a lesser extent at home). Psychological violence is most commonly reported in the school environment, followed by public spaces such as streets. Respondents provided the least amount of information about sexual violence; however, they primarily associate it with the school environment and streets (see Chart 1).

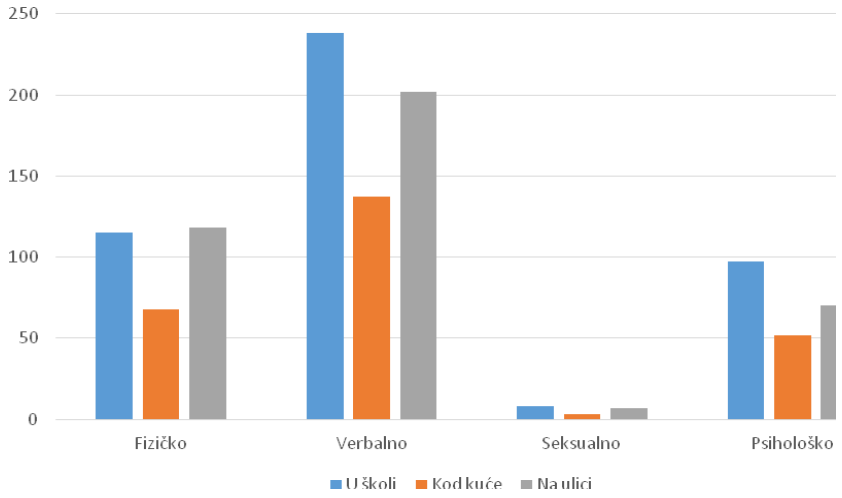

Chart 1. Data on experiences of violence (N = 664)

3.2.1 Sociodemographic characteristics of respondents and experiences of violence

Sex of respondents. The findings indicate that male respondents most frequently experienced physical violence on the streets (reported by one-third of them), followed by experiences in school (27.9%), while verbal abuse was predominantly reported on the streets (40.1%). Eleven respondents reported experiences of sexual violence occurring on the streets (?), there were six reported experiences in school, and three reported experiences at home. Experiences of psychological violence were most commonly reported in school (43%), followed by the streets.

Female respondents, as victims, have somewhat fewer experiences with violence. Among the 375 female respondents, 97 (26%) experienced some form of physical violence (most frequently at home and then at school). Verbal abuse was reported by 283 respondents, (predominantly occurring on the street or in school). Two female respondents reported experiencing sexual violence in school, while six reported experiences of sexual violence on the street (?). Psychological violence against females was most prevalent in school (reported by one-third of the female respondents) (see Table 3).

There is a statistically significant difference in the experiences of physical violence in school ($\chi^2(1) = 38.94$, $p < .001$), where males reported significantly higher incidences, and on the street ($\chi^2(1) = 77.08$, $p < .001$). It is also noteworthy that females experience physical and psychological violence at home at a significantly higher rate compared to other forms of violence. Across the entire sample, the most prevalent form of violence reported is verbal abuse (574 cases or 87%), followed by physical violence (45%), psychological violence (218 cases or 33%), and sexual violence (28 cases or 5%).

Tabela 3. Data on experiences of violence in relation to sex

Violence form	**Location**	**Males (N = 287)**		**Females (N = 375)**		**Statistical significance**	
		N	**%**	**N**	**%**	$\chi^2(1)$	p
Physical	School	80	27.9	35	9.3	38.94	<.001
	Home	30	10.5	38	10.1	0.02	.89
	Street	94	32.8	24	6.4	77.08	<.001
Verbal	School	109	38.0	128	34.1	1.05	.31
	Home	63	22.0	74	19.7	0.51	.47
	Street	115	40.1	85	22.7	23.35	<.001
Sexual	School	6	2.1	2	0.5	3.30	.07
	Home	3	1.0	0	0.0	3.94	.047
	Street	11	3.8	6	1.6	3.24	.07
Psychological	School	43	15.0	53	14.1	0.09	.76
	Home	21	7.3	31	8.3	0.20	.65
	Street	37	12.9	33	8.8	2.88	.09

Age of respondents. High school students most frequently experienced physical, verbal, and psychological violence at school, followed by incidents on the streets, nine respondents reported experiencing sexual violence on the streets, four in school, and one at home (total of 14 respondents). The most prevalent form of violence was verbal (80% of respondents), followed by psychological (122 respondents), and physical violence (117 respondents).

University students predominantly reported experiences of physical violence on the street, while verbal and psychological violence was

dominant in school / educational setting. Sexual violence was most commonly experienced on the street (8), in school (4), and at home (2) (Table 4). The most frequent form of violence in this population is verbal (361 respondents or 91%), followed by physical (184 respondents or 46%), psychological (97 respondents or 24%), and sexual (3%).

Tabela 4. Data on experiences of violence in relation to age of respondents

Violence form	**Location**	**HS (N = 269)**		**Uni students (N = 395)**		**Statistical significance**	
		N	**%**	**N**	**%**	$\chi^2(1)$	p
Physical	School	49	18.2	66	16.7	0.25	.61
	Home	30	11.2	38	9.6	0.41	.52
	Street	38	14.1	80	20.3	4.11	.04
Verbal	School	95	35.3	143	36.2	0.05	.82
	Home	40	14.9	97	24.5	9.07	.003
	Street	81	30.1	121	30.6	0.02	.88
Sexual	School	4	1.5	4	1.0	0.30	.58
	Home	1	0.4	2	0.5	0.06	.80
	Street	9	3.3	8	2.0	1.12	.29
Psychological	School	57	21.2	40	10.1	15.70	<.001
	Home	28	10.4	24	6.1	4.16	.043
	Street	37	13.8	33	8.4	4.95	.026

Residence of respondents. Most respondents from urban areas reported experiencing all forms of violence mainly in school or on the streets, although there is a notable percentage of respondents who reported experiencing violence at home. Particular attention should be given to instances of sexual violence in school (4), on the streets (9), and at home (1) (Table 5). In urban municipalities, the most prevalent type of violence is verbal (89%), followed by physical (44%), psychological (33%), and sexual (2%). In rural areas, the most common form of violence reported is verbal (85%), followed by physical (46%), psychological (33%), and sexual (3%). *Table 5. Data on experiences of violence in relation to location*

Violence form	Location	Urban (N = 387)		Rural (N = 260)		Statistical significance	
		N	%	N	%	$\chi^2(1)$	p
Physical	School	63	16.3	48	18.5	0.52	.47
	Home	43	11.1	23	8.8	0.87	.35
	Street	66	17.1	48	18.5	0.21	.65
Verbal	School	141	36.4	93	35.8	0.03	.86
	Home	80	20.6	54	20.8	0.02	.96
	Street	124	32.0	74	28.5	0.94	.33
Sexual	School	6	1.6	2	0.8	0.77	.38
	Home	3	0.8	0	0.0	2.03	.15
	Street	11	2.8	6	2.3	0.17	.68
Psychological	School	55	14.2	41	15.8	0.30	.59
	Home	32	8.3	19	7.3	0.20	.66
	Street	41	10.6	27	10.4	0.07	.93

3.3. Perpetrators

Ones schoolmate/peer is the most common perpetrator of violence (23.6%), followed by a father (10.1%), sibling (8.1%), mother (7.2%), teacher/professor (7.1%), former partner (6.5%), current partner (3.8%), and someone else (1.4%) (see Chart 2). In the *someone else* category, respondents listed street fights (3), unknown individuals (2), a police officer (1), a bus driver (1), fans of opposing sports teams (1), and drug addicts (1). This distribution corresponds with reports of fathers, siblings, and mothers being perpetrators of verbal, physical, or psychological violence at home, as well as teachers/professors being perpetrators at school. The gender dimension of violence is confirmed by experiences involving former or current partners as perpetrators.

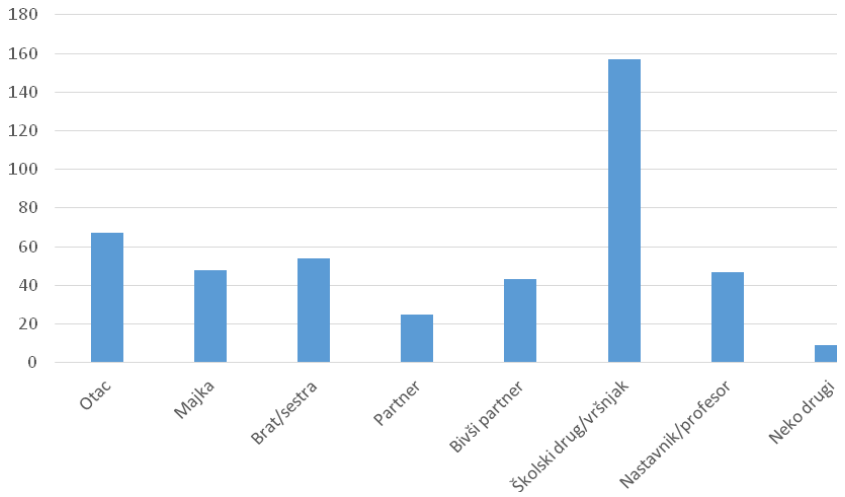

Chart 2. Who committed violence against you? (N = 664)

This distribution of perpetrators is consistent for both males and females (see Table 6). A statistically significant difference exists only for schoolmates/peers, $\chi^2(1) = 31.49$, $p < .001$, who are more frequently reported as perpetrators by males than females. An interesting finding is that former partners are reported as perpetrators in a higher percentage of cases among females (this finding is generally associated with psychological violence or so called stalking in studies on gender-based violence).

Table 6. Perpetrators of violence by gender

	Males		Females		Difference	
Perpetrator	**N**	**%**	**N**	**%**	$\chi^2(1)$	p
Father	37	12.9	30	8.0	4.23	.039
Mother	20	7.0	28	7.5	0.06	.81
Brother/sister	21	7.3	32	8.5	0.33	.57
Partner	13	4.5	12	3.2	0.78	.38
Former partner	16	5.6	27	7.2	0.73	.39
Classmate/peer	98	34.1	58	15.5	31.49	<.001
Teacher/professor	27	9.4	19	5.1	4.74	.030
Someone else	9	3.1	0	0.0	11.92	.001

The analysis of key findings on the perception of gender-based violence among respondents of both sexes highlights the dominant influence of traditional-patriarchal patterns of gender socialisation and the strong impact of the cultural-historical framework on family, marital, and partner relationships (Spasić, Radovanović, Kekić, & Krstić-Mistidželović, 2022). The perception of violence is simplified and one-sided – violence is largely equated with physical aggression, verbal threats, and sexual abuse. The failure to recognize control tactics as forms of psychological violence hinders or complicates the perception of its gender dimension. The lack of understanding of the concept of violence itself indirectly points to a mistaken perception of its dimensions, causes, factors, context, forms of manifestation, and the lack of recognition of its victimological dimension.

All forms of violence are most prevalent in schools and on the street / in public places, with a somewhat lower incidence at home, as evidenced by the correlations across all sociodemographic factors (gender, age, school, residence). Victims of all types of violence can be found among respondents of both genders. Nearly one-third of respondents of both sexes reported experiencing physical and verbal violence. Notably, girls experience a significant percentage of physical and psychological violence at home compared to other forms of violence, which reflects the existing patterns of gender socialisation (Ignjatović, 2011; Spasić, 2012).

The findings on experienced sexual violence among respondents of both genders are particularly significant (11 males reported experiencing sexual violence on the street, 3 at home, and 6 in school; for females, 2 reported sexual violence in school, while 6 experienced it on the streets). In this case, it is crucial to further differentiate, that is, qualitatively clarify all forms, contexts, characteristics, and frequencies of sexual violence. This type of violence is the most challenging to detect and victims rarely report it, which makes this finding exceptionally important.

On the other hand, after peers/schoolmates or teachers, the second most common perpetrators are fathers, brothers, and sisters, which may seem contradictory given that violence is most prevalent in schools and public spaces. This finding can be explained by the strong influence of traditional patriarchal norms within the family, which dictate that issues occurring within the home or family remain private and are not to be disclosed publicly.

4. Concluding Remarks

The study's results point to the existing, rationally accepted, and morally justified traditional culture of violence against women, that is, domestic and partner violence, as well as violence in schools among peers and by teachers/professors. Gender differentiation is taken as a given mode of social functioning. Across all sample segments based on various sociodemographic characteristics, a similar number of respondents of both sexes (including females) express a positive attitude toward violence against women. This finding underscores deeply entrenched traditional-patriarchal patterns of gender socialisation and the strong influence of the cultural-historical matrix on family, marital, and partner relationships in northern Kosovo

Prevailing social norms and the patriarchal mentality in the studied local communities have led to a situation where girls and women who experience violence do not recognize its forms and dynamics and do not seek the legal help to which they are entitled. Traditional gender roles continue to be promoted in school literature, where women are depicted as homemakers and mothers who are wise, gentle, and attentive to the instructions given to them, while men are portrayed as strong and taking on various societal roles – doctors, police officers, firefighters etc. Such promotion of gender roles contributes to the continuous reproduction of these gender stereotypes, which also affects the intensity and duration of gender-based violence, particularly domestic violence. When attempting to report violence, girls and women face significant pressures from their communities and families.

Due to a lack of economic independence or as a result of restrictions on property and inheritance rights imposed by prevailing cultural norms emphasising patrilineal ownership, many girls and women are compelled to remain in violent environments. In this way, the culture of poverty and survival strategies, when rationality and awareness are marginalised, serve to reinforce the culture of violence. In the context of how tensions and mismatches between private and public spheres influence each other, the family emerges as a key unit in the private sphere where violence against women often originates; at the same time, it ser-

ves as a model for interpersonal relationships among young individuals. Consequently, the existing conceptions of daily life and human well-being remain incompatible but are, as such, maintained and reinforced within a strong traditional patriarchal framework.

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RADNO VREME KAO IZRAZ NAČELA HUMANIZACIJE RADA

Apstrakt: Rad, kao nezaobilazna društvena kategorija, predstavlja oslonac i stub opstanka čovečanstva. Bez obzira na to o kom periodu ljudske civilizacije da govorimo, svaki je, na svoj način, rad tretirao u skladu sa postojećim stepenom razvoja ljudske svesti o jednakosti i nužnosti humanog postupanja među ljudima. Stoga u prvobitnim epohama razvoja (robovlasništvo i feudalizam) pitanje povoljnosti uslova rada nije bilo kompatibilno sa društvenim uređenjima koje je karakterisala jasno izražena podeljenost stanovništva na staleže. Takvi sistemi su onemogućavali da radnik bude subjekt radnog odnosa na način kao što je u današnje vreme. To je ujedno i razlog zbog kog radni odnos tada nije ni postojao, jer su radnici bili vlasništvo poslodavca. Tek s razvojem kapitalizma stvaraju se uslovi da se radnici postepeno izjednačavaju sa poslodavcima i da počinju za sebe pribavljati prava koja su u prošlim vremenima bila nezamisliva. Glavna odlika tih prava jeste da je u njih utkano načelo humanizacije rada koje definiše radnika kao ravnopravnog subjekta u procesu rada u odnosu na poslodavca. Rezultati novog pristupa su postajali s vremenom sve vidljiviji, pa je radnicima tokom

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vremena kako na međunarodnom, tako i na nacionalnom nivou garantovano pravo na ograničeno radno vreme, pravo na zaradu, pravo na odmor, pravo na zaštitu na radu i slično. Radno vreme je, dakle, jedan segment humanosti i garancija poštovanja zaposlenog kao ljudskog bića koje ne sme biti eksploatisano u procesu rada. Pravo na ograničeno radno vreme bilo je među prvim zahtevima radnika u cilju njihove zaštite od samovolje poslodavaca, pa stoga ne čudi što je Međunarodna organizacija rada svoju prvu konvenciju, usvojenu 1919. godine, posvetila upravo toj tematici. Imajući u vidu značaj ovog instituta radnog prava za uspešno funkcionisanje zaposlenog i kolektiva u kom obavlja posao, autori se u radu bave pitanjem definisanja radnog vremena i potrebe njegove zakonodavne zaštite. Takođe, autori analiziraju prednosti racionalnog korišćenja radnog vremena i negativne strane lošeg rasporeda istog. Cilj rada je da ukaže na nemerljiv doprinos koji je radno vreme pružilo na području funkcionisanja radnih odnosa kakve poznajemo u savremenom svetu.

Ključne reči: radno vreme, humanizacija, zakonodavstvo, radnici, zaštita.

1. Uvod

Uobičajeno, pod pojmom *rad* podrazumeva se primena čovekovih fizičkih i intelektualnih sposobnosti usmerenih direktno i svesno na proizvodnju dobara, bogatstva ili u svakom slučaju na dobijanje proizvoda od pojedinačne ili opšte korisnosti (Istituto Nazionale di Statistica, 2019, str. 13). Rad je od početka ljudske istorije osnovni deo čovekovog života. Svojim fizičkim i intelektualnim radom čovek je polako uspevao da savlada mnoge prepreke na koje je nailazio u prirodi, ali i da napravi velike iskorake u borbi za opstanak (D'Amico & D'Amico, 2009, str. 299).

Rad je neizbežan faktor postojanja i napretka ljudske civilizacije, ali i područje na kom čovek potvrđuje svoju korisnost društvenoj zajednici. Isti oplemenjuje čoveka i omogućava mu da sebi i drugima obezbedi

neophodna sredstva za egzistenciju. Ulazi u sve pore čovekovog života (javnog i privatnog, slobodnog, otvorenog i prikrivenog, intimnog) (Šijaković, 2008, str. 263). Ima ulogu neizostavnog pratioca ljudske vrste još od vremena prvobitnih civilizacija kada se obavljao pomoću primitivnih sredstava koja nisu osiguravala višak proizvoda, već samo onoliko koliko je bilo dovoljno za opstanak čoveka. Prelazak na robovlasništvo uslovio je podelu na vlasnike – one koji poseduju sredstva za rad, i radnike kao robove koji su u njihovom vlasništvu i koji rade za njihov račun. Skoro identičan položaj radnici su imali tokom srednjeg veka, u doba feudalizma, kada su bili kmetovi i takođe eksploatisani od strane vlasnika zemljišnih poseda na kojima su radili. U robovlasništvu i feudalizmu radnici su bili u izrazito nepovoljnom položaju i zavisili su od samovolje poslodavca koji je ujedno bio i njihov gospodar. Tako nepovoljan položaj radnika bio je inkompatibilan sa mogućnošću poboljšanja uslova rada i zbog toga se pomenute dve epohe uzimaju kao eklatantni primeri nepostojanja radnih odnosa kakvi postoje u savremenom svetu.

Do bitnih promena na području poboljšanja uslova rada radnika dolazi polovinom XIX veka kada radnički pokret dobija internacionalnu dimenziju. Radnicima je postalo jasno da će na pojedinačnom, nacionalnom nivou veoma teško parirati poslodavcima. Kao dodatno otežavajuća okolnost figurirala je činjenica da su tadašnje države bile veoma naklonjene poslodavcima, jer su potonji zapravo štitili postojeći društveni poredak. Zbog toga su radnici kao jedino logično i mudro rešenje izabrali udruživanje na međunarodnom nivou jer su time dodatno ojačali svoju pregovaračku poziciju. Dakle, zajedničkim snagama radnici su zapravo postali pretnja po socijalni mir i sigurnost tadašnjih država koje su bile prinuđene da im postepeno priznaju određena prava u okviru rada. Time se završava dug istorijski period nepravedne eksploatacije radnika svih životnih dobi a započinje vreme postepenog izjednačavanja zaposlenih i poslodavaca koje traje do današnjih dana.

Nesumnjivo, radnici će uvek biti u podređenom položaju u odnosu na poslodavca, ali se obim prava iz radnog odnosa, koji su za sebe pribavili (i još uvek pribavljaju), ne može meriti sa onim što je postojalo pre razvoja kapitalizma. Kapitalizam je, kao moderan ekonomski sistem, omogućio da se u okviru radnog odnosa prava, obaveze i odgovornosti poslodavaca i radnika polako ali sigurno uravnotežavaju. Zato je radni odnos u današnje vreme prvenstveno interesni odnos u kom radnici, pored obaveza koje imaju prema poslodavcima, uživaju i širok dijapazon zakonom zagarantovanih prava.

Na početku internacionalnog delovanja radnički pokret je svoje snage usmerio prvenstveno na zaštitu radnika od nehumanosti radnih uslova. Tadašnji poslodavci nisu za relevantne uzimali okolnosti koje bi radnicima olakšavale svakodnevne i iscrpljujuće radne obaveze, već su se vodili isključivo svojim interesima. Njihove aktivnosti su bile usmerene isključivo ka maksimizaciji proizvodnje koja će im garantovati visoke finansijske prihode i dalje uvećanje privatnog kapitala koji su posedovali. Stoga ne čudi što u takvom sistemu odnosa zaposleni nisu imali priliku da se izbore za bolje uslove rada koji je i tada bio osnov njihove egzistencije i članova njihovih porodica. Radnici su radili većinom u nehumanim uslovima, bez ikakvih sredstava zaštite, i do granica fizičke izdržljivosti, što podrazumeva rad tokom čitavog dana a ponekad i noći. Poslovi koje su obavljali donosili su veoma nisku zaradu, nedovoljnu za podmirivanje osnovnih životnih potreba. Bez obzira na smanjene radne kapacitete, omladina, žene i stariji nisu bili izuzeti od takvog rada a istom su, nažalost, bila podvrgavana i deca. Takve okolnosti su izazvale revolt kod radničkog pokreta koji je nezadovoljan sveukupnim položajem radnika, sasvim opravdano započeo borbu za poboljšanje položaja zaposlenih. Među prvim zahtevima radnika bilo je i pitanje radnog vremena koje je dotad zavisilo isključivo od volje poslodavca i potreba delatnosti kojom se bavio. Dugi i iscrpljujući radni dani svakako su negativno uticali na zdravlje radnika a to se posledično odražavalo i na njihov doprinos na radu. Zato su radnici u prvi plan isticali neophodnost uvođenja razumnog radnog vremena koje će omogućiti da se ostvari

potreban radni učinak, ali i ostaviti dovoljno prostora za odmor, kao nužan deo pripreme za buduće radne obaveze. To implicira da radno vreme, kao institut radnog prava, ima višestruko korisnu ulogu. Najpre štiti radnike od eksploatacije poslodavaca, sa akcentom na zaštiti zdravlja zaposlenih a isto tako omogućava da pored radnih zadovolje i druge životne potrebe. Broj radnih sati jedan je od glavnih faktora koji pokazuje da li je rad kompatibilan sa porodičnim obavezama i privatnim životom (Oficina Internacional del Trabajo, 2019, str. 8).

Na kraju, radno vreme ide i u korist poslodavaca jer će radnik koji nije iscrpljen radnim obavezama postizati bolje rezultate na radu. Samim tim u kontinuitetu će doprinositi uvećanju prihoda poslodavca. Prema tome, radno vreme predstavlja jedan on bitnih instituta radnog prava koji se kroz istoriju menjao u želji radnika, kao ekonomski slabije strane u radnom odnosu, da se vreme provedeno na poslu svede na određeno trajanje (Rajić Ćalić, 2018). Posmatrano iz današnje perspektive, radno vreme je period u kom zaposleni ne samo što je dužan, već ima i pravo da radi (Jovanović, 2015, str. 222).

2. Začeci ograničavanja radnog vremena

Pitanje radnog vremena svakako predstavlja jedno od najrelevantnijih aspekata tokom radnog veka svakog pojedinca (Darioli, 2014, str. 3). Humanizacija rada je u direktnoj vezi sa uslovima u kojima zaposleni obavljaju radne zadatke. Odnosi se na sistem zaštite koja se radnicima pruža u cilju očuvanja njihovog zdravlja i mogućnosti podmirivanja drugih životnih potreba. Radno vreme, iako jedan od najvažnijih segmenata radnog odnosa, dugo vremena nije bilo proklamovano pravnim aktima kao deo osnovnih prava radnika. Tek početkom XIX veka beleži se prvi značajan događaj na planu zakonskog regulisanja istog.

Kolevka zakonodavnog regulisanja radnog vremena bila je Engleska, koja je to učinila 1802. godine u okviru Zakona o zdravstvenoj i duhovnoj zaštiti učenika i drugih lica zaposlenih u predionicama i tkač-

nicama pamuka (Act for the preservation of the Health and Morals of Apprentices and others employed in Cotton and other Mills, and Cotton and other Factories). Zakon je uveo ser Robert Pil (Robert Peel), primenjivao se na teritoriji Velike Britanije i Irske i njime je određena maksimalna dužina radnog dana za decu mlađu od devet godina. Predviđao je da se radne prostorije moraju dva puta godišnje oprati živim krečom i vodom, kao i da se mora voditi računa o ulasku svežeg vazduha. Šegrti moraju imati dva radna odela i ona će im se isporučivati svake godine. Vreme rada je ograničeno na dvanaest sati a od 1. juna 1803. godine nijedan šegrt ne može biti primoran da radi između devet uveče i šest ujutro. U narednim decenijama engleski zakonodavci su postepeno skraćivali radno vreme za osetljivije kategorije radnika. To je rezultiralo time da su deca, žene i omladina najpre dobili pravo na ograničeno radno vreme u trajanju od deset sati dnevno. Međutim, pod uticajem radničkog pokreta pomenuto pravo je tokom vremena postalo privilegija svih radnika.

Druge države Starog kontinenta, poput Nemačke i Francuske, u decenijama koje su usledile postepeno su prihvatale englesku praksu regulisanja radnog vremena, s tim da su radno vreme ograničavale samo ženama, deci i omladini. Dobro poznata krilatica radničke klase, koja podrazumeva osam sati rada, osam sati odmora i osam sati spavanja, imala je svoje početke još za vreme Prve internacionale, 1866. godine. Tada se prvi put javljaju ozbiljniji predlozi da se započne s primenom osmočasovnog radnog vremena, što je potom i prihvaćeno u Sjedinjenim Američkim Državama i Engleskoj, ali kao deo pogodnosti koja je bila predviđena samo za određenu kategoriju zaposlenih (npr. radnici u državnim službama). Na kongresu Druge internacionale u Parizu 1889. godine komunističke partije i sindikati iz celog sveta dogovorili su se da zbog simbolike stradanja nekolicine ljudi tokom radničkih demonstracija na trgu u Čikagu početkom maja 1886. godine izaberu 1. maj kao dan kad će se organizovati prvi sveopšti internacionalni štrajk radnika za osmočasovno radno vreme. Naredne, 1890. godine demonstracije su 1. maja uspešno podignute u brojnim gradovima širom sveta a rezultati

takve sindikalne borbe pokazali su se svakako tokom 20. veka u vidu implementacije šireg spektra socijalnih prava koje ljudi danas uživaju, kao što su osmočasovno radno vreme, pravo na lični dohodak, pravo na praznike ili penziono i socijalno osiguranje.

Pomenuta krilatica o „tri osmice" prvi put je pravno definisana u Sovjetskom Savezu 1917. godine. Tada je usvojen Dekret o osmočasovnom radnom danu (Декрет о 8-часовом рабочем дне) kojim je predviđeno da u toku dana radno vreme ne može iznositi duže od osam sati. Članom 3 Dekreta propisano je da nakon najviše šest sati rada radnik ima pravo na pauzu za odmor i jelo. Pauza ne bi trebalo da bude kraća od sat vremena. Tokom pauze radnik slobodno raspolaže svojim vremenom i ima pravo da napusti radno mesto (https://constitution.garant.ru/history/act1600-1918/5306/).

Najznačajniji trenutak na planu poboljšanja sveukupnog položaja radnika širom sveta, bez ikakve sumnje, predstavlja osnivanje Međunarodne organizacije rada (International Labor Organization – ILO). Osnovana je glavom XIII Versajskog mirovnog ugovora 1919. godine sa ciljem zagovaranja socijalne pravde i međunarodno priznatih ljudskih i radnih prava, bazirajući se na uverenju da se univerzalni i održivi mir može ostvariti samo ukoliko se temelji na socijalnoj pravdi – *si vis pacem cole iustitiam* (Živkovski & Rubežić, 2016). Posle Drugog svetskog rata, tačnije 1946. godine, osniva se specijalizovana agencija Ujedinjenih nacija (United Nations – UN). Promoviše razvijanje nezavisnih radničkih organizacija i udruženja poslodavaca i tim organizacijama osigurava trening i savetodavne usluge. Unutar sistema Ujedinjenih nacija razlikuje se od ostalih specijalizovanih agencija. Jedinstvena je zbog svoje tripartitne strukture u kojoj radnici i poslodavci učestvuju u radu upravnih organa organizacije kao ravnopravni partneri vladama (Lađevac & Đukanović, 2011). Međunarodna organizacija rada (International Labor Organization – ILO) na prvoj Opštoj konferenciji 1919. godine donela je Konvenciju br. 1 kojom se definiše osmočasovni radni dan i četrdesetosmočasovna radna sedmica u industriji. Prema članu 2 Konvencije, radno vreme zaposlenih u bilo kom javnom ili privatnom

industrijskom preduzeću ili bilo kojoj njenoj grani, osim preduzeća u kome su zaposleni samo članovi iste porodice, ne može biti duže od osam sati u toku dana i četrdeset osam sati u toku nedelje, sa izuzecima previđenim dalje u tekstu:

1) odredbe Konvencije neće se primenjivati na lica koja imaju nadzorne ili rukovodeće pozicije, niti na lica zaposlena u poverljivom svojstvu,

2) kada je na osnovu zakona, običaja ili sporazuma između organizacija poslodavaca i radnika, ili ako takve organizacije ne postoje između predstavnika poslodavaca i radnika, radno vreme tokom jednog ili više dana u nedelji manje od osam sati dnevno, granica od osam sati se može prekoračiti u preostalim danima u nedelji na osnovu odluke nadležnog javnog organa ili na osnovu dogovora između ovih organizacija ili predstavnika pod uslovom da ni u kom slučaju, prema odredbama ovog stava, dnevna granica od osam sati ne bude prekoračena za više od jednog sata i

3) kada se radnici zapošljavaju u smenama dozvoljeno je da se zapošljavaju duže od osam sati dnevno i četrdeset osam sati nedeljno, ukoliko prosečan broj sati u periodu od tri nedelje ili manje ne prelazi osam sati dnevno i četrdeset osam nedeljno.

Članom 4 Konvencije predviđeno je da ograničenje propisano članom 2 može biti prekoračeno u okolnostima koje zbog prirode posla zahtevaju da se radi neprekidno u smenama pod uslovom da radno vreme ne prelazi u proseku pedeset šest sati u toku jedne nedelje. Takvo regulisanje radnog vremena ni u kom slučaju neće uticati na dane odmora koji su radnicima garantovani nacionalnim zakonom, kao nadoknada za nedeljni dan odmora. Osmočasovno radno vreme, kao cilj kome bi države širom sveta trebalo da streme, postaje deo radnopravne prakse nakon završetka Drugog svetskog rata. Međunarodna organizacija rada je tokom svog delovanja između dva svetska rata donela čitav niz konvencija i preporuka kojima se reguliše radno vreme, bazirajući se primarno na određenim delatnostima ili kategorijama radnika. Tako su njene aktivnosti bile usmerene na skraćivanje radnog vremena prilikom

obavljanja teških i za rad zahtevnijih poslova (npr. rad u rudnicima) ili na precizno definisanje broja radnih sati određenih kategorija zaposlenih, poput drumskih vozača kojima je zabranjeno da u kontinuitetu voze duže od pet sati. U pogledu postepenog skraćivanja radnog vremena, Međunarodna organizacija rada je 1962. godine usvojila Preporuku br. 116 (Reduction of Hours of Work Recommendation) u kojoj nalaže državama da promovišu i obezbede primenu principa smanjenja radnog vremena, što će posledično dovesti do krajnjeg cilja a to je četrdesetočasovna radna nedelja. Sve aktivnosti koje se preduzimaju na tom planu moraju biti vršene na način da ne dovode do smanjenja zarada radnika. Takođe, Preporukom je regulisano da se njene odredbe ne primenjuju u oblastima privrede, poput pomorskog saobraćaja ili poljoprivrede. Izričito se nalaže da se skraćivanje radnog vremena mora vršiti tako da ne utiče negativno na sveukupnu proizvodnju i produktivnost radnika tokom rada. Insistira se na tome da se treba fokusirati prvenstveno na poslove koji se obavljaju u industriji i drugim delatnostima a koji, s obzirom na uslove u kojima se vrše, dovode do povećanih rizika od narušavanja zdravlja zaposlenih u vidu povreda na radu ili profesionalnih oboljenja, kao i do povećanog umaranja.

3. **Radno vreme u domaćem radnom zakonodavstvu**

Istorijski posmatrano, ljudi iskazuju tendenciju da sve manje vremena provode na radu. Takav trend se manifestuje na različitim nivoima. Radni dan je progresivno smanjivan, radna nedelja je u većini slučajeva smanjena sa šestodnevne na petodnevnu, skraćena je radna godina, uveden je plaćeni odmor, radno vreme tokom celog života je skraćeno, uz produženje vremena posvećenog obrazovanju i uvođenju penzionih šema (De Spiegelaere & Piasna, 2018, str. 12). Regulisanje standardnog dnevnog i nedeljnog radnog vremena je osnovni metod sprečavanja dugotrajnog rada i smanjenja njegovih štetnih efekata na zdravlje radnika, kao i usklađivanja plaćenog rada sa ličnim i porodičnim životom (Yanez, 2016, str. 17).

U radnopravnoj teoriji Republike Srbije radno vreme se najčešće određuje kao vremenski period u kome zaposleni ima obavezu ili je raspoloživ da obavlja poslove prema uputstvima koje dobija od poslodavca, na mestu gde se poslovi vrše. To je vreme koje radnik duguje poslodavcu, na osnovu odnosa nastalog ugovorom o radu a koji je bilateralan i podrazumeva postojanje prava i obaveza za obe strane (Minaya, 2009). Prilikom definisanja pojma radnog vremena uočavaju se dva bitna segmenta. Prvo, reč je o obavezi radnika da u tačno određenom vremenskom periodu obavlja radne zadatke u interesu poslodavca. Drugo, radno vreme se nužno mora posmatrati i kao pravo radnika, jer je u suštini realizacija načela humanosti rada. Ono što je veoma značajno za pravilno definisanje radnog vremena jeste da ono predstavlja vreme u kojem je zaposleni dužan da obavlja posao za račun poslodavca, pri čemu nastaje radni učinak kao proizvod njegovog znanja, stručnosti i umeća. U savremeno doba zaposleni, tokom radnog vremena, više nije dužan da obavlja rad isključivo u prostorijama poslodavca. Ipak, iako radne zadatke obavlja na mestu koje je sam odabrao, takođe ima obavezu da poštuje predviđeno radno vreme. Prema tome, tokom radnog vremena zaposleni ima obavezu da poslodavcu bude na raspolaganju. U skladu sa tim, pod radnim vremenom se ne može podrazumevati vreme u kome je radnik spreman da se na poziv poslodavca pojavi na mestu rada. Razlog tome je što se radnik u vreme poziva poslodavca ne nalazi na mestu gde se rad vrši. Zato se ovo vreme naziva vreme pripravnosti a ne radno vreme. Glavna razlika među njima se ogleda u činjenici da za radno vreme zaposlenom pripada zarada, dok za vreme pripravnosti radniku sleduje naknada koja se reguliše zakonom, opštim aktom ili ugovorom o radu. Međutim, pod radnim vremenom se podrazumeva vreme koje radnik u toku pripravnosti provede u vršenju rada po pozivu poslodavca. Kao veoma važan radnopravni institut, radno vreme predstavlja garanciju da rad nema eksploatacione karakteristike i da ostavlja dovoljno prostora zaposlenima da mogu da obnove svoje fizičke i umne potencijale. Time je obezbeđeno pravo radnika na dostojanstvene i humane radne uslove na način da zaposleni u dogovorenom vremenu radnu snagu stavi na raspolaganje poslodavcu, ali i da se nakon obavljenog

posla odmori u cilju pripreme za nove radne izazove. Radnopravna teorija i praksa poznaju više vrsta radnog vremena, pa tako postoje puno, nepuno i skraćeno radno vreme, kao i prekovremeni rad.

Po pravilu, puno radno vreme iznosi četrdeset časova u toku jedne radne nedelje, osim ako zakonom nije drugačije određeno. Izuzetno, opštim aktom (najčešće pravilnikom) moguće je u praksi utvrditi radno vreme koje je kraće od četrdeset časova nedeljno, ali ne sme biti kraće od trideset šest časova u istom vremenskom periodu. Ukoliko zaposleni radi trideset šest časova nedeljno, on ostvaruje sva prava koja mu pripadaju iz radnog odnosa kao da je zaposlen puno radno vreme. Zbog zaštitnog karaktera radnopravnih propisa maloletnicima koji su u radnom odnosu radno vreme ne sme trajati duže od trideset pet časova nedeljno. Njihovo maksimalno radno vreme u toku jednog dana iznosi osam sati. Na drugoj strani, nepuno radno vreme se određuje kao radno vreme koje je kraće od punog radnog vremena i primenjuje se u slučajevima kada to dozvoljava priroda posla kojom se poslodavac bavi. Za razliku od radnika koji radi puno radno vreme, zaposleni tokom nepunog radnog vremena prava, koja mu pripadaju iz radnog odnosa, ostvaruje srazmerno vremenu provedenom na radu, zbog čega je obim njegovih prava manji. Zato je zakonom propisano pravo radnika koji kod jednog poslodavca radi nepuno radno vreme da kod drugog (ili više njih) može zasnovati radni odnos i time ostvariti puno radno vreme i ukupan fond prava koja mu pripadaju.

Skraćeno radno vreme se odlikuje prvenstveno zaštitnim karakterom koji je usmeren prema zaposlenima. Reč je o radnom vremenu koje je kraće od punog radnog vremena, ali je sa potonjim izjednačeno zbog specifičnosti koje odlikuju poslove koji se obavljaju u ovom vremenskom režimu. Naime, to su posebno teški i naporni poslovi koji imaju negativan uticaj na zdravlje zaposlenih. Regulisani su zakonom ili opštim aktom, ali i pored primene neophodnih sigurnosnih mera i dalje imaju štetno dejstvo na zdravlje radnika. U skladu sa tim, da bi se na određenim poslovima uvelo skraćeno radno vreme, mora se najpre izvršiti stručna analiza. Skraćeno radno vreme se veoma često poistove-

ćuje sa nepunim radnim vremenom. Iz tog razloga korisno je ukazati na osnovnu razliku između ova dva tipa radnog vremena. Zaposleni koji radi skraćeno radno vreme ostvaruje pun obim prava iz radnog odnosa, kao da je zaposlen puno radno vreme. Radnik koji radi nepuno radno vreme nema tu mogućnost, već mora pronaći dodatni angažman (ili više njih) da bi se izjednačio sa radnikom koji radi puno radno vreme. Shodno tome, zaposleni koji radi skraćeno radno vreme nema potrebu za dodatnim radnim angažmanom. Po pravilu, radno vreme se skraćuje srazmerno štetnom uticaju rada na zdravlje radnika, a najviše deset sati u toku jedne nedelje. Posmatrano sa aspekta bezbednosti i očuvanja zdravstvenih kapaciteta radnika, skraćeno radno vreme se u praksi pokazalo kao veoma efikasno rešenje. Značajnu ulogu je odigralo na planu smanjenja nesrećnih slučajeva do kojih dolazi na radnim mestima najčešće pri kraju radnog vremena kada se usled zamora javlja manjak koncentracije kod zaposlenih.

4. **Prekovremeni rad i raspored radnog vremena**

U okviru instituta radnog vremena zakon dopušta i određena odstupanja. Jedan od takvih primera je prekovremeni rad, kao specifična vrsta rada, i odstupanje od pravila da rad ne sme trajati duže od punog radnog vremena. Poslodavac, međutim, prekovremeni rad ne može razmatrati kao mogućnost ukoliko se poslovi, koji su razlog njegovog eventualnog uvođenja, mogu obaviti efikasnije na neki drugi način (npr. preraspodelom radnog vremena). Zakon predviđa obavezu radnika da radi duže od punog radnog vremena ukoliko to poslodavac zahteva u određenim slučajevima. Radi se o nepredviđenim okolnostima poput više sile ili iznenadnog povećanja obima posla kada je neophodno da se u određenom roku završi posao koji nije bio planiran. Ipak, da prekovremeno vršenje rada ne bi predstavljalo eksploataciju radnika i eliminaciju prava na ograničeno radno vreme, zakonom je regulisano da prekovremeni rad ne sme trajati više od osam časova nedeljno, kao i da radnik ne sme da radi više od dvanaest časova dnevno, što podrazume-

va i prekovremeni rad. Zaposleni koji rade skraćeno radno vreme ne mogu raditi prekovremeno izuzev ako zakonom nije drugačije određeno. Prilikom uvođenja prekovremenog rada mora se voditi računa da se to čini isključivo u opravdanim i vanrednim situacijama, jer je reč o okolnosti koja neminovno dovodi do smanjenja radne sposobnosti zaposlenih, koji u tim prilikama imaju manje sati dnevnog odmora na raspolaganju. Dakle, prekovremeni rad se karakteriše time što se obavlja u izuzetnim situacijama, a ne redovno (Kovačević, 2013, str. 290).

Zakonom je definisano i pitanje rasporeda radnog vremena. Raspored rada, odnosno raspodela radnog vremena na određeni vremenski period (nedelja, dan…) označava sate u kojima se radna aktivnost odvija (Cuixart, Cuixart, & Fabrega, 2013, str. 3). Radna nedelja, po pravilu, traje pet radnih dana koji se definišu kao vreme u kom radnik ne uživa u potpunosti jer stoji na raspolaganju poslodavcu (Henao, 2008, str. 56). Dakle, radni dan je mera radne beneficije koju ostvaruje poslodavac (Alarcon Caracuel, 2008). Raspored radnog vremena utvrđuje poslodavac, s tim što radni dan, po pravilu, traje osam sati. Kada donosi odluku o rasporedu radnog vremena, poslodavac se rukovodi primarno prirodom delatnosti kojom se bavi, kao i okolnostima koje dovode do što racionalnije upotrebe sredstava za rad kojima raspolaže. Po pravilu, radna nedelja traje pet radnih dana u kojima se radi po osam sati, ali imajući u vidu da je odluka o rasporedu radnog vremena u isključivoj ingerenciji poslodavca, potonji se može odlučiti za drugačije modalitete. Stoga, često se dešava da radna nedelja traje šest radnih dana, što implicira da radni dan traje kraće od uobičajenih osam sati. Nezavisno od rasporeda radnog vremena, pravilo je da radna nedelja ne može da traje duže od četrdeset časova, gde se kao obaveza nameće da jedan dan (24 časa) mora biti iskorišćen za odmor. Po zakonu, ukoliko se odluči da izvrši promenu rasporeda radnog vremena, poslodavac ima obavezu da o tome informiše radnike najmanje pet dana unapred, osim ukoliko se radi o uvođenju prekovremenog rada. Takođe, postoji mogućnost da poslodavac informiše radnike i u kraćem roku od pomenutog, ali ne kraćem od četrdeset osam sati.

Kao posledica mogućnosti različitih modaliteta rasporeda radnog vremena, postoje i različite vrste radnog vremena. Tako jednokratno radno vreme podrazumeva da se fond radnih sati u toku radnog dana realizuje u kontinuitetu, uz pripadajući prekid rada koji se koristi za odmor radnika. Vreme provedeno u odmoru se radnicima računa kao vreme provedeno na radu. Dvokratno radno vreme obuhvata rad koji se vrši u prepodnevnim i popodnevnim satima, pa se dnevni fond radnih sati realizuje u dva dela. Vreme između prepodnevnog i popodnevnog rada (prekid rada) ne računa se kao vreme provedeno na radu, ali se koristi za odmor zaposlenih. Na drugoj strani, rad u isto vreme podrazumeva da kod jednog poslodavca svi zaposleni rade istovremeno, a najčešće u prepodnevnom delu dana. Rad u smenama znači da svi zaposleni kod jednog poslodavca ne rade istovremeno, već jedan deo radnika radi u prepodnevnoj a drugi u popodnevnoj ili noćnoj smeni. Ovaj modalitet rada se primenjuje kada se posao mora obavljati u kontinuitetu a karakteriše ga okolnost da se radnici smenjuju na radnim mestima koristeći ista sredstva rada u različitim delovima dana. Ipak, uslovi rada nisu identični u svim smenama, jer je bez ikakve sumnje noćni rad najviše naporan. Poznato je da ljudski organizam nema istu stabilnost tokom svih sati u okviru jednog dana. Noću dolazi do smanjenja fizičkih i mentalnih kapaciteta a memorija opada i progresivno se poboljšava tokom dana (Calera, 2004). To je ujedno i logično i lako objašnjivo jer je ljudski organizam posebno orijentisan na budnost danju i spavanje noću (Rodriguez Oliveros & Contreras, 2012). Noćni rad odlikuje negativni uticaj na zdravlje radnika i zbog toga poslodavci imaju obavezu da zaposlenima periodično menjaju smene. To je veoma efikasan model očuvanja zdravlja radnika jer omogućava da teret noćnog rada ne podnosi isključivo jedan deo radnika. Dakle, rad u smenama je neminovno i jedan vid zaštite radnika jer ne ostavlja prostor za favorizaciju ili dodatno opterećivanje bilo kog zaposlenog. Zaštita radnika ogleda se i u činjenici da poslodavac ne sme dozvoliti da isti zaposleni radi neprekidno duže od jedne radne nedelje u noćnoj smeni. U svakom slučaju, dužan je da zaposlenom omogući promenu smene, osim ukoliko se radnik pisanim putem ne izjasni da želi da radi duže u noćnoj smeni. Na kraju, dnev-

no radno vreme traje od šest do dvadeset dva časa i realizuje se tokom dana, dok noćni rad podrazumeva radno vreme od dvadeset dva časa do šest časova sledećeg dana. Razlikovanje između ove dve vrste radnog vremena uslovljeno je specifičnostima noćnog rada. Rad noću se može uvesti samo nakon ispunjenja neophodnih uslova a poslodavac ima obavezu da prvo zatraži mišljenje sindikata o merama koje treba da preduzme da bi osigurao bezbednost radnika na radnom mestu. U praksi se jedan deo poslodavaca odlučuje za primenu kliznog radnog vremena, što je rezultat njihovog prava da samostalno odlučuju kada radni dan počinje i kada se završava. Najčešće su početak i kraj radnog vremena identični za sve radnike, ali poslodavac može odrediti da određene grupe zaposlenih imaju različito radno vreme. To za posledicu ima okolnost da svi radnici ne počinju rad istovremeno, ali ga i ne završavaju u isto vreme. Uvođenje kliznog radnog vremena zavisi od niza faktora (saobraćaj, geografske prilike …) a poslodavci ga primenjuju ukoliko im to priroda posla dozvoljava.

U pogledu radnog vremena neophodno je ukazati i na mogućnost njegove preraspodele koja predstavlja odstupanje od tipičnog rasporeda radnog vremena. Naime, rasporedom se radno vreme tokom jedne radne nedelje ravnomerno deli na pet radnih dana u kojima se radi po osam sati dnevno. Na taj način se realizuje pun fond od četrdeset časova rada u toku jedne radne nedelje, ali se takođe ostvaruje propisani broj časova rada za puno radno vreme. Preraspodela radnog vremena podrazumeva drugačiji pristup i odlikuje se time što se u određenim delovima godine radi duže, a u određenim kraće od dogovorenog. Vrši se pod određenim uslovima i iz određenih razloga, ali ne dovodi do povećanja ukupnog radnog vremena. Naime, u delu godine kada se radi duže od punog radnog vremena, reč je o prekovremenom radu. Različiti su razlozi njegovog uvođenja. Naime, preraspodela radnog vremena se vrši kada se želi postići bolje iskorišćavanje resursa kako bi se posao izvršio u određenim rokovima ili kada priroda posla to zahteva (sezonski poslovi, pogodni vremenski uslovi i sl.) (Klajić, 2020). Ipak, zaštitni karakter radnopravnih normi uslovljava da se preraspodela radnog vremena

ne može uvoditi na poslovima koji su naročito teški, naporni i štetni po zdravlje radnika, dakle, na kojima je uvedeno skraćeno radno vreme. U kontekstu vremenskog perioda, u kome se preraspodela radnog vremena može vršiti, u praksi postoje dve solucije koje se primenjuju. Prva se češće koristi i traje šest meseci u toku jedne kalendarske godine, dok druga podrazumeva period od najviše devet meseci koji ne mora biti u istoj kalendarskoj godini. Prilikom preraspodele radnog vremena maksimalno trajanje radnog vremena tokom jedne radne nedelje iznosi šezdeset časova, s tim da odmor između dva radna dana mora trajati minimalno jedanaest sati u kontinuitetu. Prema tome, postoje dve glavne odlike preraspodele radnog vremena. Prva je oročavanje, jer se preraspodela vezuje za određeni vremenski period, a druga uprosečavanje radnog vremena, što znači da je u jednom delu godine radno vreme duže od ugovorenog, a u drugom kraće. Međutim, ukupno ostvareno radno vreme u tim delovima ne iznosi više od broja sati koji se za ceo period podrazumeva sa ugovorenim radnim vremenom.

5. **Radno vreme kao faktor efikasnosti na radu**

Svaki rad zahteva određeno vreme, pa se potonje javlja kao opšti, spoljašnji, prirodni uslov ljudskog rada (Milošević, 1994). Faktori kao što su autonomija, visoki zahtevi za poslom, eksterni pritisak da se radi prekovremeno, niske nagrade (npr. nedostatak premije za prekovremeni rad) posreduju u odnosu između prekovremenog rada i zdravlja i bezbednosti na radu. Međutim, smanjenje preteranog dugog radnog vremena će verovatno dovesti do pozitivnih efekata na planu bezbednosti i zdravlja na radu (Messenger, 2018, str. 12). Očuvanje zdravlja radnika predstavlja preduslov njihove kontinuirane efikasnosti prilikom obavljanja radnih zadataka i davanja doprinosa poslovnim uspesima poslodavaca. Na tom planu je naročito u poslednjih sto godina dosta učinjeno, za šta je najviše zaslužna Međunarodna organizacija rada koja ima izrazito važnu normativnu funkciju u sistemu zaštite zdravlja zaposlenih širom sveta. Radno vreme je jedan od načina zaštite radnika jer, u

suštini, eliminiše eksploatacione potencijale poslodavaca koji su u prošlosti bili i te kako izraženi. U današnje vreme je u potpunosti jasno da limitiranje radnog vremena predstavlja benefit za sve subjekte radnog odnosa. Radnici više nisu izloženi nehumanim radnim uslovima koji su bili usmereni isključivo ka maksimizaciji profita poslodavca. U takvim okolnostima sve druge životne potrebe zaposlenih bile su sekundarnog karaktera. Poslodavci su takođe veoma brzo uvideli koristi ograničenog radnog vremena, iako su u početku bili veoma skeptični po pitanju uvođenja istog. Razlog tome je što su radnike koji su bili efikasni i produktivni na radnim mestima mogli da koriste u dužem vremenskom periodu, jer su njihove zdravstvene sposobnosti poboljšane usled korišćenja dnevnog vremena predviđenog za odmor i relaksaciju. Države su u takvim okolnostima uvidele da će značajan deo finansijskih sredstava moći da usmeravaju u druge namene, a ne za potrebe zbrinjavanja ljudi koji su postali radno nesposobni usled nehumanih uslova rada. Dakle, borba radničkog pokreta za bolje uslove rada, oličena prvenstveno u limitiranju radnog vremena i pristojnoj zaradi, nije bila uzaludna, jer je sasvim sigurno da samo zdrav radnik može biti efikasan i produktivan na radnom mestu.

Nesumnjivo, u velikoj meri radni učinak zavisi i od pravilnog rasporeda radnog vremena koji je varijabilna kategorija u mnoštvu delatnosti u kojima je zastupljen. Na primer u javnim (državnim) ustanovama se tradicionalno koristi osmočasovno radno vreme, koje se realizuje u toku petodnevne radne nedelje tokom cele godine jer priroda posla to dozvoljava. Na drugoj strani, rad u fabrikama uslovljava drugačiji raspored radnog vremena koji podrazumeva rad u smenama kao jedini način da se efikasno ispune radni zadaci. Uprkos različitom rasporedu radnog vremena, u oba slučaja se teži da se radni sati prilagode drugim životnim potrebama radnika, što će posledično imati uticaja na njihovo zalaganje na radu i radni učinak koji ostvaruju. Činjenica je da prekovremeno radno vreme ima negativan uticaj, dok standardno radno vreme pozitivno utiče na produktivnost rada, kada je reč o uslužnim delatnostima. Odgovor na pitanje da li radno vreme utiče na produktiv-

nost rada zavisi od radnih atributa koji postoje na određenom radnom mestu. Uslovi u kojima se rad odvija pozitivno utiču na produktivnost rada (Okugawa, 2021, str. 1) a glavni razlog zbog kog se produktivnost smanjuje sa povećanjem radnog vremena jeste umor radnika (Collewet & Sauermann, 2017, str. 7). Dugotrajno radno vreme se negativno odražava prvenstveno na mentalno zdravlje zaposlenih koji neretko imaju simptome depresije, hroničnog stresa ili anksioznosti, ali i veoma izražen problem s spavanjem. Zbog toga se, kao imperativ, nameće razumevanje na koji način radno vreme može da utiče na produktivnost radnika, da bi menadžment mogao da odredi radne sate koji su u najboljem interesu zaposlenih, ali uz istovremeno postizanje maksimalnog učinka ili postavljenih proizvodnih ciljeva (Vallo & Mashau, 2020). Zato se u praksi često pribegava fleksibilizaciji radnog vremena. Ista omogućava zaposlenima da radno vreme prilagode sebi svojstvenim potrebama, što će imati pozitivan uticaj na lično zadovoljstvo. Međutim, fleksibilnost eliminiše tačno određen završetak radnog dana, dok fiksno radno vreme ima jasan početak i kraj. Svakodnevna promena radnog vremena ili njegova fleksibilnost dovode do produženja radnog vremena (Holly & Mohnen, 2012, str. 7). Kvalitet rasporeda radnog vremena se najbolje uočava prilikom sagledavanja učinka koji se na radu postiže.

U poslednjih nekoliko godina, u uporednom pravu se sve više pominje četvorodnevna radna sedmica, kao jedan modalitet koji bi mogao doprineti upravo većoj produktivnosti radnika. U pojedinim kompanijama izvršena je i proba takvog rasporeda radnog vremena a iskustva su bila različita. Mišljenje autora ovog rada jeste da model četvorodnevne radne sedmice ne treba generalizovati i po svaku cenu pokušati implementirati i uspostaviti kao pravilo u svim sektorima. Polje rada je veoma kompleksno i različito, te je nužno uskladiti opšte društvene i tržišne potrebe, a pri tome imati u vidu zaštitu interesa učesnika radnog odnosa. Pravilno određeno radno vreme, koje u potpunosti dozvoljava radniku da se iskaže i na drugim životnim poljima, sasvim izvesno, kreira osećaj zadovoljstva i ispunjenosti, što će posledično imati jak uticaj na obavljanje poslova na kojima je angažovan. Takav radnik neće biti

podložan iscrpljenosti na radnom mestu i nezadovoljan poslom kojim se bavi, već će imati želju za daljim napredovanjem i usavršavanjem na radu. Dakle, radno vreme predstavlja realizaciju dostojanstvenog rada i garanciju kontinuirane produktivnosti koja je neophodna da bi ljudi napredovali u svim sferama života.

6. **Zaključak**

Radno vreme je jedno od osnovnih prava radnika kojim se omogućavaju dostojanstveni uslovi rada zaposlenim licima. Istovremeno radno vreme predstavlja i obavezu radnika koja podrazumeva da se mora staviti na raspolaganje poslodavcu u tačno određenom vremenskom periodu. Rezultat je borbe radničke klase na planu poboljšanja uslova rada i onemogućavanja eksploatacije zaposlenih od strane poslodavaca. Ograničeno radno vreme pruža mogućnost podmirivanja najrazličitijih potreba (porodične, socijalne, kulturne, rekreativne …) i služi kao garancija da će zaposleni moći da se ostvare i na drugim životnim poljima. Humanizacija uslova rada, u kontekstu radnog vremena, za posledicu ima očuvanje zdravlja radnika i njihovo pravo na dnevni odmor koje služi za obnavljanje preko potrebnih psihofizičkih potencijala. Na taj način se stvaraju uslovi da radnik u kontinuitetu bude radno angažovan, što doprinosi kako njemu, tako i poslodavcu. Zdrav i potpuno radno sposoban radnik u formi radnog odnosa ostvaruje zaradu koja je izvor egzistencije za njega i njegovu porodicu. Poslodavac od takvog zaposlenog ima koristi jer mu potonji pruža doprinos na radnom mestu oličen u višku proizvoda (dobit). Država u takvim okolnostima ne mora da izdvaja finansijska sredstva za ona lica koja su usled povreda na radu ili profesionalnih oboljenja svrstana u kategoriju radno nesposobnih, već novac može usmeravati u druge namene (izgradnja puteva, škola, obdaništa…). Dakle, radno vreme, kao jedan od najvažnijih instituta radnog prava i jedno od fundamentalnih pitanja u okviru rada, ima veoma važnu ulogu na području stabilnosti savremenog društva. Zato i ne iznenađuje činjenica da je isto bilo predmet mnogobrojnih konvencija

i preporuka usvojenih od strane Međunarodne organizacije rada koja ima zadatak da na globalnom nivou promoviše prava radnika i kontinuirano radi na poboljšanju uslova u kojima se rad vrši.

U kontekstu domaće radnopravne regulative, koja se odnosi na radno vreme, Republika Srbija ima dobra zakonodavna rešenja koja ne odstupaju od onoga što je predviđeno međunarodnim dokumentima. Zakonom o radu se uređuju vrste radnog vremena, njegovi modaliteti i raspored, ali se istovremeno pruža zaštita određenim licima zbog njihovih psihofizičkih osobenosti. Nesumnjivo, efikasnost obavljanja radnih zadataka i produktivnost radnika na radnom mestu u velikoj meri zavise od rasporeda radnog vremena. Radni sati moraju biti određeni na način da zaposleni kvalitetno obavljaju poslove na kojima su angažovani, što će za rezultat imati eliminaciju stresa koji je izvor mnogobrojnih zdravstvenih problema. U savremenim uslovima rada stres neretko dovodi do mentalnih problema koji onemogućavaju kvalitetno obavljanje posla, ali i otežavaju funkcionisanje ljudi na drugim životnim poljima. Naročito veliku odgovornost na tom planu imaju poslodavci koji radno vreme moraju prilagoditi kako svojim potrebama, tako i potrebama radnika, što implicira da se mora pronaći kompromisno rešenje koje zadovoljava obe strane. Noćni rad se u praksi pokazuje kao izrazito osetljivo pitanje jer podrazumeva uslove rada koji narušavaju ustaljeni bioritam. Rad u smenama takođe može imati negativne konsekvence po zdravlje radnika, jer učestalo menjanje radnog vremena često izaziva probleme sa spavanjem i/ili koncentracijom kod zaposlenih. Međutim, i pored pomenutih poteškoća, koje su neizostavni pratioci radnih odnosa, radno vreme je omogućilo da okolnosti u kojima se rad odvija budu dostojne čoveka (radnika). U poređenju sa nekim prethodnim epohama u razvoju čovečanstva, radno vreme služi i kao podsetnik da se ljudska vrsta, uprkos velikom broju ograničenja koja sama sebi postavlja, kreće u dobrom smeru.

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WORKING TIME: HUMANIZATION OF WORK PRINCIPLE

ABSTRACT: Work, as an indispensable social category, serves as a cornerstone and pillar for the survival of humanity. Each period of human civilization has, in its own way, approached work in line with its own level of understanding of equality and humane treatment. Therefore, in the early developmental epochs (slavery and feudalism), the issue of favourable working conditions was incompatible with societal structures marked by clear class divisions. Such systems prevented workers from engaging in employment relationships as we know them today; in fact, employment relationships did not exist because workers were considered the property of their employers. Only with the development of capitalism did favourable conditions emerge, allowing workers to gradually achieve equality with employers and start to assert rights that were previously unimaginable. First and foremost, these rights embody the humanization of work principle, which recognises workers as equal participants in the work process alongside employers. The results of this new approach became more evident over time, with workers being guaranteed rights such as limited working hours, fair wages, rest, occupational protection, and more, at both international and national levels. Working time, therefore, represents a component of humane treatment and a guarantee of respect for the employee as a person who must not be exploited in the work process. The right to limited work-

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ing time was among the first demands by workers to protect themselves from employer despotism, so it is not surprising that the International Labour Organization dedicated its first convention, adopted in 1919, to this very issue. Given the importance of these labour law institutes for the successful functioning of both employees and the teams they work in, this paper explores the definition of working time and the need for its legislative protection. We also examine the advantages of rational use of working time as well as the disadvantages of poor work time management. The aim of the paper is to demonstrate the immense contribution that working time has made to the functioning of employment relations in the contemporary world.

Keywords: working time, humanisation, legislation, employees, protection.

1. Introduction

The term *work* typically refers to the application of an individual's physical and intellectual abilities, consciously and intentionally directed toward the production of goods, wealth, or a product with either individual or general use (Istituto Nazionale di Statistica, 2019, p. 13). Work has been a fundamental aspect of human life since the dawn of history. Through physical and intellectual labour, humans have not only gradually overcome many obstacles encountered in nature but have also made significant strides in the struggle for survival (D'Amico & D'Amico, 2009, p. 299).

Work is a fundamental aspect of human existence and advancement; it is a domain where individuals demonstrate their value to society. Work enriches human life by providing the means necessary for survival and well-being, both for oneself and for others. It influences every aspect of human life (public and private, free and open, hidden and intimate) (Šijaković, 2008, p. 263). Work has been an essential companion to humanity since the time of early civilizations, when it was carried out with primitive tools that produced just enough to ensure survival, without generating any surplus. The shift to slavery led to a di-

vision between owners – those who possessed the means of production – and workers, who were enslaved and laboured for the benefit of their owners. Workers faced a similar situation during the Middle Ages in the feudal era, when they were serfs exploited by landowners for whom they laboured. Under slavery and feudalism, workers were in an extremely disadvantaged position, dependent on the will of their employers, who were also their masters. Such a disadvantaged position of workers precluded any possibility of improving working conditions; therefore, these two epochs are often cited as clear examples of the absence of modern employment relationships.

Significant changes in improving working conditions began in the mid-nineteenth century, when the labour movement expanded internationally. Workers realised that it would be very difficult to effectively challenge employers on an individual or national level. The fact that governments of the time were highly supportive of employers, as they upheld the existing social order, further complicated matters. Consequently, workers chose to unite on an international level as the most logical and strategic solution to strengthen their negotiating position. Therefore, by uniting their efforts, workers became a significant threat to social stability and security and the governments were compelled to gradually recognize certain labour rights. This marked the end of a long period of unjust exploitation of workers of all ages and the beginning of a gradual process of balancing the interests of employees and employers, which continues to this day.

Undoubtedly, workers will always be in a subordinate position relative to employers; however, the scope of labour rights that workers have secured (and continue to secure) cannot be compared to what existed before the development of capitalism. Capitalism, as a modern economic system, has enabled a gradual but steady balancing of the rights, obligations, and responsibilities of employers and workers within the framework of employment relationships. Thus, the modern employment relationship is primarily an interest-based relationship in which workers, in addition to their obligations to employers, also enjoy a broad range of legally guaranteed rights.

At the beginning of its international efforts, the labour movement primarily focused its strength on protecting workers from inhumane working conditions. At that time, employers did not consider circumstances that could ease workers' daily and exhausting work duties to be relevant and thus focused solely on their own interests. Their activities were focused exclusively on maximising production, which would guarantee high financial returns and further increase their private capital. Therefore, it comes as no surprise that in such a system, employees had no opportunity to fight for better conditions at work, which was so fundamental to their own and their families' survival. Workers often endured inhumane conditions without any protective equipment and were pushed to the limits of their physical endurance, this included working long hours throughout the day and sometimes even at night. The jobs they did paid very little, barely enough to meet basic living needs. Despite their limited physical ability and endurance, young people, women, the elderly, and, unfortunately, even children were subjected to such labour. Such conditions sparked a revolt among the labour movement, which, dissatisfied with the overall situation of workers, justifiably began to push for improving employees' status. The issue of working time, which had previously depended solely on the employer's will and the needs of the business, became one of the first workers' demands. Long and exhausting workdays had a definitive negative impact on workers' health, and, consequently, their performance. Therefore, workers emphasised the need for reasonable working time that would ensure adequate productivity while also allowing sufficient time for rest., which is essential for meeting future work obligations effectively. This implies that working time, as an institute of labour law, has multiple important advantages. Firstly, it protects workers from exploitation, with a particular focus on their health, and enables them to address essential life needs beyond their work responsibilities. The number of working hours is one of the key factors in assessing whether work aligns with family responsibilities and personal life (Oficina Internacional del Trabajo, 2019, p. 8).

Finally, regulated working time benefits employers as well, since workers who are not exhausted by their duties tend to perform better. This improved performance continuously contributes to increasing the employer's revenue. Therefore, working time represents an important

institute of labour law that has historically evolved as workers, the economically weaker party, have sought to limit their working time to a defined duration (Rajić Ćalić, 2018). From today's perspective, working time is the period during which employees not only have the obligation but also the right to work (Jovanović, 2015, p. 222).

2. Early efforts to limit working time

The issue of working time is undoubtedly one of the most relevant aspects of every individual's working life (Darioli, 2014, p. 3). The humanization of work is directly related to the conditions in which employees perform their tasks. It refers to the system of protection provided to workers to preserve their health and enable them to meet other life needs. It refers to the system of protection provided to workers to preserve their health and meet other life needs. Although working time is one of the most important aspects of an employment relationship, it had not been formally recognized as a fundamental workers' right in legal documents until the early nineteenth century, when the first significant regulatory event occurred.

England was the birthplace of legislative regulation of working hours, with the first such implementation occurring in 1802 through the Act for the preservation of the Health and Morals of Apprentices and others employed in Cotton and other Mills, and Cotton and other Factories. The law introduced by Sir Robert Peel applied to Great Britain and Ireland and set a maximum length for the workday for children under nine years old. It required that workspaces be washed twice a year with quicklime and water and that proper ventilation with fresh air be maintained. Apprentices were required to have two work uniforms, which were to be provided to them annually. Working time was limited to twelve hours a day, and from June 1, 1803, no apprentice could be forced to work between nine at night and six in the morning. In the following decades, English lawmakers gradually reduced working hours for more vulnerable categories of workers. This resulted in children, women, and young people first being granted the right to a maximum of

ten working hours per day. However, under the influence of the labour movement, this right gradually became extended to all workers.

In the decades that followed, other European countries, such as Germany and France, gradually adopted the English practice of regulating working time; however, this applied to women, children, and young people only. The well-known labour movement slogan advocating for eight hours of work, eight hours of rest, and eight hours of sleep originated during the First International (International Workingmen's Association) in 1866. At that time, more serious proposals began to emerge for implementing an eight-hour workday. This concept was later adopted in the United States and England, but initially only for certain categories of employees, such as those in public service. At the 1889 meeting of the Second International in Paris (International Workers Congresses of Paris), communist parties and trade unions from around the world agreed to select May 1 as the day for the first international general strike for an eight-hour workday. This date was chosen in honour of those who lost their lives during the workers' demonstrations in Chicago in early May 1886. On May 1, 1890, demonstrations were held successfully in numerous cities around the world. The impact of this collective trade union action became evident throughout the twentieth century, with the adoption of a broader range of social rights, including the eight-hour workday, personal income rights, holidays, and pension and social security benefits.

The "three eights" slogan was first legally defined in the Soviet Union in 1917 with the Decree on the Eight-Hour Workday (*Декрет о 8-часовом рабочем дне*), which established that the maximum length of the workday must not exceed eight hours. According to Article 3 of the Decree, workers are entitled to a break for rest and meals after a maximum of six hours of work, with the break lasting no less than one hour. During this break, workers are free to use their time as they wish and have the right to leave their workplace (https://constitution.garant.ru/history/act1600-1918/5306/).

The founding of the International Labour Organization (ILO) represents, without a doubt, the most significant milestone in improving the overall conditions for workers worldwide. Established under Part

XIII of the Treaty of Versailles in 1919, the ILO was created to advocate for social justice and internationally recognized human and labour rights, based on the belief that universal and lasting peace can only be achieved through social justice – *si vis pacem, cole iustitiam* (Živkovski & Rubežić, 2016). After World War II, in 1946, a specialised United Nations agency was established to promote independent workers' organisations and employers' associations and provide them with training and advisory services. This agency is unique within the United Nations system due to its tripartite structure, which includes workers and employers as equal partners with governments in the organisation's governing bodies (Lađevac & Đukanović, 2011). At its first General Conference in 1919, the ILO adopted Convention No. 1, which defined the eight-hour workday and forty-eight-hour workweek for industry. According to Article 2 of the Convention, working time in any public or private industrial enterprise, or any of its branches, where employees are not exclusively family members, must not exceed eight hours per day and forty-eight hours per week, with specified exceptions as outlined below:

1) the provisions of this Convention shall not apply to individuals in supervisory or managerial positions, nor to those employed in confidential roles.

2) if, by law, custom, or agreement between employers' and workers' organisations – or, where no such organisations exist, between employers' and workers' representatives – the working time on one or more days of the week is less than eight, the eight-hour limit may be exceeded on the remaining days of the week, provided that approval is granted by the relevant public authority or agreed upon by the organisations or representatives and under no circumstances should the daily limit of eight hours be exceeded by more than one hour.

3) for multiple shift work, it is permissible to exceed eight hours in a single day and forty-eight hours in a week, provided that the average number of hours over a period of up to three weeks does not exceed eight hours per day and forty-eight hours per week.

Under Article 4 of the Convention, working time limits set in Article 2 may be exceeded in processes that must run continuously due to their nature, provided that the average workweek does not exceed fifty-six hours. This regulation should not impact any rest days guaranteed by

national law to these workers as compensation for their weekly rest day. The eight-hour workday, as a goal for countries around the world to strive toward, became a standard practice in labour law after World War II. Between the two World Wars, the ILO adopted a series of conventions and recommendations to regulate working time, primarily focusing on specific industries or categories of workers. The ILO's activities focused on reducing working time for particularly demanding and strenuous jobs (e.g., mining) and on precisely defining working time limits for specific categories of workers, such as drivers, who were prohibited from driving continuously for more than five hours. In 1962, the ILO adopted Recommendation No. 116 (Reduction of Hours of Work Recommendation), which urged countries to promote and implement shorter working time, with the ultimate aim of achieving a forty-hour workweek. All activities undertaken in this regard must be implemented in a way that will not result in a decrease in workers' wages. The Recommendation also stipulates that its provisions do not apply to sectors such as maritime transportation or agriculture. It is explicitly required that the reduction in working hours be implemented in a manner that does not negatively impact worker productivity and overall production. It is emphasised that the focus should primarily be on jobs in industry and other sectors that, due to their working conditions, pose increased risks to workers' health in the form of work-related injuries or occupational diseases, as well as increased fatigue.

3. Working time in Serbian labour legislation

Historically, there has been a trend towards progressively reducing working hours, evident in several changes: the workday has been gradually shortened, the workweek has shifted from six to five days, the work year has been reduced, paid vacation has been introduced, and overall working time throughout a person's life has decreased, along with extensions in education and the introduction of pension schemes (De Spiegelaere & Piasna, 2018, p. 12). Regulating standard daily and weekly working hours is crucial for preventing excessive work and mitigating its adverse health effects, as well as balancing paid work with personal and family life (Yanez, 2016, p. 17).

In the labour law theory of the Republic of Serbia, working time is most commonly defined as the period during which an employee is obligated or available to perform duties according to instructions from the employer, at the place where the work is performed. This is the time that an employee owes to the employer based on the employment contract, which is bilateral and involves rights and obligations for both parties (Minaya, 2009). When defining the concept of working time, two key aspects are observed. First, working time refers to the employee's obligation to perform tasks for the benefit of the employer during a specified period. Second, working time must also be seen as a right of the employee, as it represents the realisation of the humanization of work principle. An important aspect of defining working time is that it represents the time during which the employee is obligated to perform work for the employer, this results in work output that reflects the employee's knowledge, expertise, and skills. In the modern age, employees are not required to work exclusively at the employer's premises. However, they must still adhere to the prescribed working time, even when working from a location of their choosing. Therefore, during working time, the employee must be available to the employer. Accordingly, working time does not include the time an employee is merely on call and ready to appear at the workplace upon the employer's request, as the employee is not present at the work site. This period is thus referred to as on-call time rather than working time. The primary difference is that employees earn a salary during working time, whereas they receive compensation for on-call time, as regulated by law, general acts, or employment contracts. However, working time does include any time spent working while on call if the employee is actively performing tasks when requested by the employer. As a crucial institute of labour law, working hours are designed as a guarantee against exploitation by ensuring that employees are not overworked and have sufficient time to restore their physical and mental capacities. In this way, by being available to the employer during agreed hours and able to rest afterward to prepare for future tasks, workers are guaranteed dignified and humane working conditions. Labour law, both in theory and practice, recognizes various types of working time, including full-time, part-time, reduced hours, and overtime.

Full-time work is typically defined as forty hours per week unless otherwise specified by law. In specific cases, a general act (usually a regulation) may set a shorter workweek, but it must not be less than thirty-six hours per week. If an employee works thirty-six hours per week, they are entitled to all the rights of full-time employment. Due to the protective nature of labour law, minors in employment are limited to a maximum of thirty-five hours per week, while their daily working time must not exceed eight hours. On the other hand, part-time work is defined as working time that is shorter than full time and is applicable in cases where the type of the employer's business allows for it. Unlike full-time employees, those working part-time have their employment rights proportionate to the hours worked, which results in a reduced scope of rights. Therefore, the law grants part-time employees the right to enter into additional employment relationships with one or more other employers to achieve full-time hours and access the full range of employment rights and benefits.

The primary characteristic of reduced working time is the protection of employees. This working time is shorter than full time but is considered equivalent to it due to the specific nature of the tasks performed under this work schedule. These are particularly demanding and strenuous jobs that adversely affect employees' health. Regulated by law or general acts, they continue to have harmful effects on workers' health despite the implementation of necessary safety measures. To implement reduced working time for certain jobs, an expert analysis must first be conducted. Reduced working time is often confused with part-time work, so it is useful to highlight the fundamental difference between these two types of working time. An employee working reduced hours / working time is entitled to the full range of employment rights as if they were working full-time. In contrast, a part-time worker must find additional work to achieve the equivalent rights of a full-time employee. Consequently, an employee on reduced working time does not need to seek additional employment. Typically, working time is reduced in proportion to the harmful impact on health, with a maximum reduction of ten hours per week. From the perspective of worker health and safety, reduced working time has proven to be a highly effective solution in practice. It has played a significant role in reducing workplace accidents, which often occur towards the end of shifts when fatigue leads to decreased concentration.

4. Overtime work and work schedule

Under the working time institutes, the law permits certain exceptions. One such example is overtime work, which is a specific type of work that deviates from the rule that work should not exceed full-time hours. However, an employer cannot consider overtime as an option if the tasks necessitating it can be performed more efficiently through other means, such as the redistribution of working time. The law mandates that employees are required to work beyond full-time hours if the employer deems it necessary in specific situations. This applies to unforeseen circumstances such as force majeure or a sudden increase in workload, where completing unplanned tasks within a specified timeframe becomes necessary. However, to prevent overtime work from leading to worker exploitation and the erosion of the right to limited working time, the law stipulates that overtime work must not exceed eight hours per week, and that employees cannot work more than twelve hours per day, including overtime. Employees working reduced hours are generally not permitted to work overtime unless otherwise specified by law. When introducing overtime, it is imperative to make sure the situation is justified or extraordinary, as such circumstances inevitably reduce the workers' capacity and leave them with less rest time during the day. Thus, overtime is characterised as an exceptional measure rather than a regular practice (Kovačević, 2013, p. 290).

The law also addresses work schedules. A work schedule, or the distribution of working time/hours over a specific period (such as a week or a day), refers to the specific times/hours during which work activities occur (Cuixart, Cuixart, & Fabrega, 2013, p. 3). The workweek typically consists of five working days, which are defined as periods when the worker does not fully enjoy their time, as he or she is available to the employer (Henao, 2008, p. 56). Therefore, the workday represents the measure of work benefit gained by the employer (Alarcon Caracuel, 2008). The employer determines the work schedule, with the standard workday typically lasting eight hours. In making decisions about the work schedule, the employer primarily considers the nature of the business and the circumstances that allow for the most efficient use of available

work resources. The standard workweek generally consists of five eight-hour workdays. However, since the decision regarding the work schedule is solely within the employer's authority, they may opt for different arrangements. Consequently, it is not uncommon for the workweek to extend to six days, which implies that the workday is shorter than the usual eight hours. Regardless of the work schedule, the rule is that the workweek cannot exceed forty hours, with the requirement that one day (24 hours) must be reserved for rest. According to the law, if an employer decides to change the work schedule, he or she is obligated to inform employees at least five days in advance, except in cases involving the introduction of overtime work. Additionally, the employer may inform employees within a shorter timeframe than the one mentioned, but it must be no less than forty-eight hours.

Due to the various work schedule modalities, there are different types of working time. Single shift involves the completion of the total number of working hours in a day without interruption, except for a designated rest period, which is regarded as working time. Single interrupted shift, on the other hand, entails dividing the daily working hours into two segments: morning and afternoon. The period between these segments (temporary cessation of work) is not counted as working time but is used for employee rest. Conversely, simultaneous work means that all employees at a single employer work concurrently, typically during the morning hours. Multiple shift work denotes a system where employees at a single employer do not work simultaneously; instead, some workers are assigned to morning shifts, while others work in the afternoon or night shifts. This work modality is applied when tasks must be performed continuously and involves rotating workers through the same tasks and equipment at various times of the day. However, working conditions are not identical across all shifts, as night shifts are undoubtedly the most challenging. It is well-known that the human body does not maintain consistent levels of physical and mental functioning throughout all hours of the day. At night, physical and mental capacities decrease, memory deteriorates and then gradually improves during the daytime (Calera, 2004). This is also logical and easily explained, as the human body is specifically oriented towards alertness during the day and sleep at night (Rodriguez Oliveros & Contreras, 2012). Night

work is characterised by its negative impact on workers' health, which is why employers are required to periodically rotate employees' shifts. This model is an effective means of preserving worker health, as it ensures that the burden of night work is shared among all employees rather than falling on a single group. Therefore, multiple shift work is inherently a form of worker protection, as it prevents favouritism or undue burden on any individual employee. Worker protection also entails that an employer must not allow the same employee to work continuously in the night shift for more than one workweek. In any case, the employer is required to offer the employee the opportunity to change shifts, unless the employee explicitly requests in writing to continue working the night shift for a longer period. Daytime working hours span from six in the morning to ten at night and are carried out during the day, while night shifts typically cover the period from ten at night to six in the morning the following day. The distinction between these two types of working hours is necessitated by the specific characteristics of night work. Night work can only be implemented after meeting the necessary conditions and the employer is required to first seek the opinion of the trade union regarding the measures that need to be taken to ensure employee safety in the workplace. In practice, some employers opt for flexible working time, which reflects their right to independently determine the start and end times of the working day. Typically, the start and end times of working hours are the same for all employees. However, an employer may designate different working hours for specific groups of employees. As a result, not all employees start or finish work simultaneously. The introduction of flexible working hours depends on various factors (traffic, geography...) and is adopted by employers when it aligns with the nature of the work.

It is also important to highlight the option of redistribution of working time, which deviates from the standard work schedule. Typically, under a standard schedule, working hours are evenly distributed across five days of the week, with eight hours of work each day. This arrangement satisfies the full forty-hour workweek requirement and fulfils the prescribed number of hours for full-time employment. Redistribution of working time involves an alternative approach where, during certain periods of the year, employees work longer hours, while in other peri-

ods, they work shorter hours than originally agreed. It is implemented under specific conditions and for various reasons, but it does not increase the total number of working hours. Namely, working longer hours during certain periods of the year constitutes overtime work. The reasons for redistributing working time vary; it may be done to optimise resource utilisation, meet project deadlines, or adapt to the nature of the work (e.g., seasonal jobs, favourable weather conditions, etc.) (Klajić, 2020). Still, due to the protective character of labour regulations, redistribution of working time cannot be applied to particularly arduous, strenuous, or health-damaging jobs where reduced working hours are already in place. In the context of the period during which working hours can be redistributed, two practical solutions are commonly employed in practice. The first, which is more frequently used, spans six months within a single calendar year. The second involves a period of up to nine months, which does not necessarily need to fall within the same calendar year. During the redistribution of working time, the maximum duration of working hours in a single workweek is sixty hours. Additionally, there must be a minimum continuous rest period of eleven hours between two working days. Thus, the redistribution of working time has two main characteristics. First, it can be fixed term, as the redistribution is associated with a specific time period. Second, it involves the averaging of working time, which means that during certain parts of the year, working hours may exceed the agreed amount, while in other parts, they may be shorter. However, the total working hours over these periods do not exceed the number stipulated for the entire period in the employment contract.

5. Working time as a factor of work efficiency

Every line of work requires a specific amount of time, which makes the latter a general, external, and natural condition of human labour (Milošević, 1994). Factors such as autonomy, high job demands, external pressure to work overtime, and low rewards (e.g., lack of overtime bonuses) mediate the relationship between overtime work and health

and safety at work. However, reducing excessive working time is likely to lead to positive effects on occupational safety and health (Messenger, 2018, p. 12). Protecting workers' health is a prerequisite for their ongoing efficiency in performing job tasks and contributing to the employer's success. A great deal has been achieved in this regard, particularly over the past one hundred years, with the ILO playing a crucial role. The ILO is especially instrumental in setting norms for the protection of workers' health worldwide. Working hours are a key mechanism for protecting workers, as they effectively eliminate the exploitative practices of employers that were prevalent in the past. It is now well established that limiting working time benefits all parties involved in the employment relationship. Workers are no longer subjected to inhumane conditions designed solely for maximising employer profit, where other aspects of their lives were relegated to secondary importance. Employers have also quickly recognized the advantages of regulated working hours, despite initial scepticism about their implementation. This is because efficient and productive workers could be retained for longer periods due to the improved health outcomes resulting from adequate rest and relaxation time. In such circumstances, governments have recognized that substantial financial resources could be redirected from managing individuals who had become unable to work due to inhumane working conditions. Therefore, the labour movement's struggle for improved working conditions, particularly through limiting working time and ensuring fair wages, has proven to be worthwhile. It is clear that only a healthy worker can be effective and productive in the workplace.

Undoubtedly, work performance also significantly depends on the proper organisation of working time, a variable aspect present across multiple sectors. For instance, in public (governmental) institutions, the traditional eight-hour workday is implemented over a five-day workweek throughout the entire year, as the operational requirements of that line of work permit such an arrangement. On the other hand, work in factories necessitates a different arrangement of working time, which typically involves multiple shift work as the only means to efficiently meet job requirements. Despite the different scheduling approaches, in both cases there is an effort to align working time with other life needs of the employees, which in turn impacts their engagement and over-

all job performance. It is a fact that overtime generally has a negative impact on productivity, whereas standard working time tends to boost productivity, especially in the service sector. Whether working time affects productivity can depend on the specific characteristics of the job in question. Conditions under which work is performed positively influence productivity (Okugawa, 2021, p. 1) and the primary reason for decreased productivity with increased working hours is worker fatigue (Collewet & Sauermann, 2017, p. 7). Long working time primarily negatively impacts employees' mental health, which is often manifested in symptoms of depression, chronic stress, or anxiety, along with significant sleep problems. Therefore, it is imperative to understand how working time affects worker productivity so that management can design schedules that serve employees' best interests while simultaneously enabling the achievement of optimal performance and production goals (Vallo & Mashau, 2020). Therefore, flexible working time arrangements are frequently utilised in practice. This flexibility enables employees to adjust their working time to fit their individual needs, which positively impacts their personal satisfaction. However, flexibility eliminates a fixed end to the working day, whereas fixed working time has a clear start and finish. Daily changes or flexibility in working hours often lead to an extension of working time (Holly & Mohnen, 2012, p. 7). The quality of work schedules is most evident when evaluating the performance achieved.

In recent years, the four-day workweek has increasingly been discussed in comparative law as a potential modality for enhancing worker productivity. Some companies have experimented with this type of work schedule and the experiences have varied. We believe that the four-day workweek model should not be generalised or imposed as a standard across all sectors. Work environments vary greatly across different sectors and industries; therefore, it is essential to balance market needs with the general needs of society, while also protecting the interests of individual employees. Properly structured working time, which allows employees to fully engage in other areas of their lives, undoubtedly contributes to their overall satisfaction and fulfilment; this, in turn, positively impacts their job performance. Such an employee is less likely to experience workplace burnout and job dissatisfaction. Instead,

this individual will be motivated to pursue further development and improvement in their line of work. Therefore, well-structured working time embodies the principles of dignified work and ensures the continuous productivity necessary for advancement across all areas of life.

6. Conclusion

Working time constitutes one of the fundamental rights of employees that ensures dignified working conditions for all workers. At the same time, it represents an obligation for employees to be available to their employer during a specified period. This concept emerged from the struggle of the working class to improve working conditions and prevent the exploitation of workers by employers. Limited working time allows employees to meet a wide range of needs (family, social, cultural, recreational, etc.) and serves as a guarantee that they can pursue fulfilment in other areas of life. The humanization of working conditions, particularly in the context of working hours, preserves workers' health and upholds their right to daily rest, essential for replenishing vital physical and mental capacities. This approach ensures that employees remain consistently engaged in their work, which benefits both themselves and their employers. A healthy and fully capable worker, through employment, earns an income that sustains both themselves and their family. Employers benefit from such workers by gaining surplus products (profit) generated through their contributions at the workplace. In this scenario, the government need not allocate funds for individuals rendered unfit for work due to occupational injuries or diseases; instead, these funds can be redirected to other purposes (construction of roads, schools, kindergartens, etc.). Therefore, working time, as one of the most important institutes of labour law and a fundamental aspect of employment, plays a crucial role in the stability of modern society. It is therefore unsurprising that working time has been the subject of numerous conventions and recommendations adopted by the ILO, which is tasked with continually improving working conditions and promoting workers' rights on a global scale.

In the context of labour regulations concerning working hours, the Republic of Serbia has effective legislative measures that align well with international standards. The Labor Law regulates the types, modalities, and scheduling of working time, while also providing protection for specific individuals due to their psychophysical characteristics. Undoubtedly, the efficiency of performing work tasks and worker productivity at the workplace largely depend on the scheduling of working time. Working time must be organised in a way that allows employees to perform their tasks effectively, which, in turn, eliminates stress, the source of numerous health issues. In modern work conditions, stress often leads to mental health issues that impair job performance and affect other areas of an individual's life. Employers have a significant responsibility to adjust working time to meet both company and employee needs, which necessitates finding a compromise that benefits both parties. Night work is a particularly sensitive issue in practice, as it disrupts the established circadian rhythm. Multiple shift work can also adversely affect employees' health, as frequent changes in working time often lead to sleep disturbances and/or concentration problems. However, despite the aforementioned challenges inherent in employment relationships, working time has made working conditions more human/worker-centred. Compared to earlier epochs in human development, working time also serves as a reminder that, despite numerous self-imposed limitations, humanity is moving in the right direction.

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PRAVNI ASPEKTI TAJNOG PRAĆENJA I SNIMANJA I PROCESNA OVLAŠĆENJA ZA NJEGOVU PRIMENU (komparativno istraživanje)

Apstrakt: U radu se istražuju pravnoteorijsko određenje tajnog praćenja i snimanja i zakonska ovlašćenja nadležnih organa za njegovu primenu u Republici Srbiji i određenim evropskim državama. Primenom metode analize sadržaja postojeće naučne građe, istorijske i komparativne metode, kao i naučnom deskripcijom, sintezom i korelacijom ovog procesnog instituta u postojećim zakonodavnim i teorijskim rešenjima dati su odgovori na osnovu nalaza iz istraživanja kojima se potvrđuje da je u Zakoniku o krivičnom postupku Republike Srbije određeno da osim policije ovu posebnu dokaznu radnju mogu da primenjuju i službe bezbednosti civilne i vojne, što je suprotno rešenjima iz uporednih procesnih zakonika zemalja u istraživanom uzorku.

Ključne reči: *tajno praćenje i snimanje, uporedno krivično procesno zakonodavstvo, kriminalistička teorija, pravna teorija.*

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1. Uvodno razmatranje

U radu se istražuje tajno praćenje i snimanje (eng. *Secret surveillance and recording; Covert monitoring and recording*, a najčešće se označava terminom *Secret Observation* ili u opštoj upotrebi opservacija) u krivičnim i kriminalističkim istragama kod kojih se od strane službenika organa otkrivanja i krivičnog gonjenja (Novosel, 2001, str. 41) koriste čula i operativna tehnika u procesu koji je imanentan prikrivenim i pokrivenim operacijama (Jović, 2011). Sprovedenim istraživanjem ukazuje se zašto je tajno praćenje i snimanje važno za otkrivanje krivičnih dela i njihovih učinilaca i obezbeđenje dokaza za vođenje krivičnog postupka (Jović, 2011), s jedne strane, a sa druge strane se uporednim istraživanjem želi spoznati koji nadležni organ je ovlašćen da sprovodi ovu procesnu radnju, odnosno kakva su zakonska rešenja propisana u nacionalnom i uporednim krivičnim procesnim zakonicima pojedinih evropskih država.

Da bi teorijski i empirijski dizajn u radu pomogao autorima da izlože nova saznanja u okvirima koncepta postavljene hipoteze, teorijsko i empirijsko istraživanje je zasnovano na dva izvora – postojećim teorijskim iskazima u literaturi i praktičnoj propisanosti tajnog praćenja i snimanja u zakonskoj regulativi.

Cilj istraživanja je analiza i ispitivanje postojeće naučne pravne i kriminalističke literature o tajnom praćenju i snimanju, otkrivanje novih saznanja i činjenica nepoznatih našoj teoriji i njihovo pravilno tumačenje u svetlu novootkrivenih činjenica i praktičnih primena takvih naučnih nalaza i utvrđivanje, prema zakonicima o krivičnom postupku jednog broja zemalja iz istraživanog uzorka, ko je ovlašćen da sprovodi tajno praćenje i snimanje u krivičnom postupku.

Istraživačka pitanja koja su istraživači analizirali u ovom radu su: kako se tajno praćenje i snimanje, kao krivična procesna i kriminalistička radnja određuje u pravnoj i kriminalističkoj literaturi? koji je smisao tajnog praćenja i snimanja u istraživanju kriminalnih događaja, prema kriminalističkoj i pravnoj teoriji? ko je, prema uporednim odredbama iz krivičnih procesnih zakonika Republike Slovenije, Republike Hrvatske, Republike Severne Makedonije, Republike Estonije i Republike Srbije, ovlašćen da ovu posebnu dokaznu radnju sprovodi?

2. Teorijsko istraživanje

Kako rezultati istraživanja pokazuju, tajno praćenje i snimanje se najčešće sprovodi u okviru krivičnih i krivičnih procesnih istraga. Stoga bismo za potrebe istraživanja najpre odredili šta je krivična procesna istraga na osnovu analize postojećih saznanja u literaturi?

Jednu od najkonciznijih i najrazumljivijih definicija krivične procesne istrage dali su Bennet i Hes (2004) kada su naveli da je „krivičnoprocesna istraga (zločina) krivičnog dela proces otkrivanja, prikupljanja, pripremanja i identifikovanja činjenica, kako bi se utvrdilo šta se dogodilo, i ko bi mogao biti odgovoran?“ (str. 4).

Jedan broj autora, kao što su Osterburg i Ward (2013), veruje da se: „krivičnoprocesna i kriminalistička istraga odnosi na proces prikupljanja informacija (ili dokaza) o kriminalnom događaju kako bi se: (1) utvrdilo da li je krivično delo počinjeno; (2) identifikovao počini/(lac)/(oci); (3) uhapsi(o)li počini(lac)/(oci); i (4) obezbedili dokazi koji će u daljem krivičnom postupku podržati optužbu (optužnicu) na sudu (pred sudom)“ (str. 13–14). Ovde je naročito značajno izneti da većina autora jednoglasno ukazuje, kao što to čini i Black (1970), da je pogrešno smatrati ako su ispunjena tri uslova (1, 2, i 3) koje su naveli Osterburg i Ward (2013, str. 13–14) da je zločin (krivično delo) rešen(o) (str. 738), kako to policija u Srbiji iznosi pre presude: one presude protiv koje više nema ni redovnog ni vanrednog pravnog leka, koja je pravnosnažna i izvršna. Osterburg i Ward (2013) dalje primećuju „da funkcija krivične istrage generalno uključuje dve komponente: prva je direktna istraga kriminalnih aktivnosti, a druga je administrativno upravljanje istražnom jedinicom“ (str. 14).

Dosadašnji naučni nalazi u pravno-kriminalističkoj teoriji u svetu (Šikman, 2013) „uče nas da proces kriminalističke i krivičnoprocesne istrage“ (str. 184), prema Zahnow (2017), „ima za cilj da prikupi dokaze zakonito“ (str. 141) etično, pravedno, u skladu sa pravima žrtava, optuženih i društva (Telep, 2017, str. 9). To uključuje ovlašćenje, kako navodi Dahl (1952), „organa otkrivanja i krivičnog gonjenja da primenom propisanih procesnih instituta i drugih pravnih i kriminalističkih sredstava“ (str. 112) rade na prikupljanju saznanja, podataka, informa-

cija (Manojlović, 2005, str. 115) i dokaza iz okruženja, kako smatraju Haberman i Ratclife (2012), iz „samog epicentra kriminalnih aktivnosti" (str. 158) nakon izvršenja krivičnog dela i radi sprečavanja izvršenja krivičnog dela (Čačković, 2010, str. 84), privođenja osumnjičenih, oduzimanja predmeta kojima je krivično delo pripremano ili izvršeno, predmeta proisteklih nakon izvršenja krivičnog dela (Škulić i Stojanović, 2017, str. 396), predmeta na kojima se nalaze tragovi koji ukazuju na izvršenje krivičnog dela ili počinioca i obezbeđenja dokaza relevantnih za pokretanje i vođenje krivičnog postupka (Klarman, 2000, str. 64).

Nadalje, jedan broj autora u pravnoj i kriminalističkoj teoriji tajno praćenje i snimanje kao krivičnu procesnu – istražnu radnju određuje, prema Giulbertu (2004), kao „vrh obrnute piramide koja se širi da bi obuhvatila istraživanje o krivičnom delu; prepoznavanje učesnika u kriminalnom događaju; omogućila kriminalističku analitičku analizu, omogućila otkrivanje i tumačenje dokaza" (str. 594) i, konačno, primećuju Inman i Rudin (2001) „dovela osumnjičenog pred sud" (str. 197).

Teorijskim stanovištem Palmiota (2012) „da krivična i kriminalistička istraga i tajno praćenje i snimanje unutar nje, nosi sa sobom skoro mitski status i visoko poštovanje od strane organa za sprovođenje zakona i progon počinilaca kao što su tužilaštva i kriminalističke istražne agencije i istražitelji" (str. 87), uočili smo i odredili mesto tajnog praćenja i snimanja u njoj i njen cilj.

Na osnovu analize sadržaja postojeće pravne i kriminalističke literature, izvodimo još jedan nalaz da se tajno praćenje i snimanje kao procesni institut, prema autoru Manojloviću (2019), nalazi „u pretpolju izvršenja krivičnog dela (predkonstruktivna), u polju vršenja krivičnog dela (konstruktivna) i nakon njegovog izvršenja (rekonstruktivna)" (str. 53). U svakom ovom segmentu tajno praćenje i snimanje ima svoj procesno-dokumentacioni značaj (Bojanić, Deljkić i Lučić-Ćatić, 2008, str. 308). Rezultati istraživanja ukazuju, takođe, da se mesto tajnog praćenja i snimanja u saznajno-dokaznom procesu može prepoznati i razumeti na više nivoa (Greenwood, 1975, str. 16). Prvi nivo jeste preventivni ili, veruju Grenvud (1975) i Wuds (2013), „kako se ukazuje zaštitni, odnosno pripremni za ostale procese" (str. 16; str. 323), kao što su sprečavanje izvršenja krivičnog dela ili obezbeđenje dokaza za vođenje krivičnog

postupka (Andresen, Hodgkinson i Tarah, 2018, str. 314, 324). Jedan broj denominatora u uporednoj pravno-kriminalističkoj teoriji tajno praćenje i snimanje određuje kao važan segment u suprotstavljanju kriminalnim aktivnostima i obezbeđenje ulaznih imputa za predikciju kriminalnih aktivnosti (Blagojević i Šetka, 2013, str. 167) koji omogućuju organima otkivanja i krivičnog gonjenja, kako primećuje Fatić (1997) „da rastegnu vreme" (str. 228) podizanjem kredibiliteta svojih kapaciteta prema manifestovanom kriminalnom događaju, odnosno da o njemu imaju izgrađen profil i sadržaje u vezi sa učesnicima, što uvećava njihovu efektivnost (Davis i Bowers, 2019, str. 23).

Istražujući činjenice o tome kada se započelo sa tajnim praćenjem i snimanjem, Shiffman i Cooke (2013) ukazuju „da su službenici organa otkrivanja bili usmereni da prikriju podatak kada takve istrage zaista počinju, i to ne samo za advokate odbrane, već ponekad i za tužioce i sudije" (str. 4). Službenici organa otkrivanja bili su obučeni da „rekreiraju" istražni sled kako bi se efikasno prikrilo odakle potiču obaveštajni ili operativni podaci i/ili informacije koje su bile osnova za izdavanje krivične procesne naredbe za otpočinjanje i sprovođenje tajnog praćenja i snimanja (Shiffman i Cooke, 2013, str. 5). Isti autori smatraju da ako optuženi ne znaju kako je započelo tajno praćenje i snimanje, oni ne mogu da zatraže da pregledaju potencijalne izvore oslobađajućih dokaza – informacije koje bi mogle otkriti osnov za zatvaranje predmeta pre suda, greške ili pristrasne svedoke. Sa druge strane, stručnjaci iz advokature, tužilaštva i sudstva prigovaraju da prikrivanje obaveštajnih izvora u predkonstruktivnoj obaveštajnoj opservaciji (Manojlović, 2013, str. 49), na osnovu kojih se pokreće procesni postupak tajnog praćenja i snimanja, predstavlja kršenje ustavnih prava optuženog na pravično suđenje" (str. 6).

Za teoretičare iz oblasti prava primena tajnog praćenja i snimanja sa sobom pokreće još jedno, za hipotetički okvir istraživanja esencijalno pitanje: da li zakonici propisuju obavezu notifikacije – obaveštavanja osobe prema kojoj je primenjena mera opservacije, a nakon njene primene, kao i koji su obaveštajni izvori prema tom licu pokrenuli sprovođenje opservacije (Maguire i Duffee, 2015, str. 234)? U teorijskim pristupima se ukazuje za one čija sloboda nije na redu, pravo optuženih za krivično delo može se činiti kao usko, proceduralno pitanje (Toomey i

Kaufman, 2015, str. 843). Odbijanje da se osoba prema kojoj je primenjena mera tajnog praćenja i snimanja obavesti o meri i izvorima na kojima je mera procesno zasnovana suprotno je pravima optuženih u postupku, u suprotnosti je sa istorijskom praksom i protivi se pravu da optuženi osporavaju dokaze proistekle iz nezakonitih pretraga, pri čemu optuženi ne mogu da uđu u trag plodu bilo kojeg otrovnog drveta od/do njegovog izvora (Toomey i Kaufman, 2015, str. 853).

Istražujući tajno praćenje i snimanje, kao procesnu meru, Fredrickson i Siljander (2002) smatraju „da je tajno praćenje i snimanje neprocenjiva istražna tehnika kojom se mora sa velikom pažnjom upravljati, uzimajući u obzir potencijalne rizike koji se odnose na svu dinamiku istrage kriminala“ (str. 170). Prema ovim autorima, glavni razlozi za sprovođenje fizičkog nadzora su pribavljanje informacija ili razvoj tragova i pribavljanje dokaza o počinjenom krivičnom delu ili posmatranje zločina koji se trenutno vrši (Fredrickson i Siljander, 2002, str. 163).

Interesantni su pristupi u teoriji koji upućuju na to da uspešna kriminalistička istraga zahteva specijalizovanu veštinu i postavlja zahteve istražiteljima da koriste sve dostupne metode i tehnike (Hess, Orthmann i Lim, 2016, str. 266, 578). Primećuje se da se kriminalistička istraga odnosi na čitav proces pribavljanja informacija kako bi se otkrila istina o krivičnoj situaciji/scenariju (Jannemieke i Van Der Aa, 2011, str. 275). Razmatrajući ulogu tajnog praćenja i snimanja u dokaznom kapacitetu istrage, Fredrickson i Siljander (2002) zastupaju stanovište da je „tajno praćenje i snimanje jedna od tehnika koju istražitelj može da iskoristi za prikupljanje dokaza u procesu istrage“ (str.169). Isti autori dalje navode da „tajno praćenje i snimanje podrazumeva tri različita, ali kompatibilna načina primene; na primer, nadgledanje vozilom, pešice u pokretu i statički, od kojih je najpoznatija tehnika: fizičko posmatranje čoveka“ (str. 172).

3. Ko je ovlašćen da sprovodi tajno praćenje i snimanje? Komparativni nalazi

Iz istraživanog uzorka izvodi se zaključak da zakonici o krivičnom postupku ne propisuju jednoobrazno koji je organ ovlašćen za sprovođenje tajnog praćenja i snimanja na osnovu izdate naredbe. Ovlašćenja za sprovođenje utvrđena su na sledeći način: (a) Republika Slovenija je svojim procesnim zakonikom propisala da je policija organ koji sprovodi tajno praćenje i snimanje pod kontrolom javnog tužioca, čl. 149 i dalje 154 („Uradni list", 8/2006, št. 14/2007, 32/07, 102/07, 23/08, 68/08, 77/09, 29/10 i dr.); (b) ovlašćenje za sprovođenje tajnog praćenja i snimanja iz čl. 252 st.1 tač. 2 do čl. 257 Republika Severna Makedonija je prenela u nadležnost pravosudne policije pod nadzorom tužioca („Služben vesnik na zakonot", 150/2010; 198/2018); (c) Zakonikom o krivičnom postupku Republike Estonije propisano je da će se tajno praćenje i snimanje iz čl. 110, čl. 126^{1}–126^{17} sprovoditi neposredno, preko određenih policijskih jedinica, policijskih agenata, tajnih agenata ili lica regrutovanih za tajnu saradnju, uz dozvolu sudije za prethodni istražni postupak a pod nadzorom javnog tužioca (Kriminaalmenetluse seadustik, „Riigikogu RT", I 2003, 27, 166, 2004); (d) Republika Hrvatska je članom 322 stav 1 tačka 4 Zakona o kaznenom postupku propisala da tajno praćenje i snimanje sprovodi policija pod nadzorom državnog tužioca („Narodne novine", br.152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 126/19; (e) u Republici Srbiji je Zakonikom o krivičnom postupku propisano da tajno praćenje i snimanje iz člana 172 stav 1 izvršava policija, Bezbednosno-informativna agencija ili Vojnobezbednosna agencija („Službeni glasnik RS", br. 72/11, 101/2011, 121/2012; 32/2013; 45/2013; 55/2014 i 35/2019) (Jović et al., 2019, str. 276).

Tabela 1. Empirijski uzorak – države evropskog kontinenta (kreirali autori 2023. godine)

Zakonici o krivičnom postupku država	Ko je, prema odredbama Zakonika o krivičnom postupku, ovlašćen da sprovodi tajno praćenje i snimanje?	
	Službe bezbednosti	Policija
Republika Estonija	Ne	Da
Republika Slovenija	Ne	Da
Republika Hrvatska	Ne	Da
Republika Srbija	**Da**	**Da**
Republika Severna Makedonija	Ne	Da

4. Analiza i diskusija rezultata istraživanja

Na osnovu pravne i kriminalističke građe koja je istražena za potrebe ovoga rada nalazimo zajedničke elemente koji upućuju na instrumentalnu definiciju kojom je tajno praćenje i snimanje u krivičnom procesnom smislu definisano kao prikriveno osmatranje osoba, mesta, stvari, predmeta, aktivnosti, delatnosti, vozila i komunikacija između osoba i veza između osoba i predmeta (Simpson i Hipp, 2017, str. 715) u kriminalnom miljeu (okruženju) (Manojlović, 2015, str. 18), koje organi za sprovođenje zakona primenjuju za istraživanje navoda o kriminalnoj delatnosti. Kako primećuju Haberman i Ratcliffe (2012), „ova se tehnika kreće u rasponu od tajnog praćenja i snimanja fizičkog lica – osobe do upotrebe operativnih uređaja" (str. 151, str. 166).

Jedan broj denominatora, koji je prepoznat kada se želi definisati tajno praćenje i snimanje u kriminalistici, ukazuje da ono predstavlja, prema autorima Arielu, Veisbergu i Bragi (2019), „aktivno pribavljanje informacija iz primarnog izvora – kriminalnog miljea" (str. 485, 516).

Kada su istraživane komparativne karakteristike izvedene iz teorijskih nalaza, one ukazuju da je tajno praćenje i snimanje: operativni policijski metod rada; krivični procesni institut; sistemska krivična proce-

sna delatnost i kriminalistička metoda specifična po načinu izvođenja, istovremeno i kvantitativna i kvalitativna (Mastrofksi, 1998, str. 1, 17), dok je u pravnom i kriminalističkom aspektu spoj ljudskog i tehničkog faktora; po pravilu je nenametljivo i tajno, prikriveno i neretko pokriveno; službenici koji ga sprovode rukovode se višim standardima pravnog kvaliteta u primeni normi kojima se omogućuje sprovođenje i ograničavanje; uključuje prikupljanje, unos, evidentiranje, čuvanje i analizu saznanja, podataka i informacija, generisanje izveštaja, širenje izveštaja i osiguranje poverljivosti (Manojlović, 2008); sve informacije teku u petlji povratnih informacija prema nadzornim organima i organima za sprovođenje procesnih zahvata; trenutno je ili kontinuirano, omeđeno vremenom; sa neposrednim ili temporalnim ljudskim ili tehničkim uočavanjem (Manojlović, 2008, str. 45); ima forenzički značaj u pojedinim aspektima i fazama dokazivanja; evidencija se vodi odmah sa mnogim drugim sadržajima i varijacijama od unutrašnjih i spoljnih uslova koji obeležavaju ili uslovljavaju njegovo sprovođenje (Manojlović, 2005).

Jedan od istraživača iz oblasti tajnog praćenja i snimanja – Dahl (1952), kada određuje mesto opservacije u krivičnom procesnom pravu, navodi kako „primena zakona ne bi mogla da funkcioniše da nije bilo opserviranja. Čitava njegova struktura izgrađena je na osmatranju. Primećuje se kršenje zakona. Primećuju se prekršitelji zakona“ (str. 103, 124). Iz rezultata teorijskog istraživanja izveden je esencijalni nalaz na osnovu kojeg Dahl (1952) primećuje „da je tajno praćenje i snimanje mera koja filigramski, ali jasno, odvaja procesnu razliku između zatečenog sa predmetom i uhvaćenog sa predmetom“ (str. 103, 124).

Nadalje, teorijski rezultati ukazuju da je tajno praćenje i snimanje raznoliko određeno. Između ostalog, kao: tajni nadzor, prikriveni nadzor, posebna dokazna radnja, specijalna istražna radnja (Perina, 2014, str. 507); zatim sa širim određenjima instituta, u sadržajnom smislu, kao nadgledanje lica i predmeta radi sticanja znanja o osobama i predmetima koji se klasifikuju (Loftus, Goold, 2012, str. 278) na osnovu zapisa tehničkih ili drugih sredstava; kontinuiran ili ponovljen skup metoda, izvođenje akcija pomoću tehničkih uređaja za uspostavljanje položaja ili pokreta i tehničkih uređaja za prenos i snimanje zvuka, fotografije i video-zapisa, a fokusira se na nadgledanje položaja, kretanja i aktivnosti osobe prema kojoj se sprovodi (Bowling, Reiner, Sheptycki, 2019, str. 31).

U pogledu ovlašćenja za sprovođenje tajnog praćenja i snimanja nađeno je zajedničkih, ali i različitih zakonskih rešenja. Ona se kreću od ovlašćenja da ga sprovodi policija, kao što je slučaj u Republici Hrvatskoj i Republici Sloveniji, ili sudska policija u Republici Severnoj Magedoniji, policijski agenti ili čak i angažovana lica od strane policije kao što je u Republici Estoniji. Jedina razlika koja je uočena odnosi se na rešenje u Zakoniku o krivičnom postupku Republike Srbije, kao jedinstven, izolovan pristup, gde su službe bezbednosti Bezbednosno-informativna agencija i Vojnobezbednosna agencija ovlašćene da sprovode tajno praćenje i snimanje.

Iz istraživanja koje su sproveli Mars (1992) i Đumbert (1995) „tajna sredstva i metode kakva je tajno praćenje i snimanje, i mnoge druge koje se primenjuju s ciljem razotkrivanja i dokazivanja kriminalne delatnosti, koje su neophodni procesni i policijsko-taktički instrument za suzbijanje kriminala su 'dinamit u demokratiji'. 'Dinamit' ima velike prednosti i stvara pozitivne efekte, ali se mora koristiti krajnje oprezno, i samo u granicama zakonskih normi" (str. 11, 314).

5. Zaključno razmatranje

Rezultati istraživanja normi kojim organima se daju ovlašćenja za sprovođenje tajnog praćenja i snimanja daju osnova da se zaključi da ono nije jednoobrazno propisano u svim zemljama obuhvaćenim istraživanjem.

Sa druge strane, nalazi ukazuju da postoje izvesne opasnosti u primeni ovog instututa. Ako optuženi ne mogu da saznaju kako je započelo tajno praćenje i snimanje, oni ne mogu da zatraže da pregledaju potencijalne izvore oslobađajućih dokaza – informacije koje bi mogle otkriti razloge za zatvaranje predmeta pre suđenja, greške ili pristrasne svedoke. Nadalje, stručnjaci iz advokature, tužilaštva i sudstva ukazuju da prikrivanje obaveštajnih izvora na osnovu kojih se pokreće postupak tajnog praćenja i snimanja predstavlja kršenje ustavnih prava optuženog na pravično suđenje.

Može se zaključiti da pored saznanja da tajno praćenje i snimanje ima neprocenjiv značaj kao istražna tehnika, njime se mora s velikom pažnjom upravljati, uzimajući u obzir potencijalne rizike koji se odnose na svu dinamiku istrage kriminala.

Tajno praćenje i snimanje je, kao što se iz istraživanja može zaključiti, nezobilazan krivični procesni institut za otkrivanje krivičnih dela i njihovih učinilaca. U proaktivnom dejstvu ono ima sve elemente polise osiguranja od potencijalnog požara i elemente moćnog metoda pametne vode za preventivno sprečavanje požara kojom se mogu obeležiti i prepoznati indikatori koji ukazuju na nastanak i smer razvoja kriminalne delatnosti.

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LEGAL ASPECTS OF SECRET SURVEILLANCE AND RECORDING AND PROCESS AUTHORITIES FOR ITS IMPLEMENTATION: COMPARATIVE RESEARCH

Abstract: The paper examines how covert monitoring and recording is treated in legal theory and what legal powers authorities have to implement it in the Republic of Serbia and a number of European countries. Using content analysis of existing research, historical and comparative methods, as well as scientific description, synthesis and correlation of this procedural institute in existing legislation and legal theory, research findings showed that the Criminal Procedure Code of the Republic of Serbia stipulates that, besides police, this special evidentiary action can also be implemented by civil and military security services. This contradicts the stipulations from the comparative procedural codes of the countries in the researched sample.

Key words: covert monitoring and recording, comparative criminal procedure legislation, criminal theory, legal theory

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1. Introduction

The paper investigates covert monitoring and recording (also called *secret surveillance and recording*, *secret observation* or, in general usage, simply *observation*) in criminal investigations in which law enforcement and criminal prosecution authorities (Novosel, 2001, p. 41) use senses and operational techniques specific for covert and covered operations (Jović, 2011). The conducted research indicates why secret monitoring and recording is important for detecting criminal acts and their perpetrators and providing evidence for conducting criminal proceedings (Jović, 2011), on the one hand. On the other hand, comparative research aims to find out who is authorized to carry out this procedure, i.e., what are the legal solutions prescribed in the national and comparative criminal procedural codes of individual European countries.

In order to present new knowledge within the framework of the hypothesis, the theoretical and empirical research is based on two sources – existing literature and practical regulation of secret monitoring and recording in legislation.

The aim of the research is the analysis and examination of the existing law and criminology literature on secret surveillance and recording, uncovering new knowledge and facts unknown to current theory and their correct interpretation in the light of newly discovered facts. Additionally, the aim is to examine the practical applications of such findings and to determine who is authorized to carry out secret surveillance and recording in criminal proceedings, according to the Criminal Procedure Code of the countries included in the research sample.

The research questions are the following: how secret monitoring and recording, as a criminal procedural action, is defined in the literature; what is the purpose of secret monitoring and recording in the criminal investigation, according to criminal and legal theory; and who, according to the provisions of the criminal procedural codes of the Republic of Slovenia, the Republic of Croatia, the Republic of North Macedonia, the Republic of Estonia and the Republic of Serbia, is authorized to conduct this special evidentiary action.

2. Theoretical Research

As the results of the research show, secret monitoring and recording is most often carried out in criminal investigations. Therefore, for the purposes of the research, we will first determine what a criminal procedural investigation is based on the analysis of existing literature.

One of the most concise and understandable definitions of criminal investigation was given by Bennett and Hess (2004): "criminal investigation is the process of discovering, collecting, preparing and identifying facts, in order to determine what happened, and who could be responsible" (p. 4).

Some authors, such as Osterburg and Ward (2013), believe that "criminal procedure and criminal investigation refers to the process of gathering information (or evidence) about an event in order to: (1) determine whether a crime has been committed; (2) identify the perpetrator(s); (3) arrest the perpetrator(s); and (4) provide evidence that will support the charge (indictment) in court in further criminal proceedings" (pp. 13-14). It is particularly significant here that most authors (e.g., Black (1970) unanimously claim that it is wrong to consider if the three conditions (1, 2, and 3) stated by Osterburg and Ward (2013, pp. 13-14) are met that the crime has been solved, as stated by the police in Serbia before the verdict: that verdict against which there is no longer any regular or extraordinary legal remedy, which is legally binding and enforceable. Osterburg and Ward (2013) further note "that the criminal investigation function generally includes two components: the first is the direct investigation of criminal activity, and the second is the administrative management of the investigative unit"(p. 14).

Current scientific findings in the field of law and criminology (Shikman, 2013) "teach us that the process of criminal investigation" (p. 184), according to Zahnow (2017), "aims to gather evidence lawfully" (p. 141) ethically, and fairly, in accordance with the rights of victims, the accused and society (Telep, 2017, p. 9). As Dahl (1952) notes, this means that "law enforcement and criminal prosecution authorities are authorized to use prescribed procedural institutes and other legal and criminal procedure methods" (p. 112) to gather knowledge, data, information (Manojlović, 2005, p. 115) and evidence from the crime scene.

As Haberman and Ratcliffe (2012) claim, the scene is "the epicenter of criminal activities" (p. 158) after a criminal offense has been committed, with the aim of preventing criminal offenses (Čačković, 2010, p. 84), apprehending suspects, confiscating items with which a criminal offense was prepared or executed, items resulting from the criminal offense (Škulić and Stojanović, 2017, p. 396), items which may bear the traces of the criminal offense or the perpetrator, and securing evidence relevant to the criminal procedure (Klarman, 2000, p. 64).

Furthermore, some authors define secret monitoring and recording as a criminal procedural-investigative action, according to Giulbert (2004), as "the top of the inverted pyramid that expands to include criminal investigation, identifying the participants in the event, conducting forensic analysis, uncovering and interpreting evidence" (p. 594), and finally, as Inman and Rudin (2001) note, "bringing the suspect to justice" (p. 197).

In line with Palmiot's (2012) claim that "criminal investigation and covert surveillance and recording as its integral part is afforded an almost mythical regard by law enforcement and prosecution authorities such as prosecutors' offices and criminal investigation agencies and investigators" (p. 87), we determined the status of secret monitoring and recording and its goal as part of criminal investigation.

Based on the content analysis of the existing literature, we have concluded that, according to Manojlović (2019), secret monitoring and recording as a process institute is relevant to "the phase before a criminal offense is committed (pre-constructive), when a criminal offense is committed (constructive), and after a criminal offense has been committed (reconstructive)" (p. 53). In each of these segments, secret monitoring and recording has its procedural significance (Bojanić, Deljkić and Lučić-Ćatić, 2008, p. 308). Research results also indicate that the place of covert monitoring and recording in the investigation can be recognized and understood on several levels (Greenwood, 1975, p. 16). The first level is preventive or, as Greenwood (1975) and Woods (2013) believe, "protective, i.e., preparation for other processes" (p. 16; p. 323), such as preventing a criminal offense or providing evidence for conducting criminal proceedings (Andresen, Hodgkinson and Tarah, 2018, pp. 314, 324). A number of denominators in comparative theory define

secret monitoring and recording as an important segment in combating criminal activities and providing inputs for the prediction of criminal activities (Blagojević and Šetka, 2013, p. 167), which enable the authorities to capture and prosecute, and "to stretch time" (Fatić, 1997, p. 228) by increasing their knowledge about the crime committed, i.e., to have a profile and information related to the participants, which increases their effectiveness (Davis and Bowers, 2019, p. 23).

Investigating the historical origins of covert surveillance and recording, Shiffman and Cooke (2013) state "that investigation officials were directed to conceal when such investigations actually began, not only from defense attorneys but sometimes from prosecutors and judges as well" (p. 4). Investigation officers were trained to "recreate" the investigative sequence in order to effectively conceal the origin of intelligence or operational data and/or information that formed the basis of a criminal warrant to initiate and conduct covert surveillance and recording (Shiffman and Cooke, 2013 , p. 5). The same authors argue that if defendants do not know how the secret surveillance and recording began, they cannot request to review potential sources of exculpatory evidence—information that could reveal grounds for closing the case, errors, or biased witnesses. On the other hand, legal experts, prosecutors, and judges object that the concealment of intelligence sources in pre-constructive intelligence observation (Manojlović, 2013, p. 49), on the basis of which the procedural procedure of secret monitoring and recording is initiated, represents a violation of the constitutional rights of the accused to a fair trial (p. 6).

Legal scholars note that implementing secret monitoring and recording brings with it another important question for the hypothetical framework of the research: whether the law prescribes the obligation to notify the person under the observation measures about them, as well as which intelligence agencies are involved in the observation (Maguire and Duffee, 2015, p. 234). Theoretical approaches suggest that for those whose liberty is at stake, the right of criminal defendants may appear to be a narrow, procedural issue (Toomey and Kaufman, 2015, p. 843). The refusal to inform the person against whom the measure of covert surveillance and recording was applied about the measure and the sources on which the measure is procedurally based is contrary to the rights of

the accused in the proceedings, to historical practice, and the right of the accused to challenge the evidence resulting from illegal searches, whereby defendants cannot trace the fruit of any poison tree from/to its source (Toomey and Kaufman, 2015, p. 853).

Investigating covert monitoring and recording as a procedure, Fredrickson and Siljander (2002) claim "that covert monitoring and recording is an invaluable investigative technique that must be managed with great care, taking into account the potential risks related to the entire dynamics of criminal investigation" (p. 170). According to these authors, the main reasons for conducting physical surveillance are to obtain information or develop clues and obtain evidence of a crime committed or to observe a crime in progress (Fredrickson and Siljander, 2002, p. 163).

Some interesting theoretical approaches suggest that a successful criminal investigation requires specialized skills and requires investigators to use all available methods and techniques (Hess, Orthmann, & Lim, 2016, pp. 266, 578). Criminal investigation involves the entire process of obtaining information to uncover the truth about a criminal situation/scenario (Jannemieke and Van Der Aa, 2011, p. 275). Discussing the role of covert monitoring and recording in the evidentiary capacity of the investigation, Fredrickson and Siljander (2002) advocate the view that "covert monitoring and recording is one of the techniques that the investigator can use to gather evidence in the investigation process" (p.169). The same authors further state that „covert monitoring and recording involves three different but compatible modes of application; for example, surveillance by vehicle, on foot in motion, and static, of which the most famous technique is: physical human observation" (p. 172).

3. Who may carry out secret monitoring and recording: Comparative Analysis

Based on the sample, we can conclude that the criminal procedure codes do not uniformly prescribe which authority or agency may carry out secret monitoring and recording based on the issued order. The enforcement authorities are determined as follows: (a) The Republic

of Slovenia has prescribed in its procedural code that the police is the agency that conducts secret surveillance and recording under the supervision of the public prosecutor, Art. 149 et seq. 154 („Official Gazette", 8/2006, no. 14/2007, 32/07, 102/07, 23/08, 68/08, 77/09, 29/10, etc.); (b) authorization to carry out secret monitoring and recording from Art. 252 paragraph 1 point. 2 to Art. 257 The Republic of North Macedonia transferred to the jurisdiction of the judicial police under the supervision of the prosecutor („Official Gazette of the Law", 150/2010; 198/2018); (c) The Code of Criminal Procedure of the Republic of Estonia stipulates that the secret monitoring and recording referred to in Art. 110, art. 126^{1}–126^{17} to be carried out directly, through certain police units, police agents, secret agents or persons recruited for secret cooperation, with the permission of the judge for the preliminary investigation procedure and under the supervision of the public prosecutor (Kriminaalmelutsela seadustik, "Riigikogu RT", I 2003, 27, 166 , 2004); (d) The Republic of Croatia, in Article 322 paragraph 1 point 4 of the Law on Criminal Procedure, prescribed that secret monitoring and recording is carried out by the police under the supervision of the state prosecutor („Narodne novine", no. 152/08, 76/09, 80/11, 121/ 11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 126/19; (e) in the Republic of Serbia, the Code of Criminal Procedure stipulates that secret surveillance i recording referred to in Article 172 paragraph 1 is carried out by the police, the Security and Information Agency or the Military Security Agency („Official Gazette of the RS", no. 72/11, 101/2011, 121/2012; 32/2013; 45/2013; 55/2014 and 35 /2019) (Jović et al., 2019, p. 276).

Table 1. Empirical sample: European countries

National criminal procedure codes	Who is authorized to carry out secret monitoring and recording?	
	Security Services	Police
Estonia	No	Yes
Slovenia	No	Yes
Croatia	No	Yes
Serbia	**Yes**	**Yes**
North Macedonia	No	Yes

(Source: Authors, 2023)

4. Analysis and Discussion

Based on the literature review, we have found common elements that suggest that an instrumental definition is adequate: secret monitoring and recording in the criminal procedural sense is covert observation of persons, places, things, objects, activities, activities, vehicles and communications between persons and connections between persons and objects (Simpson and Hipp, 2017, p. 715) in the criminal milieu (environment) (Manojlović, 2015, p. 18), which law enforcement authorities apply to investigate allegations of criminal activity. As Haberman and Ratcliffe (2012) note, "this technique ranges from covert surveillance and recording of a physical person to the use of operational devices" (p. 151, p. 166).

A number of denominators which define covert surveillance and recording in criminalistics, indicate that it represents, according to the authors Ariel, Weisberg and Braga (2019), "actively obtaining information from a primary source – the criminal milieu" (p. 485, 516).

When we examined comparative characteristics derived from theoretical findings, we concluded that covert monitoring and recording is defined an operational police method, criminal procedure institute, systemic criminal procedural activity and criminalistic method with a specific manner of implementation, simultaneously quantitative and qualitative (Mastrofksi, 1998, p. 1, 17). In the legal and criminal aspects, it is a combination of human and technical factors; as a rule, it is unobtrusive and secret, hidden and often covert; the officials who implement it are guided by higher standards of legal quality in the application of norms that enable implementation and limitation; includes collection, entry, recording, storage and analysis of knowledge, data and information, generating reports, disseminating reports and ensuring confidentiality (Manojlović, 2008). All the information flows in a loop of feedback towards the supervisory authorities and authorities for the implementation of procedural interventions; it is instantaneous or continuous, limited by time; with immediate or temporal human or technical observation (Manojlović, 2008, p. 45). It has forensic significance in certain aspects and stages of proof; records are kept immediately with many

other contents and variations from internal and external conditions that mark or condition its implementation (Manojlović, 2005).

Discussing the status of observation in criminal procedural law, Dahl (1952) states that "law enforcement could not function if there was no observation. The entire structure is built on observation. Both the offense and offender(s) must be observed and recorded (p. 103, 124). Dahl (1952) notes that covert monitoring and recording is a measure that minutely, but clearly, separates the procedural difference between found with an object and caught with an object (pp. 103, 124).

Furthermore, the theoretical results indicate that covert surveillance and recording has various definitions, such as: secret surveillance, covert surveillance, special evidentiary action, special investigative action (Perina, 2014, p. 507); then with broader definitions of the institute, in the substantive sense, as monitoring of persons and objects in order to gain knowledge about persons and objects that are classified (Loftus, Goold, 2012, p. 278) based on records of technical or other means; a continuous or repeated set of methods, performing actions using technical devices for establishing position or movement and technical devices for transmitting and recording sound, photography and video, and focuses on monitoring the position, movement and activity of the person of interest (Bowling, Reiner, Sheptycki, 2019, p. 31).

In terms of the authority to carry out secret monitoring and recording, common but also different legal solutions have been found. They range from the authority to enforce it by the police, as is the case in the Republic of Croatia and the Republic of Slovenia, or the judicial police in the Republic of North Macedonia, police agents or even persons engaged by the police, as in the Republic of Estonia. The only difference that was observed refers to the solution in the Code of Criminal Procedure of the Republic of Serbia, as a unique, isolated approach, where the security services Security and Information Agency and Military Intelligence and Security Agency are authorized to carry out secret monitoring and recording.

Both Mars (1992) and Jumbert (1995) claim that covert means and methods such as covert surveillance and recording, and many others that are applied with the aim of exposing and proving criminal activity,

which are a necessary procedural instrument for crime suppression, are 'dynamite in democracy'. This 'dynamite' has great advantages and creates positive effects, but it must be used with extreme caution, and only within the limits of legal norms (p. 11, 314).

5. Concluding Remarks

The results of the research show this authorization is not uniformly prescribed in all the countries included in the sample.

On the other hand, the findings indicate that there are certain dangers in the application of this institute. If defendants are unaware how the secret surveillance and recording began, they can't ask to review potential sources of exculpatory evidence—information that could reveal reasons for closing cases before trial, mistakes, or biased witnesses. Furthermore, experts from the legal profession, the prosecution and the judiciary indicate that the concealment of intelligence sources on the basis of which the procedure of secret monitoring and recording is initiated is a violation of the constitutional rights of the accused to a fair trial.

It can be concluded that in addition to knowing that covert surveillance and recording is of inestimable importance as an investigative technique. However, it must be managed with great care, taking into account the potential risks related to all the dynamics of criminal investigation.

Secret monitoring and recording is an indispensable criminal procedure institute for the detection of criminal acts and their perpetrators. In its proactive effect, it has all the elements of an insurance policy against a potential fire and elements of a powerful smart water method for preventive fire prevention, which can be used to mark and recognize indicators that indicate the origin and direction of the development of criminal activity.

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NASILJE U PORODICI – KRIVIČNOPRAVNI ASPEKT I DRUŠTVENA REAKCIJA

Apstrakt: Nasilje u porodici u Republici Srbiji već dugo beleži tendenciju rasta, a prema nekim fenomenološkim oblicima, i zabrinjavajuće razmere. Za samo pet meseci od početka 2024. godine devet žena je izgubilo život na način da su ih ubili bračni ili vanbračni partneri. Dosadašnja zakonska rešenja očigledno nisu bila zadovoljavajuća kako po broju inkriminacija, tako i po visini krivičnih sankcija. Nasilje u porodici je, nažalost, široko rasprostranjeno i kod nas i u svetu. Tema ovog rada je analiza nasilja u porodici sa krivičnopravnog aspekta, kao i analiza kaznene politike po pitanju ovog krivičnog dela. Pravovremeno i adekvatno reagovanje na nasilje može da spreči mnoge loše posledice. Cilj je da se kroz odgovarajuću literaturu dođe do saznanja kako je nasilje u porodici definisano u zakonodavstvu i kakva je reakcija zakona na ovo krivično delo. Imajući u vidu savremene međunarodne standarde, a posebno Konvenciju Saveta Evrope o sprečavanju nasilja nad ženama i nasilja u porodici (tzv. Istanbulsku konvenciju), koju je ratifikovala Republika Srbija, bilo je neophodno novom zakonskom regulativom obezbediti potpuno usklađivanje sa ovim međunarodnim standardima, predvideti neke nove neophodne inkriminacije i pooštriti pojedine krivične sankcije. Upravo je to i bio cilj donošenja Zakona o sprečavanju nasilja u porodici.

Ključne reči: *nasilje u porodici, Krivični zakonik, femicid, društvena reakcija.*

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1. Uvod

Nasilje u porodici jedan je od fenomena koji se javlja svuda u svetu, u svim kulturama, nezavisno od ekonomskog statusa i društvenog sloja porodice. Iako datira od davnina, njemu se posvećuje naročita pažnja tek tokom 70-ih godina XX veka sa pojavom feminističkih pokreta koji se zalažu za prava žena. Dakle, tek tada dolazi do podizanja vela sa ovog vešto skrivanog društvenog problema. Statistika pokazuje da se kao nasilnici najčešće pojavljuju muškarci, dok su žrtve nasilja uglavnom žene i deca. Veliki broj slučajeva nasilja u porodici imao je tragične ishode, što je dovelo do neophodnosti uključivanja države i medija u rešavanje ovog kompleksnog problema.

Nasilje u porodici definiše se kao vid seksualnog, psihičkog ili ekonomskog zlostavljanja koje vrši jedan član porodice prema drugom članu porodice. Reč je o široko rasprostranjenoj pojavi koja dovodi do negativnih fizičkih, psihičkih, socijalnih i finansijskih posledica po žene, decu, porodicu i društvenu zajednicu u celini. Međunarodno pravo određuje porodično nasilje kao kršenje osnovnih ljudskih prava lica koje ga trpe i obavezuje države da preduzmu delotvorne korake koji su usmereni na suprotstavljanje različitim oblicima nasilja u porodici. Porodični zakon Republike Srbije (2005) kaže da je nasilje u porodici ponašanje kojim jedan član porodice ugrožava telesni integritet, duševno zdravlje ili spokojstvo člana svoje porodice.

Svedoci smo da je ovaj vid nasilja u neprestanom porastu i da su društvo i država uvideli ozbiljnost ovog problema, te da je pored već postojećih krivičnih dela Krivični zakonik Republike Srbije (2005) predvideo i nove inkriminacije. Dosadašnje odredbe Zakonika pružale su jasna rešenja kada je nasilje izvršeno, jer imamo krivično delo i zakonski osnov za određivanje pritvora. Nije, međutim, postojalo rešenje za pretnje ponavljanja nasilja ili u slučaju neposredne opasnosti da se nasilje i dogodi, zbog čega nasilnik nije mogao da se izdvoji iz dotadašnje sredine a žrtva zaštiti.

Osnovni cilj Zakona o sprečavanju nasilja u porodici (2016) jeste da premosti pravni vakuum koji postoji od prijave nasilja ili opasnosti od nasilja do otpočinjanja odgovarajućeg sudskog postupka jer je upravo u tom vakuumu žrtva posebno izložena riziku od novog ili eskaliranog nasilja.

U prvom delu rada biće dat prikaz dela koje Porodični zakon i Krivični zakonik Republike Srbije tretiraju kao nasilje u porodici, potom ćemo se, u drugom delu rada, osvrnuti na specifičnosti Zakona o sprečavanju nasilja u porodici u kontekstu reakcije države na ovu pojavu, dok će u trećem delu rada biti prikazani statistički podaci dobijeni iz odnosa broja prijavljenih slučajeva nasilja u porodici, podignutih optužnica i osuđenih lica u Republici Srbiji za period od deset godina.

2. Krivično delo nasilje u porodici u Krivičnom zakoniku Republike Srbije

Neohodno je napomenuti da je krivičnopravna zaštita sekundarna u odnosu na porodičnu, te da bi ona trebalo da štiti žrtve od nasilja u porodici samo onda kada primarnom zaštitom to više nije moguće. Pojam *nasilje u porodici* definisan je Porodičnim zakonom (čl. 197. st. 1) i pod njime se podrazumeva ponašanje kojim jedan član porodice ugrožava telesni integritet, duševno zdravlje ili spokojstvo drugog člana porodice. U istom zakonu su nabrojani i neki tipični primeri ovog nasilja, kao što su:

a) nanošenje ili pokušaj nanošenja telesne povrede;
b) izazivanje straha pretnjom ubistva ili nanošenja telesne povrede članu porodice ili njemu bliskom licu;
c) prisiljavanje na seksualni odnos;
d) navođenje na seksualni odnos ili seksualni odnos sa licem koje nije navršilo četrnaest godina života ili sa nemoćnim licem;
e) ograničavanje slobode kretanja ili komuniciranja sa trećim licima;
f) vređanje, kao i svako drugo, bezobzirno i zlonamerno ponašanje.

Dakle, postoji više vrsta nasilja u porodici: fizičko, psihičko, seksualno i ekonomsko. Fizičko nasilje podrazumeva batinanje, udaranje po telu i glavi, povrede oštrim i tupim predmetima, bacanje o zid ili na pod, čupanje kose, šutiranje, nanošenje opekotina i sl. Psihičko nasilje podrazumeva zastrašivanje, konstantno kritikovanje, vređanje, stvaranje nesigurnosti kod žrtve, posesivno ponašanje, emocionalnu rezervisanost, postavljanje žrtvi nerealnih zahteva i sl. Seksualno nasilje podrazumeva

svaku povredu polne slobode i polnog morala, prisiljavanje na seksualni odnos, silovanje i sl. Ekonomsko nasilje podrazumeva nasilno oduzimanje novca i vrednih stvari, kontrolisanje zarade i primanja, trošenje novca isključivo na zadovoljenje sopstvenih potreba, oduzimanje sredstava za rad, zabranu pronalaženja zaposlenja, zabranu napredovanja u poslu i sl.

Princip društvene brige o porodici, kao primarnoj društvenoj grupi i značajnom elementu društvene strukture, proklamovan je Ustavom Republike Srbije (2006), prema kojem porodica uživa razne oblike zakonske, ekonomske, socijalne i druge društvene zaštite i podrške utvrđene zakonskim i drugim propisima i merama društvenoekonomske i socijalne politike. Član 66 Ustava propisuje da „porodica, majka, samohrani roditelj i dete u Republici Srbiji uživaju posebnu zaštitu", dok je način ostvarivanja ove zaštite uređen zakonima i propisima donetim na osnovu Ustava. Na ovaj način ukazano je na značaj i mesto porodice u našem društvenopolitičkom sistemu. Koncepcija o zaštiti porodice, kao osnovnom pravu čoveka, uređena je i drugim odredbama Ustava Republike Srbije sadržanim u delu „Ljudska i manjinska prava i slobode".

Nasilje u porodici je kao krivično delo uvedeno u Krivični zakon Republike Srbije 2002. godine izmenama tadašnjeg krivičnog zakona a kao reakcija države i društva na dotadašnju pravnu regulativu koja očigledno nije bila dovoljna niti dovoljno efikasna. Ovim činom bilo je očigledno da se promenio odnos države prema ovom društveno opasnom i neprihvatljivom ponašanju.

Krivično delo nasilje u porodici svrstano je u grupu krivičnih dela protiv braka i porodice i ima jedan osnovni oblik, tri kvalifikovana oblika i jedan posebni oblik (Bošković i Skakavac, 2018, str. 68).

Osnovni oblik postoji u formi primene nasilja ili pretnje da će se napasti na život ili telo ili drskog ili bezobzirnog ponašanja kojim se ugrožavaju spokojstvo, telesni integritet ili duševno stanje člana porodice. Radnja dela je, dakle, povreda ili ugrožavanje telesnog ili duševnog integriteta člana porodice upotrebom sile ili ozbiljnom pretnjom da će se napasti na život ili telo. Pasivni subjekt je punoletni član porodice (krvni srodnici i svako lice koje živi u porodičnoj zajednici) a izvršilac lice koje živi u porodičnoj zajednici. Neophodno je da je radnja izvršenja takva

da je objektivno podobna da dovede do ugrožavanja spokojstva, telesnog integriteta ili duševnog stanja člana porodice. Između ugrožavanja i radnje izvršenja mora postojati uzročna veza.

Prvi teži oblik postoji ako je osnovni oblik povezan sa određenim sredstvima izvršenja, odnosno ako je pri izvršenju dela korišćeno oružje, opasno oruđe ili drugo sredstvo podobno da telo teško povredi ili zdravlje teško naruši. Oružje i opasno oruđe su klasična sredstva pogodna za nanošenje teških povreda tela ili teškog narušavanja zdravlja. Oružje je sredstvo čija je osnovna namena napad ili odbrana i može biti hladno ili vatreno. Oruđe je sredstvo čija je namena obavljanje kakvog društveno korisnog posla ili rada, ali koje se može upotrebiti za napad ili odbranu. Koja su to druga sredstva podobna da se telo teško povredi ili zdravlje teško naruši je faktičko pitanje i ceni se u svakom konkretnom slučaju.

Drugi teži oblik vezan je za radnju iz osnovnog i prvog težeg oblika, ali i za posledicu i uzrast člana porodice. Delo postoji ako je iz prethodnih oblika nastupila teška telesna povreda ili teško narušavanje zdravlja ili su učinjena prema maloletnom licu.

Najteži oblik postoji ako su osnovni i teži oblik za posledicu imali nehatnu smrt člana porodice.

Izvršilac dela (aktivni subjekt) i oštećeni (pasivni subjekt) mogu biti samo članovi porodice. Podstrekač ili pomagač može biti i lice koje nije član porodice. Krivično delo nasilje u porodici može biti izvršeno samo sa direktnim umišljajem, dok u odnosu na težu posledicu učinilac postupa iz nehata, osim kada je u pitanju starosno doba pasivnog subjekta, odnosno kada je krivično delo izvršeno prema maloletniku. Stoga je potrebno pažljivim utvrđivanjem svih objektivnih i subjektivnih okolnosti utvrditi da li je u pitanju kvalifikovani oblik ovog krivičnog dela ili neko drugo krivično delo.

Posebni oblik propisan je za člana porodice koji prekrši mere zaštite od nasilja u porodici koje mu je sud odredio na osnovu zakona.

3. Neke specifičnosti Zakona o sprečavanju nasilja u porodici

Možemo reći da je nasilje u porodici jedan od najtežih oblika kršenja ljudskih prava. Feministička istraživanja ukazuju na to da je svaka treća žena u svetu tokom života bila izložena nekom obliku zlostavljanja u svojoj porodici. Osnovni uzroci porodičnog nasilja proizilaze iz etioloških osnova datih kroz socijalne faktore i posebno izdvojenu oblast porodične faktore delinkvencije. U najvećem broju slučajeva uzroci porodičnog nasilja su u kombinaciji sa socijalnim, psihopatološkim i kulturno-istorijskim činiocima. Osnovni motiv porodičnog nasilja je sticanje i zadržavanje kontrole nad pojedinim članovima porodice. Istraživanja pokazuju da porodično nasilje eskalira što duže traje, češće se ponavlja i postaje sve surovije i brutalnije (Bošković, 2012).

Ustavni osnov za donošenje Zakona o sprečavanju nasilja u porodici (2016) sadržan je u članu 97 tačka 2 Ustava Republike Srbije (2006) prema kome Republika Srbija uređuje i obezbeđuje, između ostalog, ostvarivanje i zaštitu sloboda i prava građana, ustavnost i zakonitost i postupak pred sudovima i drugim državnim organima.

Cilj ovog zakona je da se u naš pravni sistem uvede standard prema kojem učinilac nasilja ne sme da ostane kod kuće ne samo kada je nasilje već učinjeno, već i kada postoji neposredna opasnost od nastanka bilo kog oblika nasilja. Praktično se ostvaruje princip *nulte tolerancije* na nasilje. Zakon uređuje poseban postupak nadležnih državnih i drugih organa, organizacija i ustanova i predviđa izricanje hitnih mera učiniocu nasilja kojima se on lišava izvesnih prava a sa ciljem zaštite žrtve nasilja u strogo normiranom postupku. Hitne mere, koje predviđa ovaj propis, jedan su od instituta kojim se sprečava ponavljanje nasija ili mogućnost da do njega dođe. Pored toga, cilj ovog zakona jeste efikasna reakcija nadležnih državnih organa da se spreči ili ne ponovi nasilje pre pokretanja krivičnog postupka.

Neposredna opasnost od nasilja u porodici postoji kada iz ponašanja mogućeg učinioca proizilazi da je on spreman da u vremenu koje neposredno predstoji prvi put učini ili ponovi nasilje u porodici. Prema odredbama Zakona, pod nasiljem u porodici smatra se akt fizičkog, seksualnog, psihičkog ili ekonomskog nasilja učinioca prema licu sa kojim

se učinilac nalazi u sadašnjem ili ranijem bračnom ili vanbračnom ili partnerskom odnosu ili prema licu sa kojim je srodnik u pravoj liniji, u pobočnoj liniji do drugog stepena ili sa kojim je srodnik po tazbini do drugog stepena ili u kome je usvojitelj, usvojenik, hranitelj ili prema drugom licu sa kojim živi ili je živeo u zajedničkom domaćinstvu.

Odredbe ovog zakona primenjuju se i na saradnju u sprečavanju nasilja u porodici u krivičnim postupcima za krivična dela: proganjanje (čl. 138a KZ); silovanje (čl. 178 KZ); obljuba nad nemoćnim licem (čl. 179 KZ); obljuba nad detetom (čl. 180 KZ); obljuba zloupotrebom položaja (čl. 181 KZ); nedozvoljene polne radnje (čl. 182 KZ); polno uznemiravanje (čl. 182a KZ); podvođenje i omogućavanje vršenja polnog odnosa (čl. 183 KZ); posredovanje u vršenju prostitucije (čl. 184 KZ); prikazivanje, pribavljanje i posedovanje pornografskog materijala i iskorišćavanje maloletnih lica za pornografiju (čl. 185 KZ); navođenje deteta na prisustvovanje polnim radnjama (čl. 185a KZ); zapuštanje i zlostavljanje maloletnog lica (čl. 193 KZ); nasilje u porodici (čl. 194 KZ); nedavanje izdržavanja (čl. 195 KZ); kršenje porodičnih obaveza (čl. 196 KZ); rodoskrvnuće (čl. 197 KZ); trgovina ljudima (čl. 388 KZ) i druga krivična dela ako je krivično delo posledica nasilja u porodici.

Za sprečavanje nasilja i pružanje zaštite i podrške žrtvama nasilja u porodici i žrtvama gore navedenih krivičnih dela nadležni su: policija; javna tužilaštva; sudovi opšte nadležnosti i prekršajni sudovi kao nadležni državni organi, a osim njih i centri za socijalni rad kao ustanove socijalne zaštite. Zakon predviđa specijalizaciju svih nadležnih državnih organa koji postupaju u skladu sa ovim propisom. Predviđeno je da pored nadležnih državnih organa i ustanova podršku žrtvama nasilja mogu da pruže i druga pravna i fizička lica iz okruženja.

Institucionalni stub, tj. prva karika u lancu društvene reakcije na nasilje je policijski službenik za sprečavanje nasilja u porodici koji je završio specijalizovanu obuku da bi sprečio nasilje i pružio zaštitu žrtvama nasilja. U tom smislu, svi policijski službenici su dužni da odmah obaveste nadležnog policijskog službenika (koji je posebno specijalizovan u pogledu sprečavanja nasilja u prodici) o svakom nasilju u porodici ili neposrednoj opasnosti od nasilja bez obzira na to kako su za njega saznali i imaju pravo da sami, ili na zahtev nadležnog policijskog službenika, dovedu mogućeg učinioca u nadležnu organizacionu jedinicu poli-

cije radi vođenja postupka. Ovo zadržavanje može trajati najduže osam časova. Tokom zadržavanja mora se dati mogućnost licu da se izjasni o svim bitnim činjenicama a policijski službenik je u obavezi da odmah proceni rizik neposredne opasnosti od nasilja u porodici i da, u skladu sa zakonom, izrekne hitnu meru za sprečavanje nasilja u porodici.

Pored hitnih mera, novina koja svakako zaslužuje posebnu pažnju jeste procena rizika od strane nadležnog policijskog službenika. Prema odredbama Zakona, procena rizika se zasniva na dostupnim obaveštenjima i odvija se u što kraćem roku. Pri proceni rizika naročito se vodi računa o tome:

1) da li je mogući učinilac ranije ili neposredno pre procene rizika izvršio nasilje u porodici,
2) da li je spreman da ga ponovi,
3) da li je pretio ubistvom ili samoubistvom,
4) poseduje li oružje,
5) da li je mentalno bolestan ili koristi psihoaktivne supstance,
6) da li postoji sukob oko starateljstva nad detetom ili oko održavanja ličnih odnosa deteta i roditelja koji je mogući učinilac,
7) da li je mogućem učiniocu izrečena hitna mera ili određena mera zaštite od nasilja u porodici,
8) da li žrtva doživljava strah i kako ona procenjuje rizik od nasilja i slično.

Ukoliko procena rizika ukaže na neposrednu opasnost od nasilja, ona se odmah dostavlja nadležnom javnom tužiocu, nadležnom centru za socijalni rad i grupi za koordinaciju i saradnju.

Procena rizika od opasnosti od nasilja u porodici predstavlja ozbiljan i kompleksan proces (zadatak, postupak). Teret procenjivanja ličnosti – mogućeg nasilnika isključivo je na policiji. Smatramo da ovo pitanje zaslužuje ozbiljnu stručnu raspravu i mislimo da bi u tom procesu policiji, bez obzira na njenu specijalizovanost, trebalo priključiti još neka stručna lica, tj. psihologe, socijalne radnike, defektologe i dr. Ovako je na policiji velika odgovornost jer u situaciji kada se prijavi nasilje u porodici ona odmah, odnosno bez detaljnije stručne analize, procenjuje

da li rizik od neposrednog nasilja postoji, te izriče hitnu meru i sva potrebna obaveštenja dostavlja javnom tužiocu u čijoj je nadležnosti dalji postupak.

U slučaju kada ustanovi neposrednu opasnost od nasilja u porodici, nadležni policijski službenik donosi naređenje kojim izriče hitnu meru. Zakonodavac je predvideo sledeće moguće hitne mere:

1) meru privremenog udaljenja učinioca iz stana i
2) meru privremene zabrane učiniocu da kontaktira žrtvu nasilja i prilazi joj.

Naređenjem mogu da se izreknu obe hitne mere jednom učiniocu. Nakon uručenja naređenja o izricanju hitnih mera učiniocu, nadležni policijski službenik ih dostavlja i nadležnom javnom tužiocu, centru za socijalni rad i grupi za koordinaciju i saradnju. Hitne mere koje izrekne nadležni policijski službenik traju 48 časova od trenutka uručenja naređenja. Čim je izrekao mere, nadležni policijski službenik je dužan da naređenje sa dokazima dostavi nadležnom javnom tužiocu koji ima rok od 24 sata da odluči da li će od suda da traži produženje hitne mere na 30 dana. Predlog za produženje javni tužilac dostavlja sudu na čijoj teritoriji žrtva ima prebivalište ili boravište. Sud je dužan da u roku od 24 sata donese odluku o tome da li će produžiti hitne mere. Ovu odluku sud donosi samo na osnovu predloga tužioca, bez prisustva stranaka. Lice u odnosu na koje je mera produžena ima pravo na žalbu.

Kršenje hitnih mera i produženih hitnih mera predstavlja prekršaj za koji je predviđena kazna zatvora do 60 dana, sa mogućnošću da se prekršajni postupak vodi po skraćenom postupku koji predviđa izvršenje kazne i pre pravnosnažnosti presude.

Pored navedenih zakona, kao stubova društvene reakcije kada je u pitanju nasilje u porodici, na ovom mestu neophodno je pomenuti i da je Vlada Republike Srbije, na predlog Ministarstva za rad, zapošljavanje, boračka i socijalna pitanja, donela Strategiju za sprečavanje i borbu protiv rodno zasnovanog nasil*j*a prema ženama i nasil*j*a u porodici za period 2021–2025. godine. Pored navedene strategije, važe i sledeći podzakonski propisi, kao što su: Opšti protokol o postupanju i saradnji ustanova, organa i organizacija u situacijama nasilja nad ženama u porodici i u partnerskim odnosima, Poseban protokol Ministarstva zdravlja za

zaštitu i postupanje sa ženama koje su izložene nasilju (2010), Poseban protokol o postupanju centara za socijalni rad – organa starateljstva u slučajevima nasilja u porodici i ženama u partnerskim odnosima, Opšti protokol za zaštitu dece od zlostavljanja i zanemarivanja (2005) i drugi.

4. Statistički pokazatelji nasilja u porodici

U ovom delu rada analiziraćemo zvanične podatke u pogledu kaznene politike, kada je reč o krivičnom delu nasilje u porodici. Za analizu nasilja u porodici poslužili smo se podacima Republičkog zavoda za statistiku Srbije za period 2013–2022. godine, a koji su prikazani u Tabeli 1. Podaci se prikupljaju putem individualnih upitnika koje popunjavaju nadležna javna tužilaštva i nadležni sudovi i potom statistički obrađuju. Odlučili smo se za prikaz rezultata koji obuhvataju razdoblje od deset godina jer nam je namera bila da utvrdimo kakav uticaj su ostvarili donošenje Zakona o sprečavanju nasilja u porodici, zatim podizanje društvene svesti u kontekstu nedozvoljenosti i kažnjivosti ovakvog ponašanja, a pre svega kakav je uticaj pomenuti propis imao na potencijalne žrtve i žrtve nasilja u porodici.

Tabela 1. Broj podnetih krivičnih prijava, broj optuženja i broj osuđenih lica

GODINA	Krivične prijave	Optuženja	OSUĐENA LICA za nasilje u porodici
2013.	**3782**	**2026**	**1532**
2014.	**3642**	**1309**	**1712**
2015.	**5040**	**1837**	**1778**
2016.	**7244**	**2386**	**2065**
2017.	**7759**	**3077**	**2713**
2018.	**7916**	**3385**	**2974**
2019.	**7308**	**2984**	**2627**
2020.	**5932**	**2729**	**2337**
2021.	**5663**	**2621**	**2230**
2022.	**5531**	**2398**	**2021**

Kao što se može videti u Tabeli 1, broj podnetih krivičnih prijava za nasilje u porodici je vrlo visok na godišnjem nivou. Ova činjenica, ako posmatramo samo statistiku, ukazuje na to da je pojava nasilja u porodici sve izraženija i dobija zabrinjavajuće razmere. Podaci pokazuju da je najveći broj prijava bio u periodu kada se intenzivno radilo na donošenju Zakona o sprečavanju nasilja u porodici i neposredno nakon njegovog stupanja na snagu. Moguće je, takođe, i da su sada, za razliku od prethodnog perioda, žrtve više ohrabrene da prijave porodično nasilje, da nije potrebno da trpe nikakav vid nasilja, te da su nadležni organi tu da im pruže zaštitu. Takođe, borba društva sa ovom pojavom se konstantno i više nego ranije prati putem sredstava masovnih komunikacija koji motivišu žrtve da slobodnije prijavljuju nasilje u porodici. Važno je ipak konstatovati, i tu činjenicu nikako ne zanemariti, da je i dalje prisutna visoka „tamna brojka" kod porodičnog nasilja, iako su žrtve svesnije da će više biti zaštićene od strane nadležnih subjekata. Na porast broja prijava nasilja nesumnjivo su uticale aktivnosti Viktimološkog društva Srbije, Autonomnog ženskog centra, SOS linije za nasilje u porodici, Savetovališta za nasilje u porodici, Sigurne ženske kuće i dr. Podaci koji se odnose na poslednjih pet godina posmatranog perioda pokazuju blagi pad broja podnetih krivičnih prijava i to svakako ohrabruje i treba da bude motivacija nadležnim organima, jer je očigledno da je sveobuhvatna borba nadležnih organa i društva protiv nasilja u porodici polako počela da pokazuje rezultate.

Drugi statistički pokazatelji odnose se na broj podignutih optužnica u odnosu na broj krivičnih prijava. Ukoliko posmatramo navedeni period, vidimo da se procentualno taj raspon kreće između 40 i 50 procenata. Ako posmatramo ove podatke, možemo reći da je aktivnost javnih tužilaca u pogledu sagledavanja porodičnog nasilja na zadovoljavajućem nivou. Pretpostavljamo da je na ovaj podatak uticala i primena odredaba Zakonika o krivičnom postupku (2021) i mogućnost sklapanja sporazuma o priznanju krivičnog dela između javnog tužioca i okrivljenog. Zakonik o krivičnom postupku daje mogućnost sklapanja sporazuma (nagodbe) posle donošenja naredbe o sprovođenju istrage pre ili posle podnošenja optužnice, pa do završetka glavnog pretresa. Ovaj sporazum predstavlja jedan vid načela oportuniteta u našem krivičnom postupku.

Poslednji parametar u prikazanoj tabeli odnosi se na broj osuđenih lica za krivično delo nasilje u porodici. Ako uporedimo broj optuženja i broj osuđenih lica, možemo konstatovati da su ti parametri kaznene politike na zadovoljavajućem nivou.

5. **Zaključak**

Nasilje u porodici je univerzalna i veoma rasprostranjena pojava koja prožima sva društva. Ova globalna patološka pojava izaziva nesagledive posledice i na individualnom i na društvenom planu. Spada u red najtežih oblika nasilja, jer se njegovim ispoljavanjem krše osnovna ljudska prava i slobode članova porodice, kao što su pravo na život, slobodu i bezbednost, pravo na fizički, psihički i seksualni integritet.

Iako statistika govori o povećanju delikata nasilja u porodici nakon donošenja Zakona o sprečavanju nasilja u porodici (2016), to ne znači da je takvih ponašanja ranije bilo znatno manje. Naprotiv, nasilje u porodici je ranije zanemarivano, tolerisano, „gurano pod tepih". Žrtve nisu, za razliku od sadašnjeg vremena, ohrabrivane da prijave nasilje i to se svakako odražava na statističke pokazatelje i govori o velikoj „tamnoj brojci" ove pojave.

Statistički gledano, nasilje u porodici, kao društveno opasno ponašanje, poslednjih godina beleži tendenciju pada, posebno od vremena kada je društvo promenilo svoj dotadašnji rigidni sistem tolerancije i nepreduzimanja ozbiljnijih mera na njenom sprečavanju i suzbijanju. Ne samo da je pooštrena krivičnopravna zaštita žrtava nasilja u porodici, već je i samo društvo poprimilo značajno aktivniji odnos kako po pitanju osuda ovakvog ponašanja, tako i u proceduralnom smislu, kroz preduzimanje čitavog niza postupaka koji doprinose sprečavanju i suzbijanju ove pojave.

Posebno zabrinjavajuća činjenica jeste vrlo visok procenat nasilja u porodici sa smrtnim ishodom, inajući u vidu podatak da je za prvih pet meseci u Republici Srbiji devet žena ubijeno od strane njihovih bračnih ili vanbračnih partnera.

Analiza pravne prakse pokazuje da ovaj oblik kriminaliteta često prati neadekvatna i neblagovremena reakcija nadležnih državnih i društvenih subjekata, kao i institucija, pre svih interventne policije koja često umanjuje ozbiljnost blažih oblika porodičnog nasilja, npr. uvrede, pretnje, psihičkog zlostavljanja i drskog i bezobzirnog ponašanja.

Neadekvatno reagovanje državnih organa i drugih subjekata demotiviše žrtvu da se odluči na prijavljivanje ovog krivičnog dela, proizvodeći kod nje osećaj napuštenosti, a kao rezultat toga veoma često izostaje i podrška nadležnih centara za socijalni rad.

Podizanje svesti u društvu o svim oblicima nasilja prema ženama i nasilja u porodici jedan je od najznačajnijih zadataka na planu prevencije nasilja. Iako su ostvareni izvesni pomaci na podizanju svesti i iskorenjivanju predrasuda, običaja, tradicije i ostalih praksi koje doprinose održavanju stereotipnih stavova o ženskim ulogama, ove pojave su još uvek duboko ukorenjene.

Potpisivanjem i ratifikovanjem međunarodnih dokumenata, kao i donošenjem strategije i podzakonskih propisa, država ima i moralnu i političku obavezu da zabrani kršenje ljudskih prava žena koje se javlja u okviru porodice kao osnovne ćelije svakog društva. Poslednjih godina evidentan je porast broja slučajeva nasilja u porodici sa smrtnim ishodom. Žrtve su najčešće žene koje su prethodno trpele nasilje od strane svojih muževa i koje nisu dobile odgovarajuću zaštitu od policije, centra za socijalni rad niti od ljudi iz svoje neposredne okoline.

Na samom kraju možemo zaključiti da uprkos tome što su krivičnopravna zaštita žrtava nasilja u porodici i društvena reakcija poslednjih godina poboljšane, to još uvek ne znači da su dovoljne i da obezbeđuju veću sigurnost žrtvama.

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DOMESTIC VIOLENCE: CRIMINAL JUSTICE PERSPECTIVE AND SOCIETAL REACTION

Abstract: Domestic violence in the Republic of Serbia has been showing a long-term upward trend, and in some phenomenological forms, it has reached alarming proportions. In just the first five months of 2024, nine women have lost their lives at the hands of their spouses or partners. The existing legal measures have proven inadequate, both in the number of charges filed and in the severity of the criminal penalties imposed. Unfortunately, domestic violence remains widespread, both in Serbia and globally. This paper focuses on analysing domestic violence from a criminal justice perspective and examining the penal policy related to this criminal offence. Timely and appropriate responses to domestic violence can prevent many adverse consequences. The aim is to explore, through relevant literature, how domestic violence is defined in legislation and to examine the legal system's response to this criminal offence. In light of contemporary international standards, particularly the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (commonly known as the Istanbul Convention), which has been ratified by the Republic of Serbia, it was necessary to introduce new legal regulations to ensure full alignment with these international standards, as well as to define new essential charges and tighten certain criminal penalties. This was precisely the goal of enacting the Law on Prevention of Domestic Violence.

Keywords: *domestic violence, Criminal Code, femicide, societal reaction.*

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1. Introduction

Domestic violence is a phenomenon that occurs worldwide, across all cultures, regardless of economic status or social class. Although it has existed since the earliest times, domestic violence only began to receive significant attention in the 1970s with the emergence of feminist movements advocating for women's rights. Only then did this deeply concealed social issue begin to be unveiled. Statistics indicate that perpetrators are most often men, while the victims are predominantly women and children. The high number of domestic violence cases with tragic outcomes has highlighted the need for state and media involvement in addressing this complex problem.

Domestic violence is defined as a form of sexual, psychological, or economic abuse inflicted by one family member on another. It is a widespread issue that leads to adverse physical, psychological, social, and financial consequences for women, children, families, and the broader community. International law regards domestic violence as a violation of the fundamental human rights of those affected and obliges countries to take effective measures to combat its various forms. According to the Family Law of the Republic of Serbia (2005), domestic violence is behaviour that threatens "physical integrity, mental health, or tranquillity of another family member."

We are witnessing a continuous increase in this form of violence. However, there has been a growing awareness among both society and the government of the severity of the issue. As a result, the Criminal Code of the Republic of Serbia (2005) now includes additional incriminations alongside the previously established criminal offences. Previous provisions of the Code provided clear solutions in cases where violence had already occurred, as there was an actual criminal offence and, thus, legal grounds for detention. However, there was no solution for situations involving threats of recurring violence or immediate risks of violence. Consequently, there was no mechanism in place to remove the perpetrator from the shared environment and thereby protect the victim.

The main objective of the Law on Prevention of Domestic Violence (2016) is to fill the legal vacuum that exists between the initial reports

of violence or threats of violence and the commencement of relevant legal proceedings. It is precisely within this legal void that victims are particularly at risk of experiencing further or escalating violence.

The first section of this paper will provide an overview of how domestic violence is addressed by the Family Law and the Criminal Code of the Republic of Serbia. The second section will focus on the specifics of the Law on Prevention of Domestic Violence, particularly in the context of the government's response to this issue. Finally, the third section will present statistical data on the number of reported cases of domestic violence, charges filed, and convictions in the Republic of Serbia over a period of ten years.

2. Criminal offence of domestic violence in the Criminal Code of the Republic of Serbia

It is important to note that criminal-law protection is secondary to family protection and should therefore be employed in cases of domestic violence only when primary protection measures are no longer viable. Family Law (Article 197, Paragraph 1) defines *domestic violence* as any behaviour by which one family member jeopardises the physical integrity, mental health, or tranquillity of another. The law also lists some typical examples of this type of violence, such as:

a) inflicting or attempting to inflict physical harm;;
b) instilling fear by threatening to kill or inflict physical harm on a family member or another close person;
c) forcing someone into sexual intercourse;
d) coercing someone into sexual intercourse or engaging in sexual intercourse with a person under fourteen years of age or with an incapacitated person;
e) restricting freedom of movement or communication with others;
f) exhibiting insulting or otherwise inconsiderate and malevolent behaviour.

Therefore, domestic violence encompasses several types: physical, psychological, sexual, and economic. Physical violence includes actions such as beating, striking the body or head, causing injuries with sharp or blunt objects, throwing someone against a wall or onto the floor, pulling hair, kicking, causing burns, etc. Psychological violence includes intimidation, constant criticism, insults, instilling insecurity in the victim, possessive behaviour, emotional reservedness, setting unrealistic demands on the victim, etc. Sexual violence encompasses any violation of sexual freedom and sexual morality, coercion into sexual intercourse, rape, etc. Economic violence involves forcibly taking money and valuables, controlling earnings and inflow of funds, using money exclusively for personal needs, depriving the victim of work resources, preventing them from finding employment, hindering their career advancement, and similar actions.

The principle of societal care for the family, as a primary social group and an important component of the social structure, is established by the Constitution of the Republic of Serbia (2006). According to the Constitution, the family is entitled to various forms of legal, economic, social, and other types of protection and support, as defined by legal and other regulations and measures of socio-economic and social policy. Article 66 of the Constitution stipulates that "families, mothers, single parents and any child in the Republic of Serbia shall enjoy special protection," while the methods for accessing this protection are regulated by laws and regulations derived from the Constitution. This highlights the family's importance and role in the Serbian socio-political system. The protection of the family as a fundamental human right is also addressed by other provisions in the Constitution of the Republic of Serbia, particularly in the section on Human and Minority Rights and Freedoms.

Domestic violence was introduced as a criminal offence in the Criminal Code of the Republic of Serbia in 2002, through amendments to the existing criminal law. This action represented both a governmental and societal response to the previous legal framework, which had proven to be inadequate and ineffective and marked a discernible shift in Serbia's stance toward this socially dangerous and unacceptable behaviour.

The criminal offence of domestic violence is categorised under crimes against marriage and family and includes one basic form, three more severe/aggravated forms, and one special form (Bošković & Skakavac, 2018, p. 68).

The basic form involves either the use of violence or threats to life or bodily harm, or insolent or inconsiderate behaviour that jeopardises the tranquillity, physical integrity, or mental state of a family member. The act, therefore, involves harming or endangering the physical or mental integrity of a family member through the use of force or serious threats to their life or body.The passive subject is an adult family member (blood relatives and anyone living within the family unit), while the perpetrator is someone residing within the same family unit. The act must be such that it is objectively likely to endanger the tranquillity, physical integrity, or mental state of a family member. There must be a causal link between the endangerment and the act.

The first aggravated form exists if the basic form is associated with specific means of execution, that is to say, if a weapon, dangerous tool, or another object capable of causing severe bodily injury or serious harm to health is employed. Weapons and dangerous tools are typical means used to inflict severe bodily injuries or significant harm to health. A weapon is an item primarily designed for attack or defence and includes two main types – firearms and cold weapons. A tool is an item intended for tasks related to community service or work, but it can also be used for offensive or defensive purposes. The suitability of other objects for causing severe bodily injury or serious health damage is a question of fact and is evaluated on a case-by-case basis.

The second aggravated form is linked to the acts described in the basic and first aggravated forms as well as to the outcome and the age of the family member involved. The offence exists if the previous forms have resulted in serious bodily injury or significant health damage or if it was committed against a minor.

The most severe form (third aggravated form) exists if the basic and aggravated forms have resulted in the death of a family member through negligence.

The perpetrator (active subject) and the victim (passive subject) of the offence must come from the same family. However, an instigator or accomplice may be someone outside the family. The criminal offence of domestic violence can only be committed with direct intent, while a more severe consequence is attributable to the offender's negligence, except when the passive subject's age is a factor, i.e., when the offence is committed against a minor. it is necessary to carefully determine all the objective and subjective circumstances to establish whether the crime in question is an aggravated form of this criminal offence or it can be classified another criminal offence.

The special form applies to a family member who breaches court-ordered protective measures against domestic violence.

3. Law on Prevention of Domestic Violence: Specific Features

Domestic violence is regarded as one of the most serious violations of human rights. Feminist research indicates that one in three women worldwide has been subjected to some form of abuse within her family during her lifetime. The root causes of domestic violence stem from etiological foundations rooted in societal factors as well as in the distinct area of family-related factors of delinquency. In most cases, the causes of domestic violence are a combination of societal, psychopathological, and cultural-historical factors. The primary motive for domestic violence is to gain and maintain control over certain family members. Research indicates that domestic violence escalates over time, it becomes more frequent and increasingly severe and brutal (Bošković, 2012).

The constitutional basis for enacting the Law on Prevention of Domestic Violence (2016) can be found in Article 97, Paragraph 2 of the Constitution of the Republic of Serbia (2006). This article stipulates that the Republic of Serbia shall among other things "organise and provide for the exercise and protection of freedoms and rights of citizens, constitutionality and legality, and proceedings before courts and other state bodies."

The goal of this law is to establish a standard within the Serbian legal system that mandates the removal of perpetrators of domestic violence from the home, not only after violence has already occurred but

also when there is an imminent risk of any form of violence. The principle of *zero tolerance* for violence is in effect implemented. The law establishes a specific procedure for competent state and other authorities, organisations, and institutions, and mandates the imposition of urgent measures against perpetrators; these measures deprive perpetrators of certain rights in order to protect the victim through a strictly regulated process. The urgent measures provided by this regulation are one of the legal institutes used to prevent the recurrence of violence or the possibility of its occurrence. Additionally, the law aims to ensure an effective response from the competent state authorities to prevent or address violence before criminal proceedings are initiated.

An imminent risk of domestic violence exists when the behaviour of a potential perpetrator indicates that they are ready to commit or repeat domestic violence in the immediate future. Under the provisions of the Law, domestic violence is defined as any act of physical, sexual, psychological, or economic violence perpetrated against a person with whom the perpetrator is currently or has previously been in a matrimonial or domestic partnership. It also applies to individuals related to the perpetrator by blood in the direct or collateral line up to the second degree, or through marriage up to the second degree – this includes adopted children, adoptive parents, foster parents, or anyone with whom the perpetrator is living or has lived in a shared household.

The provisions of this law also apply to cooperation in preventing domestic violence in criminal proceedings for the following criminal offences: stalking (Art. 138a CC); rape (Art. 178 CC); sexual abuse of an incapacitated person (Art. 179 CC); sexual abuse of a child (Art. 180 CC); sexual abuse through misuse of position (Art. 181 CC); prohibited sexual acts (Art. 182 CC); sexual harassment (Art. 182a CC); procuring and pandering (Art. 183 CC); mediation in prostitution (Art. 184 CC); display, acquisition, and possession of pornographic material and exploitation of minors for pornography (Art. 185 CC); inducing a child to witness sexual acts (Art. 185a CC); neglect and abuse of a minor (Art. 193 CC); domestic violence (Art. 194 CC); failure to provide maintenance (Art. 195 CC); violation of family duties (Art. 196 CC); incest (Art. 197 CC); human trafficking (Art. 388 CC); and other criminal offences resulting from domestic violence.

The prevention of violence and provision of protection and support to victims of domestic violence, as well as to victims of the above listed criminal offences, fall under the purview of the following authorities and institutions: the police, public prosecutor's offices, general jurisdiction courts, misdemeanour courts, as well as centres for social work and social protection institutions. The law mandates the specialisation of all competent state authorities acting in accordance with these provisions. Additionally, besides the competent state authorities and institutions, support to victims may also be provided by other legal and natural persons in the community.

The institutional cornerstone, or the initial link in the chain of societal response to violence, is the police officer specialised in the prevention of domestic violence; this officer has undergone specialised training to effectively prevent violence and offer protection to victims. In this regard, all police officers are required to promptly inform the competent police officer (specialised in the prevention of domestic violence) about any instance of domestic violence or imminent risk of violence, regardless of how they were made aware of it. They also have the authority to either independently or at the request of the competent officer, bring a potential perpetrator to the competent police organisational unit for processing. This detention can last no longer than eight hours. During this time, the individual must be given the opportunity to give a statement on all relevant facts. The police officer is required to immediately assess the risk of imminent domestic violence and, in accordance with the law, implement an urgent measure to prevent such violence.

In addition to urgent measures, a significant new development that warrants special attention is the risk assessment conducted by the competent police officer. According to the provisions of the Law, the risk assessment must be based on available information and conducted as promptly as possible. When assessing risk, particular attention is given to the following factors:

1) whether the potential perpetrator has previously or immediately prior to the risk assessment committed domestic violence,
2) whether they are likely to repeat it,
3) whether they have threatened with murder or suicide,

4) whether they possess arms,
5) whether they are mentally ill or are abusing psychoactive substances,
6) whether there is a conflict over child custody or regarding the maintenance of personal relationships between the child and the parent who is a potential perpetrator,
7) whether an urgent measure or a protection measure against domestic violence has been imposed on the potential perpetrator
8) whether the victim experiences fear and how they assess the risk of violence.

If the risk assessment reveals a threat that is not immediate, all available information should be submitted to the competent public prosecutor, the competent centre for social work, and the coordination and cooperation group.

The risk assessment for domestic violence is a serious and complex process (task, procedure). The burden of assessing the perpetrator's personality falls solely on the police. We believe this issue warrants serious professional discussion and suggest that, despite their specialisation, the police should work alongside additional experts, such as psychologists, social workers, special education teachers, and others. Currently, the police bear significant responsibility, as they must assess whether an immediate risk of violence exists based on domestic violence reports, often without detailed expert analysis. They then implement urgent measures and forward all necessary information to the public prosecutor, in charge of the subsequent proceedings.

If, upon conducting the risk assessment, the competent police officer identifies an immediate threat of domestic violence, they are required to issue an order imposing an urgent measure. The legislation outlines the following possible urgent measures:

1) the temporary removal of the perpetrator from the home, and
2) a temporary prohibition preventing the perpetrator from contacting or approaching the victim.

The order may impose both of these urgent measures on a single perpetrator. After the perpetrator has been served with an order imposing urgent measures, the competent police officer must deliver the order to the public prosecutor, the centre for social work, and the coordination and cooperation group. The urgent measures imposed by the competent police officer remain in effect for 48 hours from the moment the order is served. Once the measures have been imposed, the competent police officer is required to submit the order along with the evidence to the public prosecutor, who has 24 hours to decide whether to request an extension of the urgent measures from the court for a period of up to 30 days. The public prosecutor submits a request for the extension of the urgent measure to the court in the jurisdiction where the victim has permanent or temporary residence. The court must render a decision within 24 hours on whether to extend the urgent measures. This decision is made solely based on the prosecutor's request, without the presence of the parties involved. The individual subject to the extended measures has the right to appeal the court's decision.

Violating an urgent measure or an extended urgent measure constitutes an offence punishable by imprisonment of up to 60 days; the offence proceeding may be processed under a summary procedure, which allows for the execution of the sentence before the judgement becomes final.

In addition to the aforementioned laws, which serve as pillars of societal response to domestic violence, it is essential to mention that the Government of the Republic of Serbia, upon the proposal of the Ministry of Labour, Employment, Veteran and Social Affairs, has adopted a Strategy for Preventing and Combating Gender-Based Violence against Women and Domestic Violence for the Period 2021-2025. In addition to this strategy, the following by-laws are also in effect: General Protocol for Action and Cooperation of Institutions, Bodies and Organisations in the Situations of Violence against Women within the Family and in Intimate Partner Relationship[s], Republic of Serbia Ministry of Health - Special Protocol for The Protection and Treatment of Women Victims of Violence, Special Protocol for Action of the Centre for Social Work – Custody Authority in Cases or Domestic and Intimate Partner Violence against Women, General Protocol on Protection of Children from Abuse and Neglect (2005) and others.

4. Domestic violence statistics

In this section of the paper, we will analyse official data regarding punitive policies related to the criminal offence of domestic violence. For the analysis of domestic violence, we used data from the Statistical Office of the Republic of Serbia for the period 2013-2022, as presented in Table 1. The data were collected through individual questionnaires completed by the competent public prosecutor's offices and courts and subsequently processed statistically. We opted to present the results spanning a ten-year period because of our aim to assess the impact of the enactment of the Law on Prevention of Domestic Violence, the subsequent increase in societal awareness regarding the unacceptability and punishability of such behaviour, and, most importantly, the influence this legislation has had on both potential and actual victims of domestic violence.

Table 1. Number of criminal complaints submitted, charges, and convicted persons.

YEAR	Criminal complaints	Charges	PERSONS CONVICTED of domestic violence
2013.	**3782**	**2026**	**1532**
2014.	**3642**	**1309**	**1712**
2015.	**5040**	**1837**	**1778**
2016.	**7244**	**2386**	**2065**
2017.	**7759**	**3077**	**2713**
2018.	**7916**	**3385**	**2974**
2019.	**7308**	**2984**	**2627**
2020.	**5932**	**2729**	**2337**
2021.	**5663**	**2621**	**2230**
2022.	**5531**	**2398**	**2021**

As shown in Table 1, the number of criminal complaints for domestic violence remains consistently high each year. This statistic, when considered in isolation, suggests that domestic violence is becoming in-

creasingly prevalent and is reaching alarming levels. The data show that the peak in complaints occurred during the period of active efforts to pass the Law on Prevention of Domestic Violence and immediately after its implementation. This increase may also reflect that, unlike in the past, victims are now more empowered to report domestic violence, feel less obliged to endure any type of abuse, and trust that the competent authorities are ready to offer protection. Moreover, society's efforts to combat domestic violence are now more visible than ever through the channels of mass communication, which encourage victims to report domestic violence more freely. However, it is crucial to acknowledge and not overlook the fact that a significant "dark figure" of domestic violence persists, despite victims' growing awareness of the improved protection available from competent entities. The increase in the number of criminal complaints has undoubtedly been influenced by the activities of the Victimology Society of Serbia, the Autonomous Women's Centre, the SOS helpline for domestic violence, the Counseling Against Family Violence centre, the Safe House for women, and other similar organisations. Data from the last five years of the observed period show a slight decrease in the number of criminal complaints. This is encouraging and should serve as motivation for the competent authorities, as it indicates that the comprehensive efforts of both the authorities and society against domestic violence are beginning to yield results.

Other statistical indicators relate to the number of charges in relation to the number of criminal complaints. Examining the period in question, we find that this ratio ranges between 40% and 50%. Looking at these data, we can conclude that the activity of public prosecutors in addressing domestic violence is at a satisfactory level. We assume that this data was also influenced by the provisions of the Criminal Procedure Code (2021) and the possibility of reaching a plea agreement between the public prosecutor and the accused. The Criminal Procedure Code allows for plea agreements (bargains) to be made after an investigation order has been issued, either before or after the charge has been filed, and up until the conclusion of the main hearing. This agreement embodies one form of the opportunity principle within Serbia's criminal procedure.

The final column in the table shows the number of persons convicted for domestic violence. Comparing this number with the number of charges reveals that these aspects of criminal policy are at a satisfactory level.

5. Conclusion

Domestic violence is a universal and pervasive issue affecting all societies. This global pathological phenomenon has profound consequences both on an individual and societal level. It ranks among the most severe forms of violence, as it infringes upon the fundamental human rights and freedoms of family members, which includes the right to life, liberty, and security, as well as the right to physical, psychological, and sexual integrity.

Although statistics indicate an increase in domestic violence incidents following the enactment of the Law on Prevention of Domestic Violence (2016), this does not imply that such behaviour was significantly less common in the past. On the contrary, domestic violence was previously often neglected, tolerated, and "swept under the carpet." Unlike today, victims were not encouraged to report such violence, which undoubtedly impacted statistical data, thereby reflecting a substantial "dark figure" of this phenomenon.

From a statistical perspective, domestic violence, as a socially dangerous behaviour, has shown a downward trend in recent years, particularly compared to the period when this form of violence was tolerated and no significant measures were taken to prevent or address it. Not only has the criminal-law protection for victims of domestic violence been strengthened, but society has also taken a significantly more active stance, both ethically, by condemning such behaviour, and procedurally, by implementing a range of measures aimed at preventing and combating this issue.

The exceptionally high percentage of domestic violence incidents resulting in fatalities is particularly concerning, especially given that in the first five months of 2024 nine women in the Republic of Serbia were murdered by their spouses or partners.

Analysis of legal practice reveals that this type of crime is often met with inadequate and delayed responses from the competent state authorities and societal entities, as well as institutions. This is especially true for police intervention units, which frequently downplay the severity of less extreme forms of domestic violence, such as insults, threats, psychological abuse, and insolent and disrespectful behaviour.

Inadequate responses from state authorities and other entities discourage victims from reporting these criminal offences, which leads to feelings of abandonment. Consequently, the lack of reporting may result in centres for social work not providing the necessary support.

Raising societal awareness about all forms of violence against women and domestic violence is crucial for effective prevention. While there has been progress in increasing awareness and combating prejudices, customs, traditions, and practices that reinforce stereotypical views of women's roles, these issues are still deeply entrenched.

By signing and ratifying international agreements, as well as implementing relevant strategies and by-laws, the government assumes both a moral and political obligation to prevent violations of women's human rights within the family, the basic unit of society. In recent years, there has been a concerning rise in cases of domestic violence resulting in fatalities. The victims are most commonly women who had previously suffered abuse from their husbands and had not received adequate protection from law enforcement, centres for social work, or their immediate surroundings.

At the very end, we conclude that while criminal-law protection for victims of domestic violence and societal responses have improved in recent years, this does not necessarily mean that these measures are sufficient or that they ensure greater security for the victims.

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TEORIJSKE OSNOVE EFIKASNOSTI UPOTREBE BEZBEDNOSNIH KAMERA NA VIDNIM DELOVIMA UNIFORME POLICIJSKIH SLUŽBENIKA SA STATUSOM OVLAŠĆENOG SLUŽBENOG LICA

Rezime: Policijske organizacije u Sjedinjenim Američkim Državama i u Evropi u drugoj deceniji 21. veka počele su da opremaju policijske službenike minijaturnim kamerama koje se mogu postaviti na njihovo telo, odnosno na delove uniforme. Ove kamere, policijske organizacije uvode u svoj rad smatrajući da će njihovom upotrebom u određenoj meri rešiti ili smanjiti određene probleme i unaprediti odnose s građanima. Kamere na telu policijskih službenika treba da ostvare preventivni uticaj na policijske službenike i građane, odnosno njihovo odvraćanje od nezakonitog i društveno nepoželjnog ponašanja i postupanja. Ovim uticajem doprinosi se smanjenju nezakonitih postupaka policijskih službenika i nasilja građana nad policijskim službenicima. Pozitivan uticaj kamera na policijske službenike i građane u radu je objašnjen teorijom samosvesti i teorijom odvraćanja. Takođe, u radu su predstavljeni rezultati istraživanja o pozitivnom uticaju kamera na policijske službenike i građane.

Ključne reči: kamere, policijske organizacije, samosvest, odvraćanje, teorije.

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1. **Uvodna razmatranja**

Policijske organizacije u svom radu suočavale su se sa raznim problemima i izazovima, kao što su novi oblici i izvori ugrožavanja bezbednosti, povećana stopa kriminala, ugrožavanje bezbednosti policijskih službenika, nezadovoljavajući odnosi policije i zajednice i slično. U iznalaženju rešenja na manifestovane probleme, policijske organizacije realizovale su brojne programe i projekte prevencije, zatim su uvodile u svoj rad nove metode i sredstva i preduzimale druge mere i radnje. Pojedine aktivnosti, programi i projekti, uprkos uloženom naporu i resursima, nisu dali očekivane rezultate.

U drugoj deceniji 21. veka policijske organizacije bile su suočene sa novim i nerešenim starim problemima koji su uticali na njihov rad. Policijska rukovodstva, u potrazi za odgovorom na ispoljene probleme i izazove, odlučuju da implementiraju u rad kamere na telo policijskih službenika. Kamere postavljene na telo policijskih službenika (u daljem tekstu: kamere) viđene su kao sredstvo za rešavanje određenih ili bitnih problema u policijskom sistemu jedne države.[3]

Prva masovnija implementacija kamera sprovedena je u policijskim organizacijama Sjedinjenih Američkih Država (SAD) posle 2014. godine, podstaknuta građanskim nemirima i protestima usled lišenja života nenaoružanog crnoputog osamnaestogodišnjaka Majkla Brauna (Michael Brown) i dugogodišnjeg nasilja policije nad građanima crne rase[4]. Kamere su tada u SAD predložene kao jedino rešenje za smirivanje građanskih nemira, za sprečavanje nasilja policijskih službenika prema građanima crne rase, neprofesionalno ponašanje i postupanje prema ostalim građanima i u cilju sprečavanja upotrebe neosnovane i prekomerne prinude (Peterson & Lawrence, 2019; Braga et al., 2018; Nowacki & Willits, 2018). Evropske policijske organizacije su za razliku od policije u SAD, implementirale kamere u svoj rad zbog poveća-

[3]U stručnoj literaturi SAD i evropskih država za minijaturne kamere postavljene na uniformi ili delu opreme policijskih službenika koriste se pojmovi „kamere na telu policijskih službenika" ili „telesne kamere". Minijaturne kamere uglavnom se ne postavljaju na telo policijskog službenika, već na deo uniforme ili opreme.

[4] Majkla Brauna lišio je života policijski službenik Daren Vilson (Darren Wilson).

nog nasilja građana nad policijskim službenicima i sve većeg stepena ugroženosti njihove bezbednosti (Lehmann, 2020; Hansen & Backman, 2021; Meyer, 2020). Policija Srbije započela je 1. 9. 2023. godine sa realizacijom pilot-projekta upotebe kamera. Pilot-projekat realizuje se u dve organizacione jedinice saobraćajne policije sa ciljem: dokumentovanja i kontrole rada policijskih službenika; poboljšanja primene zakona i radnog učinka; utvrđivanja osnovanosti pritužbi građana; sprečavanja zloupotrebe i korupcije; unapređenja policijskih poslova i obuke[5]. Rezultati ovog projekta trebalo bi da posluže kao osnov za salgedavanje efekata upotrebe kamera i donošenje odluke o implementaciji kamera u policiju Srbije[6].

Policijske organizacije odlučuju se za implementaciju kamera pretpostavljajući da će se snimanjem interakcije između policijskih službenika i građana ostvariti pozitivan uticaj na njihova ponašanja i postupanja. Od upotrebe kamera očekuje se preventivni uticaj, odnosno odvraćanje policijskih službenika i građana od nezakonitog i društveno nepoželjnog postupanja i ponašanja u cilju smanjenja nezakonitih postupaka policijskih službenika i nasilja građana nad policijskim službenicima (Lum et al., 2020)[7].

Na ovaj način kamere bi imale uticaj na ostvarivanje „civilizacijskog efekta", odnosno na ostvarivanje pozitivnog uticaja na međusobno ponašanje i interakciju policijskih službenika i građana (Katz, et al., 2015). Pozitivna efikasnost ili ostvarivanje „civilizacijskog efekta" kamera na policijske službenike i građane može se objasniti pomoću dve teorije – teorije samosvesti i teorije odvraćanja. Obe teorije govore o tome da policijski službenici i građani obraćaju pažnju na svoje ponašanje kada znaju da se njihova interakcija snima (Peterson & Lawrence, 2019; Lum, et al., 2020; Adams & Mastracci, 2019; Stoughton, 2018; Katz, et al.,

[5] Videti više: http://www.mup.gov.rs/wps/portal/sr/aktuelno/tema/66deb0efae1f-454b-8c26-d9fd95454e40, preuzeto 20. 08. 2023. godine.

[6] Kamere u policiji Srbije koriste policijski službenici koji obavljaju policijske poslove u statusu ovlašćenih službenih lica i primenjuju policijska ovlašćenja, mere i radnje.

[7] Zbog ovakavih očekivanja kamere su u veoma kratkom periodu postale jedna od najbrže usvojenih tehnologija u istoriji moderne policije (Lum et al., 2020).

2015). U nastavku su, zbog značaja ovih teorija, razmatrani osnovi njihove efikasnosti u ostvarivanju preventivnog uticaja na policijske službenike i građane.

2. **Teorija samosvesti i njena osnovanost**

Psiholozi tvrde da ljudi menjaju svoje stavove i ponašanje kada misle da ih drugi posmatraju (Morin, 2011). Kada ljudi postanu svesni da se njihovo ponašanje ili postupci prate u javnosti, počinje proces samosvesti. Samosvest se odnosi na proces fokusiranja pažnje ka sebi ili sposobnost da se postane objekat sopstvene pažnje. Čovek postaje svestan sebe kada razmišlja o iskustvu opažanja i obradi stimulusa (Morin, 2011).

Tokom 70-ih godina prošlog veka Čarls Karver (Charles Carver) realizovao je nekoliko eksperimenata osmišljenih da testiraju ulogu samosvesti u smanjenju agresije. U eksperimentima su učestvovala dva para. Svaki par činila su dva učesnika. Prvi učesnik u paru drugom je postavljao pitanja. Kada drugi učesnik nije znao odgovor na postavljeno pitanje, onda bi prema njemu prvi učesnik primenio silu električnog udara. Prvi učesnik je sâm određivao jačinu električnog udara koja je na skali bila određena od jedan do deset. Karver je otkrio da su učesnici u prostoriji sa ogledalom primenjivali elektrošokove manje jačine nego učesnici u prostoriji bez ogledala. Karver je na osnovu ovih eksperimenata zaključio da je ogledalo povećavalo samosvest, što je zauzvrat smanjilo agresiju (Stoughton, 2018). Kada ljudi postanu svesni da su posmatrani, oni onda prilagođavaju svoje stavove i ponašanje u skladu sa prihvatljivim društvenim ponašanjem ili društveno poželjnim reakcijama (Sproull et al., 1996; Paulhus, 1988).

Rezultati pojedinih istraživanja potvrđuju da povećana samosvest dovodi do društveno poželjnog ponašanja jer pojedinci reaguju na društveno poželjne načine čak i na najmanji znak koji može da ukazuje da su posmatrani (Boyd, Gintis & Bowles, 2010; Burnham & Johnson, 2005; Haley & Fessler, 2005). Stoga samosvest da je osoba posmatrana povećava potrebu za ponašanjem po pravilima. Saznanje da se ponašanje osobe posmatra deluje na njene kognitivne procese koji utiču da

se ponašanje i postupanje odvija u skladu sa propisima i društveno poželjnim i prihvatljivim normama (Ariel, Farrar, & Sutherland, 2015).

Kamere koje koriste policijski službenici imaju ulogu posmatrača treće strane u događaju. One, kao posmatrač, deluju kao stimulus koji pokreće samosvest kod policijskih službenika i građana da se u svom ophođenju i postupanju pridržavaju pravila i propisa o društveno poželjnom ponašanju i radu (Ariel, 2016). Prisustvo treće strane u našem fizičkom svetu utiče na nas da modifikujemo svoje opažanje, motivaciju i na kraju ponašanje. Pored pozitivnih promena u ponašanju policijskih službenika, kamere mogu imati i negativan uticaj na ponašanje i postupanje ovih službenika.

Upotreba kamera od strane policijskih službenika i obaveštavanje građana na početku interakcije da se događaj snima može da utiče na povećanje njihove samosvesti. Povećana samosvest pozitivno utiče na građane da postupaju po zahtevima policijskih službenika i da ne pružaju nikakav otpor jer postoje zabeleženi dokazi. Sa druge strane, povećana samosvest utiče na policijskog službenika da se u ophođenju i postupanju pridržava propisanih pravila i standarda postupanja.

Efekat samosvesti kod policijskih službenika zavisi od toga da li su kamere aktivirane. Ako policijski službenici odluče da ne uključe kamere, izostaće efekat samosvesti a moguće i ponašanje koje je profesionalno i legitimno (Hedberg et al., 2017; Taylor, 2016). Za razliku od policijskih službenika, efekat samosvesti kod građana nastaje u zavisnosti od toga da li su primetili kamere kod policijskih službenika ili su na početku susreta bili upozoreni da se njihova interakcija snima.[8]

Kada su policijski službenici i građani svesni da se njihovo ponašanje i interakcija snimaju, onda se oni pridržavaju pravila ponašanja i postupanja. Postojanje snimka predstavlja dokaz o njihovoj odgovornosti. Tako su obe strane u interakciji svesne ne samo činjenice da su posma-

[8] Preliminarne studije ukazale su da članovi zajednice obično ne primećuju kamere na policijskim službenicima. Ovo je posebno bilo izraženo u početnim fazama projekta implementacije kamera. Na primer u jednom istraživanju samo je 28% anketiranih članova zajednice u roku od mesec dana od interakcije sa policijskim službenicima zapamtilo da je policijski službenik imao na svom telu kameru. Videti više: White, Todak, & Gaub, 2017.

trane, već i mogućih posledica, zbog čega se ponašaju ili postupaju u skladu sa važećim propisima i društvenim normama (Ariel, Farrar, & Sutherland, 2015; Surette, 2005).

Teorija samosvesti govori da saznanje o zabeleženom ponašanju utiče da pojedinac fokusira svoju pažnju na sebe, procenjuje i usklađuje svoje trenutno ponašanje sa prihvatljivim društvenim normama, pravilima i zakonima (Duval & Wicklund, 1972). Osnovna polazišta ove teorije primenljiva su na policijske službenike i građane – učesnike u događaju koji snima kamera. Policijski službenici i građani pod uticajem kamera veruju da će njihovo ponašanje biti sankcionisano ako ne postupaju u skladu sa društvenim normama i operativnim procedurama policijske organizacije (Peterson & Lawrence, 2019).

3. **Teorija odvraćanja i njena osnovanost**

Poreklo većine modernih teorija odvraćanja može se pronaći u radovima pravnih filozofa iz epohe prosvetiteljstva. Bekarija i Bentam (Beccaria & Bentham) tvrdili su da se odvraćanje sastoji iz tri ključna elementa: ozbiljnosti, izvesnosti i brzine kazne. Ovi elementi, posebno izvesnost i brzina kazne, čine osnovu gotovo svih savremenih teorija odvraćanja. Izvesnost kazne proizvod je niza uslovnih verovatnoća, verovatnoće hapšenja i verovatnoće optuženja zbog izvršenog krivičnog dela, verovatnoće osude zbog optužbe za krivično delo i verovatnoće različitih formalnih sankcija zbog osude. Podrška odvraćajućem efektu izvesnosti od kazne odnosi se isključivo na izvesnost privođenja. Prema Naginu, izvesnost privođenja u odnosu na težinu posledice koja sledi efikasnije je sredstvo odvrađanja. Opšta hipoteza odvraćanja govori da na smanjenje kriminalnih aktivnosti utiče povećanje ozbiljnosti, izvesnosti i brzine kažnjavanja (Nagin, Solow, & Lum, 2015).

Rezultati istraživanja iz oblasti ljudskog ponašanja govore da su društveno i moralno neprihvatljive radnje manje verovatne kada je izvesnost straha od krivičnog dela visoka i kada je ozbiljnost kazne značajna. Ovo se posebno odnosi na radnje u vezi sa kriminalom i neredima, jer se posledice privođenja zbog takvog ponašanja doživljavaju kao teške i ljudi jednostavno ne žele da budu uhvaćeni (Nagin, 2013; Ariel, Farrar,

& Sutherland, 2015). Za kaznu se pretpostavlja da će odvratiti budući zločin u meri u kojoj je ona izvesna, brza i dovoljno stroga da nadmaši korist dobijenu izvršenjem zločina. Izvesnost se odnosi na verovatnoću ili rizik od otkrivanja zločina i naknadne kazne. Brzina se odnosi na to koliko se brzo sankcija primenjuje nakon otkrivenog delikta. Ozbiljnost se odnosi na težinu i veličinu kazne (Piquero et al., 2011).

Prema teoriji odvraćanja, mogućnosti za zločin su smanjene kada potencijalni prestupnik veruje da je cena izvršenja zločina veća od njegove koristi (Peterson & Lawrence, 2019). Teorija odvraćanja predviđa da će ljudi poštovati pravila i usvajati društveno prihvatljiva ponašanja kada misle da su posmatrani (Nagin, 2013). Ova teorija polazi od postojanja racionalnog proračuna i svesti. Stoga je malo verovatno da će lica pod dejstvom alkohola ili psihoaktivnih supstanci reagovati na poruke odvraćanja, pretnju privođenjem ili pretnju sankcijom zbog ponašanja koje je snimljeno kamerom. Odvraćanje zahteva racionalnost. Kada su lica u alkoholisanom stanju često im je smanjena uračunljivost i malo je verovatno da će kamere u odnosu na njih imati ulogu odvraćanja (Ariel, 2016).

Kamere mogu da ostvare efekat odvraćanja ukoliko su aktivirane, jer se tada povećava izvesnost straha od mogućih posledica. Kamere utiču na policijske službenike i građane, kao posmatrač, usled čega oni prilagođavaju svoje ponašanje i postupanje nastojeći tako da izbegnu bilo kakvu sankciju (Ariel, Farrar, & Sutherland, 2015).

Odvraćanje podjednako deluje na lica koja bi inače odlučila da počine zločin i na policijske službenike koji bi inače prekršili pravila postupanja. Kamere ostvaruju preventivnu funkciju i prema policijskim službenicima i prema građanima. U slučajevima kada su policijski službenici i građani svesni kamera, oni poštuju pravila jer u suprotnom postoji verovatnoća hapšenja i sankcije. Oba učesnika u događaju postaju svesna ne samo da su posmatrana, već i činjenice o mogućim posledicama usled nepoštovanja pravila i propisa (Ariel, 2016). Kamere mogu da odvrate od nedoličnog ili neprofesionalnog ponašanja i postupanja policijskih službenika i građana samo ako su policijski službenici odvraćeni od zloupotrebe ili nekorišćenja kamera (Stoughton, 2018). Efekat odvraćanja prema građanima može se postići kada oni primete kamere na policijskim službenicima i kada veruju da se njihova interakcija

sa policijskim službenicima snima. U suprotnom kamere kod građana neće proizvesti efekat odvraćanja, jer oni neće biti svesni da se njihova interakcija snima (Farrar & Ariel, 2013).

Teorija odvraćanja nastoji da objasni kako pretnje sankcijama i nametanje sankcija sprečavaju pojavu kriminalnih aktivnosti u društvu. Pretpostavka je da će sankcije odvratiti budući zločin u meri u kojoj je kazna izvesna, brza i dovoljno stroga da nadmaši korist dobijenu izvršenjem zločina. Teorija odvraćanja govori o tome da su mogućnosti za zločin umanjene kada potencijalni prestupnik veruje da je cena izvršenja zločina veća od njegove koristi (Gibbs, 1975; Zimring & Hawkins, 1973). Policijski službenici i članovi zajednice mogu smatrati da se verovatnoća hapšenja i brzog kažnjavanja povećavaju kao rezultat dokaza zabeleženih kamerama usled čega menjaju svoje ponašanje kako bi izbegli ili umanjili moguću kaznu (Peterson & Lawrence, 2019).

4. **Efekti upotrebe kamera**

Posle perioda implementacije kamera u policijske organizacije SAD usledila su brojna istraživanja radi sagledavanja ostvarenih efekata i uticaja kamera na policijske službenike, policijske organizacije, građane i zajednicu. Najveći broj empirijskih istraživanja bio je usmeren na sagledavanje ostvarenih efekata kamera na upotrebu sredstava prinude od strane policijskih službenika, i podnetih pritužbi od strane građana. Efekat upotrebe kamera, kao i kod analiziranja drugih rezultata policijske efikasnosti, sagledavan je na osnovu statističkih pokazatelja. U ovom slučaju razmatrani su statistički pokazatelji o upotrebi sredstava prinude i podnetim pritužbama.

Realizovana istraživanja o efektima kamera ukazala su na veći procenat smanjenja broja podnetih pritužbi. Smanjenje pritužbi od 23% usled korišćenja kamera zabeleženo je u Feniksu, Arizona (Phoenix, Arizona) (Katz et al., 2014), zatim od 87,5% u Rialtu u Kaliforniji (Rialto, California) (Ariel, Farrar, & Sutherland, 2015), od 65% u Orlandu na Floridi (Orlando, Florida) (Jennings, Lynch, & Fridell, 2015) i smanjenje od 11,5% na ostrvu Vajt, Ujedinjeno Kraljevstvo (Wight, United Kingdom) (Ellis, Jenkins, & Smith, 2015).

Prva procena efekata kamera istraživana je 2012. godine u policijskoj upravi Rialto (Kalifornija) i ona je sprovedena u saradnji rukovodstva policijske uprave i Univerziteta u Kembridžu. U ovom istraživanju izvršeno je poređenje dve grupe policijskih službenika koji su u radu koristili kamere i koji nisu koristili kamere u radu. U obuhvaćenom periodu istraživanja zabeleženo je smanjenje od 87,5% podnetih pritužbi. U periodu pre implementacije kamera podnete su 24 pritužbe a samo su tri pritužbe podnete u periodu nakon implementacije kamera. Jedna pritužba je podneta protiv policijskih službenika s kamerama a dve pritužbe su podnete protiv policijskih službenika bez kamera (Ariel, Farrar, & Sutherland, 2015).

U policijskoj upravi Milvokija (Milwaukee) u periodu od oktobra 2015. do decembra 2016. godine realizovano je istraživanje u kome je zabeleženo smanjenje broja podnetih pritužbi za oko 50% (Peterson et al., 2018).

Hedberg, Kac i Čout (Hedberg, Katz and Choate) realizovali su istraživanje u dve policijske stanice u Feniksu. Policijski službenici u policijskim stanicama bili su podeljeni takođe u dve grupe. U svrhu istraživanja korišćeni su podaci iz oko 44.000 događaja. Analizirajući podatke iz događaja zaključeno je da je upotreba kamera uticala na smanjenje pritužbi za oko 62% (Hedberg, Katz, & Choate, 2017).

Veliko istraživanje o efektima kamera realizovano je u Londonu od maja 2014. do aprila 2015. godine. U ovom istraživanju učestvovalo je 814 policijskih službenika koji su koristili kamere u radu i 1.246 policijskih službenika koji nisu koristili kamere u radu. Rezultati ovog istraživanja ukazali su da je 2,55 puta veća verovatnoća da **će** protiv policijskih službenika bez kamera biti podneta pritužba u odnosu na policijske službenike sa kamerama (Owens & Finn, 2018).

Realizovana istraživanja ukazala su, takođe, na smanjenje upotrebe sredstava prinude. U policijskoj upravi Rialto (Kalifornija) o efektima kamera zabeleženo je smanjenje upotrebe sredstava prinude. Upotreba sredstava prinude smanjena je za oko 50% u smenama policijskih službenika koji su koristili kamere u odnosu na smene policijskih službenika koji nisu koristili kamere (Ariel, Farrar, & Sutherland, 2015).

U policijskoj upravi Las Vegasa (Las Vegas) realizovano je nasumično istraživanje u kome je učestvovalo 416 policijskih službenika. U

ovom istraživanju evidentirano je 12,5% manje upotreba sredstava prinude u eksperimentalnoj grupi u odnosu na kontrolnu grupu (Braga et al., 2018)[9]. Takođe, u policijskoj upravi Orlanda (Florida) evidentirano je smanjenje upotrebe sredstava prinude od 8,4% kod eksperimentalne grupe u odnosu na 3,4% kod kontrolne grupe (Jennings et al., 2017). Suprotni ovim istraživanjima jesu rezultati nasumičnog istraživanja iz policijske uprave u Vašingtonu i istraživanja iz policijske uprave u Milvokiju. U istraživanju sprovedenom u policijskoj upravi u Vašingtonu učestvovala su 2.224 policijska službenika a u policijskoj upravi u Milvokiju 504 policijska službenika. Rezultati ovih istraživanja nisu ukazivali na smanjenje upotrebe sredstava prinude kod policijskih službenika koji su koristili kamere u radu (Yokum, Ravishankar, & Coppock, 2019; Peterson, et al., 2018). Istraživanje u Spokejnu (Spokane, Washington) ukazuje da je kod policijskih službenika, koji su nasumično odabrani da koriste kamere, evidentirano smanjenje sredstava prinude tokom petomesečnog perioda upotrebe kamera (od 0,91 do 0,84 događaja mesečno). Nakon završenog istraživanja zabeleženo je povećanje upotrebe sredstava prinude u periodu od pet meseci (od 0,84 do 1,18 događaja mesečno) (Peterson & Lawrence, 2019).

Tokom deset meseci u 2013. godini, sa policijskim službenicima u policijskoj upravi u Mesi (Arizona) realizovano je istraživanje u kome je praćeno postupanje 100 policijskih službenika sa kamerama. Obavljena je analiza 3.700 izveštaja sačinjenih od strane ovih policijskih službenika. Analizom su konstatovane promene u ponašanju policijskih službenika koje su uticale na smanjenje upotrebe sredstava prinude (Ready & Young, 2015).

Rezultati prezentovanih istraživanja ukazali su na pozitivan uticaj kamera na smanjenje upotrebe sredstava prinude i broja podnetih pritužbi. Smanjenje upotrebe sredstava prinude i broja podnetih pritužbi usled primene kamera nastaje kao rezultat promene ponašanja i postupanja policijskih službenika i građana. Policijski službenici i građani, pod uticajem samosvesti, koriguju svoje ponašanje i postupanje kada znaju da se njihova interakcija snima.

[9] Eksperimentalna grupa u radu koristila je kamere, dok kontrolna grupa u radu nije koristila kamere.

Zaključak

Uvođenje kamera u rad predstavlja pokušaj policijskih organizacija da reše svoje određene probleme i unaprede odnose sa građanima u lokalnoj sredini. Upotrebom kamera, policijske organizacije nastoje da ostvare preventivni uticaj na građane i policijske službenike da se uzdrže od nezakonitog, društveno negativnog ponašanja i postupanja.

Minijaturne kamere na telu policijskih službenika predstavljaju tehničko sredstvo koje audio i video dokumentuje postupanje policijskih službenika u određenom događaju. Saznanje da se interakcija policijskih službenika i građana snima preventivno utiče na njihovu svest da usklade svoje ponašanje i postupanje sa zakonskim propisima i prihvatljivim društvenim normama, jer, u suprotnom, slede određene posledice.

O efektima kamera na policijske službenike govore rezultati istraživanja sprovedenih u SAD koji ukazuju da su policijski službenici zahvaljujući kamerama imali manje upotreba sredstava prinude i da je protiv njih podnet manji broj pritužbi. Ostvareni efekti kamera u SAD predstavljaju praktičnu realizaciju teorijskih osnova, teorije samosvesti i teorije odvraćanja zasnovanih na promeni ponašanja policijskih službenika.

Policija Srbije već nekoliko meseci realizuje pilot-projekat upotrebe kamera u dve organizacione jedinice saobraćajne policije. Ostvareni efekti upotrebe kamera i drugi pokazatelji njihove primene treba da posluže rukovodstvu MUP-a u donošenju odluke o implementaciji kamera.

Bez obzira na ostvarene efekte u radu policije, kamere ne smeju postati glavno sredstvo u rešavanju problema policijske organizacije. Obuke i edukacije treba da budu pokretači promena svesti kod policijskih službenika, one vode ka većoj profesionalizaciji. Kamere tada treba da imaju sporednu ulogu koja u manjoj meri doprinosi ostvarenju ciljeva policijske organizacije.

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EFFECTIVENESS OF THE USE OF BODY-WORN CAMERAS BY POLICE OFFICERS: THEORETICAL GROUNDS

Abstract: In the 2010s, law enforcement agencies in the U.S.A and Europe began to equip police officers with miniature cameras that can be placed on their bodies, i.e. on their uniforms. These cameras were introduced with the belief that their use will solve or reduce certain problems and improve relations with citizens. Body-worn cameras are supposed to have a preventive effect on police officers and citizens alike, deter them from illegal and socially undesirable actions. This paper argues that the positive impact of bodycams can be explained by the self-awareness and deterrence theory. The paper also presents the results of a study on the positive impact of bodycams on police officers and citizens.

Keywords: bodycams, law enforcement, self-awareness, deterrence, theories

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1. Introductory Remarks

Ever since their establishment, law enforcement agencies have had to cope with various problems and challenges, such as new forms and sources of security threats, increased crime rates, threats to the security of police officers, unsatisfactory relations between the police and the community, etc. To resolve these problems, law enforcement agencies have implemented numerous prevention programs and projects, introduced new methods and resources, and other measures and actions. Certain activities, programs and projects, despite the effort and resources invested, did not produce the expected results.

In the 2010s, law enforcement agencies were faced with both new and unresolved old problems that affected their work. One of the proposed solutions was to introduce body cameras worn by police officers. These police body cameras (hereinafter: bodycams) were seen as a means to solve specific and/or major challenges in the state police system.[3]

The first mass implementation of cameras was in the U.S. law enforcement agencies after 2014. This decision was prompted by civil unrest and protests following the killing of an unarmed Black teenager Michael Brown and long-term police violence against black citizens. At the time, bodycams were proclaimed as the only solution to calm the civil unrest, prevent violence by police officers against black citizens, unprofessional behavior and treatment of other citizens, and the use of unfounded and excessive coercion (Peterson & Lawrence, 2019; Braga et al., 2018; Nowacki & Willits, 2018). Law enforcement agencies in Europe, however, have implemented bodycams because acts of violence by citizens against police officers were on the rise (Lehmann, 2020; Hansen & Backman, 2021; Meyer, 2020). On September 1, 2023, the Serbian Police began implementing the pilot project for the use of bodycams. The pilot project is implemented in two organizational units of the traffic police with the aim of documenting and controlling the work of police officers,

[3] In the U.S. and European literature, the terms "cameras worn on the body of police officers" or "body cameras" are used for miniature cameras placed on the uniform or part of the equipment of police officers. As a rule, miniature cameras are not pinned directly on the torso, but on a piece of uniform or equipment.

improvements in law enforcement and work performance, determining the validity of citizens' complaints, prevention of abuse and corruption, and improvement of police work and training. The results of this project should serve as a basis for evaluating the effects of the use of bodycams and making a decision on the implementation of bodycams in the Serbian police[4].

Law enforcement agencies made the decision to implement bodycams assuming that recording interactions between police officers and citizens will have a positive impact on their behavior and actions. Bodycams were expected to have a preventive effect, i.e., to deter both police officers and citizens from illegal and socially undesirable actions and behavior (Lum et al., 2020)[5].

Bodycams would thus contribute to the civilizing effect", i.e., achieving a positive impact on the interactions between police officers and citizens (Katz, et al., 2015). The civilizing effect" of bodycams can be explained by two theories - the theory of self-awareness and the theory of deterrence. Both theories suggest that police officers and citizens pay attention to their behavior when they know their interactions are being recorded (Peterson & Lawrence, 2019; Lum, et al., 2020; Adams & Mastracci, 2019; Stoughton, 2018; Katz, et al. al., 2015). In the following sections, we will discuss the reasons for their effectiveness in achieving a preventive effect on police officers and citizens.

2. **The Self-Awareness Theory and Its Grounds**

Psychologists argue that people change their attitudes and behavior when they think others are watching them (Morin, 2011). When people become aware that their behavior or actions are being watched in public, the process of self-awareness begins. Self-awareness refers to the process of focusing attention on oneself or the ability to become the

[4] In Serbia, bodycams are mostly worn by police officers who perform police duties and exert police authority.

[5] Due to their expected effects, bodycams became the most rapidly adopted technological advancement in modern police history (Lum et al., 2020).

object of one's own attention. One becomes self-aware when one reflects on the perceptual experience and processing of stimuli (Morin, 2011).

During the 1970s, Charles Carver conducted several experiments designed to test the role of self-awareness in reducing aggression. The participants were organized in pairs, each pair consisting of two participants. The first participant posed questions to the second participant. When the second participant did not know the answer to the question, the first participant would punish him or her with an electric shock. The first participant could determine the strength of the electric shock on a scale from one to ten. Carver found that the participants in the room with the mirror administered lower-intensity electric shocks than participants in the room without the mirror. Based on these experiments, Carver concluded that the mirror increased self-awareness, which in turn decreased aggression (Stoughton, 2018). When people become aware that they are being watched, they then adjust their attitudes and behavior in accordance with acceptable social behavior or socially desirable reactions (Sproull et al., 1996; Paulhus, 1988).

The results of some studies confirm that increased self-awareness leads to socially desirable behavior because individuals react in socially desirable ways to even the smallest sign that may indicate that they are being watched (Boyd, Gintis & Bowles, 2010; Burnham & Johnson, 2005; Haley & Fessler, 2005). Therefore, self-awareness increases the need to behave according to the rules. Knowing that a person's behavior is being observed affects their cognitive processes that influence behavior and actions to be in accordance with regulations and socially desirable and acceptable norms (Ariel, Farrar, & Sutherland, 2015).

Police bodycams have the role of a third-party observer in the event. They act as a stimulus that triggers self-awareness among police officers and citizens to adhere to the rules and regulations on socially desirable behavior (Ariel, 2016). The presence of a third party in our physical world modifies our perception, motivation, and ultimately behavior. In addition to positive changes in the behavior of police officers, bodycams can also have a negative impact on the behavior and actions of these officers.

The use of bodycams and informing citizens at the beginning of the interaction that the event is being recorded can have the effect of increasing their self-awareness. Increased self-awareness positively influences citizens to act according to the requests of police officers and not to offer any resistance because there is recorded evidence. On the other hand, increased self-awareness influences the police officer to adhere to the prescribed rules and standards of behavior in his behavior and actions.

The self-awareness effect of police officers depends on whether bodycams are activated. If police officers decide not to turn them on, the effect of self-awareness will be lost, and thus professional and legitimate actions on the part of the police may not be in evidence (Hedberg et al., 2017; Taylor, 2016). The effect of self-awareness among citizens, however, arises depending on whether they noticed the bodycams or were warned at the beginning of the encounter that their interaction was being recorded.[6]

When police officers and citizens are aware that their behavior and interactions are being recorded, then they adhere to the rules of conduct and behavior. The existence of the video recording is proof of their responsibility. Thus, both parties in the interaction are aware not only of the fact that they are being observed, but also of the possible consequences, which is why they behave or act in accordance with valid regulations and social norms (Ariel, Farrar, & Sutherland, 2015; Surette, 2005).

The theory of self-awareness states that knowledge of recorded behavior influences an individual to focus their attention on themselves, evaluate and align their behavior with acceptable social norms, rules and laws (Duval & Wicklund, 1972). The basic premises of this theory are applicable to police officers and citizens - participants in the event recorded by the bodycams. When bodycams are present, police officers and citizens believe that their behavior will be punishable by law if they

[6] Preliminary studies have indicated that community members usually do not notice bodycams on police officers. This was particularly pronounced in the initial stages of the camera implementation project. For example, in one study, only 28% of surveyed community members remembered that the police officer had a body cam within a month of interacting with the police. See more: White, Todak, & Gaub, 2017.

do not act in accordance with social norms and operational procedures of the police organization (Peterson & Lawrence, 2019).

3. The Deterrence Theory and Its Grounds

The origins of most modern theories of deterrence may be found in the works of law philosophers of the Enlightenment Era. Beccaria & Bentham argued that deterrence consists of three key elements: severity, certainty, and speed of punishment. These elements, especially the certainty and speed of punishment, form the basis of almost all modern deterrence theories. The certainty of punishment is the product of a series of conditional probabilities: probability of arrest and of being charged for the crime committed, probability of conviction for the criminal charge, and probability of various formal sanctions for the conviction. The deterrent effect of the certainty of punishment depends exclusively on the certainty of arrest. According to Nagin, the certainty of apprehension/arrest relative to the severity of the consequences is a more effective deterrent. The general deterrence hypothesis states that a reduction in criminal activity is influenced by an increase in the severity, certainty, and speed of punishment (Nagin, Solow, & Lum, 2015).

The results of research in the field of human behavior show that socially and morally unacceptable actions are less likely when the fear of a criminal offense is high and when the severity of the punishment is significant. This is especially true for acts related to criminal offence and disorderly conduct, as the consequences of being apprehended for such behavior are perceived as severe and people simply want to avoid being caught (Nagin, 2013; Ariel, Farrar, & Sutherland, 2015). Punishment is presumed to deter future crime to the extent that it is certain, swift, and severe enough to outweigh the benefit derived from perpetrating the crime. Certainty refers to the likelihood or risk of detection of a crime and subsequent punishment. Speed refers to how quickly a sanction is applied after an offense is detected. Severity refers to the harshness and degree of punishment (Piquero et al., 2011).

According to deterrence theory, crime is reduced when a potential offender believes that the cost of committing a crime is greater than its benefits (Peterson & Lawrence, 2019). Deterrence theory predicts that people will follow rules and adopt socially acceptable behaviors when they think they are being watched (Nagin, 2013). This theory presumes the existence of rational thinking and awareness. Therefore, persons under the influence of alcohol or psychoactive substances are unlikely to respond to messages of deterrence, the threat of arrest, or threat of sanctions for behavior caught on camera. Deterrence requires rationality. When people are in an intoxicated state, their judgment is often reduced, and it is unlikely that cameras will play a deterrent role (Ariel, 2016).

Cameras can have a deterrent effect if they are activated, because then the certainty of fear of possible consequences increases. Body cameras affect police officers and citizens; they adjust their behavior and actions in an effort to avoid any sanctions (Ariel, Farrar, & Sutherland, 2015).

Deterrence works equally on persons who would otherwise decide to commit a crime and on police officers who would otherwise violate the rules of conduct. Bodycams perform a preventive function for both police officers and citizens. In cases where police officers and citizens are aware of the existence of bodycams, they follow the rules because otherwise there is a likelihood of arrest and sanctions. Both participants in the event become aware not only of being observed, but also of the fact of possible consequences due to non-compliance with rules and regulations (Ariel, 2016). Bodycams can only deter inappropriate or unprofessional behavior and actions by police officers and citizens only if police officers are warned against misusing or not using bodycams (Stoughton, 2018). A deterrent effect on citizens can be achieved when they notice body cameras on police officers and believe that their interactions with police officers are being recorded. Otherwise, bodycams will not produce a deterrent effect on citizens, because they will not be aware that the interaction is being recorded (Farrar & Ariel, 2013).

Deterrence theory seeks to explain how the threat of sanctions and the imposition of sanctions prevent crime in a community. It is assumed that sanctions will deter future crime if the punishment is certain, swift, and severe enough to outweigh the benefit obtained from committing

the crime. Deterrence theory states that opportunities for crime are reduced when a potential offender believes that the cost of committing a crime is greater than the benefits (Gibbs, 1975; Zimring & Hawkins, 1973). Police officers and community members may perceive the likelihood of arrest and swift punishment to increase because of body camera evidence, causing them to change their behavior to avoid or minimize possible punishment (Peterson & Lawrence, 2019).

4. **Bodycam Effects**

After the period of implementation of cameras in US law enforcement agencies, many studies were done to assess the achieved effects and impact of bodycams on police officers, law enforcement, citizens and the community. The largest number of empirical studies examined the effects of bodycams on the use of coercion by police officers, and complaints submitted by citizens. These effects were analyzed using statistics.

The studies indicated that the number of complaints submitted was reduced: a 23% reduction in complaints due to the use of bodycams was reported in Phoenix, Arizona (Katz et al., 2014), 87.5% reduction in Rialto, California (Ariel, Farrar, & Sutherland , 2015), 65% in Orlando, Florida (Jennings, Lynch, & Fridell, 2015) and 1.5% in the Isle of Wight, United Kingdom (Ellis, Jenkins, & Smith, 2015).

The first evaluation of the effects of the cameras was done in 2012 at the Rialto Police Department (CA), in collaboration with the University of Cambridge. This study compared two groups of police officers: one group used bodycams and the other did not. The number of complaints decreased by 87.5%: before bodycams were implemented, there were 24 complaints, and after the implementation, only three complaints were submitted. One complaint was filed against police officers with bodycams and two complaints were filed against police officers without bodycams (Ariel, Farrar, & Sutherland, 2015).

Milwaukee Police Dept. participated in a study from October 2015 to December 2016, which revealed that the number of complaints decreased by about 50% (Peterson et al., 2018).

Hedberg et al. conducted a study in two police stations in Phoenix. Police officers were also divided into two groups. Data from around 44,000 events were used for the purpose of the research. It was concluded that the use of cameras reduced complaints by about 62% (Hedberg, Katz, & Choate, 2017).

A major survey on the effects of bodycams was carried out in London from May 2014 to April 2015. 814 police officers who used bodycams and 1,246 police officers who did not participated in this research. The results of this research indicated that police officers without bodycams were 2.55 times more likely to have a complaint filed against them, compared to police officers with bodycams (Owens & Finn, 2018).

The research also showed a decrease in coercion, e.g., the Rialto Police Department noted that coercion decreased by about 50% among police officers who used bodycams (Ariel, Farrar, & Sutherland, 2015).

A random survey of 416 police officers was conducted in the Las Vegas Police Department. In this research, there was 12.5% less coercion in the experimental group compared to the control group (Braga et al., 2018)[7]. In the Orlando (Florida) police department, there was 8.4% less coercion in the experimental group compared to 3.4% in the control group (Jennings et al., 2017). Contrary to these studies are the results of a random survey from the Washington Police Department and a survey from the Milwaukee Police Department. 2,224 police officers participated in the research conducted in the Washington Police Department and 504 police officers in the Milwaukee Police Department. The results of these studies did not indicate a reduction in the use of coercion among police officers who used bodycams (Yokum, Ravishankar, & Coppock, 2019; Peterson, et al., 2018). A study carried out in Spokane, Washington, showed that police officers who were randomly selected to use body cameras used coercion less frequently over a five-month period (from 0.91 to 0.84 events per month). After the research was completed, an increase in the use of coercion was noted over a period of five months (from 0.84 to 1.18 events per month) (Peterson & Lawrence, 2019).

During ten months in 2013, a study was conducted in Mesa (Arizona), in which the behavior of 100 police officers with bodycams was

[7] The experimental group used bodycams, the control group did not.

monitored. An analysis of 3,700 reports made by these police officers was carried out. The analysis revealed changes in the behavior of police officers that influenced the decrease in coercion (Ready & Young, 2015).

The results of the presented studies showed the positive impact of bodycams on the use of coercion and the number of complaints filed. This is due to changed behavior and actions of police officers and citizens. Police officers and citizens, under the influence of self-awareness, correct their behavior and actions when they know that their interactions are being recorded.

5. **Conclusion**

The use of bodycams is an attempt by law enforcement agencies to solve their specific challenges and improve relations with citizens in the community. By using bodycams, law enforcement agencies have been trying to exert a preventive influence on citizens and police officers to refrain from illegal, socially negative behavior and actions.

Body worn police cameras document the actions of police officers during interactions with the community. The knowledge that the interaction of police officers and citizens is being recorded affects their awareness, motivating them to harmonize their actions with legal regulations and acceptable social norms in order to avoid consequences.

The effects of bodycams have been examined in numerous studies conducted in the USA, which show that police officers used coercion less and that fewer complaints were filed against them. The theory of self-awareness and the theory of deterrence have thus been proven by empirical evidence.

The Serbian Police has been implementing a pilot project for the use of bodycams in two traffic police units for several months. The effects of their use should be useful to the Ministry of Interior in deciding whether to implement bodycams.

Regardless of the achieved effects in the work of the police, bodycams must not become the main tool in solving the problems of the police organization. Training and education should be the drivers of

change among police officers and lead to more professionalism. Body-cams would then have a secondary role and contribute to a lesser extent to effective police work.

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KRIVIČNO DELO IZAZIVANJE NACIONALNE, RASNE I VERSKE MRŽNJE I NETRPELJIVOSTI U SVETLU PRAVA NA SLOBODU GOVORA

Rezime: Rad je posvećen analizi inkriminacije izazivanje nacionalne, rasne i verske mržnje i netrpeljivosti iz čl. 317 Krivičnog zakonika RS. Fokus analize je usmeren na odnos sa garancijama u pogledu slobode govora, imajući u vidu da se u savremeno doba u širokim uporednopravnim okvirima krivični progon koristi kao jedno od sredstava za suzbijanje govora mržnje. Iako postoje situacije u kojima je nužno krivično gonjenje onih koji se pežorativno i neprijateljski izražavaju o pripadnicima različitih nacionalnih, rasnih i verskih grupa, istovremeno se ne sme zaboraviti da ekstenzivno ograničavanje slobode izražavanja nije prihvatiljivo u društvu zasnovanom na vladavini prava i demokratskoj kulturi. Autor je takođe nastojao da ukaže na ključne zaključke iz prakse Evropskog suda za ljudska prava u vezi sa sankcionisanjem govora mržnje. U radu su korišćeni normativno-logički i komparativno-pravni metod a cilj rada jeste da se ispita usklađenost domaćih pozitivnopravnih rešenja sa internacionalno ustanovljenim standardima.

Ključne reči: krivično delo, govor mržnje, sloboda izražavanja.

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1. Uvodna razmatranja

U savremeno doba svedoci smo enormnog razvoja mogućnosti za izražavanje različitih ideja, uverenja i životnih filozofija. Sa ekspanzijom društvenih mreža i opštom dostupnošću teničkih sredstava za kreiranje i plasiranje raznovrsnih sadržaja, gotovo svako je dobio priliku da svima, koje to interesuje, govori o tome šta misli i oseća. Takođe, neograničene mogućnosti za prenošenje vesti o lokalnim događajima i individualnim sukobima, koji bi inače verovatno prošli neopaženo, povećavaju rizik od pogrešne interpretacije i njome izazvane konfrontacije. Sa druge strane, živimo u eri veličanja ljudskih prava i sloboda, u kojoj se insistira na tome da svako ima pravo da se uvažava njegovo lično dostojanstvo i u kojoj niko ne sme da bude uskraćen u pravima i slobodama usled svojih ličnih svojstava. Logično se postavlja pitanje: kako onemogućiti kakofoniju u kojoj bi oni koji su najglasniji mogli da pozivaju na nepoštovanje i diskriminisanje drugih koji im nisu po volji ili prema kojima gaje različite predrasude? Ni sloboda govora ne bi trebalo da strada, jer vladavina prava, kao ključna civilizcijska tekovina, ne može počivati na cenzuri i ekstenzivnim zabranama.

Kako sve veći broj međunarodnih univerzalnih i regionalnih dokumenata stavlja države pred sve kompleksnije zadatke u pogledu garantovanja ljudskih prava i sloboda, odnosno u pogledu zabrane diskriminacije, nemali broj nacionalnih vlasti pribegava uvođenju krivičnih dela putem kojih bi trebalo sperečiti podsticanje na diskriminaciju, mržnju i sukobe među pripadnicima različitih grupa. Ako se stvari posmatraju površno, ovakav pristup deluje kao delotvorno i legitimno rešenje. Ukoliko se, međutim, zagrebe po površini, izbijaju brojni problemi, te se nameće pitanje: da li se uopšte mogu postaviti objektivni kriterijumi na osnovu kojih će se procenjivati o čemu i kako sme da se govori, to jest da li je krivično pravo adekvatno sredstvo za suzbijanje govora mržnje i za podsticanje tolerancije?

Iako se krivično delo izazivanje nacionalne, rasne i verske mržnje i netrpeljivosti iz čl. 317 Krivičnog zakonika RS (2019, skraćeno: KZ) nalazi u grupi krivičnih dela protiv ustavnog uređenja i bezbednosti Republike Srbije, ne bi se moglo osporiti da se suština ovog krivičnog dela

ogleda u diskriminatornim pobudama koje motivišu učinioce, te da ono posredno ugrožava i lična prava i slobode.

Za razumevanje samog bića krivičnog dela neophodno je objasniti pojmove mržnje i netrpeljivosti. Tako se u literaturi ističe da je mržnja jedna od najintenzivnijih negativnih emocija koja se prepliće sa osećanjima poput besa, ljutnje, prezira i gađenja, te da se javlja u situacijama u kojima postupke drugih ocenjujemo kao nepoštene, nemoralne i zlonamerne (Fischer, Halperin, Canetti i Jasini, 2018, str. 310). Sternberg objašnjava da mržnja zapravo ne predstavlja samo jedno osećanje, već da sadrži više komponenti koje se mogu različito manifestovati u različitim situacijama. Mržnja, stoga, može biti iskazana kroz težnju za distanciranjem ili kao strah i ljutnja koji izazivaju potrebu za odbranom, te kroz odlučnost da se omraženi kontinuirano posmatraju i vrednuju kao inferiorni (Sternberg, 2003). Svaka mržnja je zapravo i kontramržnja, to jest reakcija na stvarnu ili umišljenu prethodnu mržnju, što implicira da onaj koji mrzi doživljava sebe kao žrtvu postojanja omrznutog i da veruje da bi sve bilo u redu kada omrznutog ne bi bilo (Delić, 2015, str. 8). Sa druge strane, netrpeljivost je po svom negativnom potencijalu nižeg intenziteta od mržnje (Stojanović, 2006, str. 689). Prezir, pak, ne bi trebalo poistovećivati sa mržnjom i netrpeljivošću jer on podrazumeva negativan stav za koji je karakteristično ignorisanje, ali ne i preduzimanje konkretnih radnji (Stojanović, 2006, str. 690). U srpsko pozitivno krivično zakonodavstvo, izmenama i dopunama KZ iz 2012. godine, uvedena je posebna obavezna otežavajuća okolnost koja se ceni pri odmeravanju kazne i koja se sastoji u tome što je delo učinjeno iz mržnje zbog pripadnosti rasi i veroispovesti, nacionalne ili etničke pripadnosti, pola, seksualne orijentacije ili rodnog identiteta drugog lica (čl. 54a). Time je uvažena činjenica da je vršenje određenih krivičnih dela motivisano mržnjom zasnovanom na predrasudama. Za razliku od ovog pravnog rešenja, kojim se faktički u naše pravo uvode zločini mržnje, kod krivičnog dela izazivanje nacionalne, rasne i verske mržnje i netrpeljivosti poenta nije u tome da se kažnjava zbog toga što je određeno krivično delo, poput nanošenja teških telesnih povreda, učinjeno prema pripadniku manjinske grupe usled mržnje prema grupi. Naime, svrha inkrimnacije iz čl. 317 KZ ogleda se u zabranjivanju postupanja koje odlikuje dominantna namera da se iniciraju ili podstaknu negativna osećanja između pripadnika različitih nacionalnih, verskih i

rasnih grupa. Dakle, u slučaju zločina mržnje učinilac manifestuje sopstvenu mržnju prema grupi lica, dok kod izazivanja nacionalne, rasne i verske mržnje i netrpeljivosti nastoji da podstakne sukobe i naruši manje ili više harmonične odnose. Ovakvim nedozvoljenim ponašanjima podrivaju se i same osnove društvenog i pravnog poretka koji se, shodno Ustavu RS (2006), bazira na vladavini prava, zaštiti nacionalnih manjina, neotuđivosti ljudskih i manjinskih prava, očuvanju ljudskog dostojanstva i zabrani diskriminacije.

Kada su u pitanju verska i rasna pripadnost, razumevanje ovih pojmova ne iziskuje dodatna objašnjenja. Nacionalna pripadnost, odnosno nacija definiše se, pak, na nešto kompleksniji način. Tako zapadnoevropski pristup nacionalnu pripadnost poistovećuje sa državljanstvom, određujući naciju kao skup individua ujedinjenih pod zajedničkim zakonom i zajedničkom skupštinom, dok srednjoevropski pristup državu i naciju ne smatra istovetnim, već nalazi da je nacija zajednica jezika, kulture i istorije, što ne mora da se poklapa sa okvirima države (Lukić, Košutić i Mitrović, 1999, str. 108).

2. Međunarodni dokumenti, krivična dela bazirana na diskriminaciji i govor mržnje

Nesporno je da međunarodni dokumenti sugerišu da su države dužne da suzbijaju mržnju na nacionalnoj, rasnoj, verskoj i drugim sličnim osnovama, odnosno da zabrane ponašanja kojima se mržnja i netrpeljivost rasplamsavaju. Tako Međunarodna konvencija UN o ukidanju svih oblika rasne diskriminacije (1965) u čl. 4 predviđa da države osuđuju svaku propagandu i sve organizacije koje se rukovode idejama ili teorijama zasnovanim na superiornosti neke rase ili grupe lica izvesne boje ili izvesnog etničkog porekla. Države, između ostalog, imaju obavezu da kazne, kao krivično delo, svako širenje ideja zasnovanih na superiornosti ili rasnoj mržnji, svako podsticanje na rasnu diskriminaciju, kao i sva dela nasilja ili podsticanja na nasilje po diskriminatorskim osnovama, te da suzbijaju rasnu diskriminaciju kao svako razlikovanje, organičavanje ili davanje prvenstva pri uživanju prava i sloboda zasnovano na rasnoj pripadnosti i poreklu (čl. 1, tač. 1).

Kada je reč o dokumentima Saveta Evrope posebno je značajna Preporuka o „govoru mržnje“ (1997) čije je usvajanje motivisano težnjom da se suzbiju oblici izražavanja koji raspiruju rasnu mržnju, ksenofobiju, antisemitizam i sve oblike netolerancije, imajući u vidu da oni potkopavaju demokratsku sigurnost, kulturnu povezanost i pluralizam. Načelo br. 2 predviđa da vlade država članica treba da uspostave i održavaju celovit pravni okvir koji se sastoji od odredaba građanskog, krivičnog i upravnog prava o govoru mržnje i koji će omogućavati državnim i sudskim vlastima da u svim slučajevima usklade poštovanje slobode s poštovanjem ljudskog dostojanstva i zaštite ugleda ili prava drugih. U tom cilju, između ostalog, države treba da razmotre načine i sredstva kako bi preispitale postojeći pravni okvir i obezbedile da se on adekvatno primenjuje na nove medije, komunikacione servise i mreže.

Pažnju treba posvetiti i Opštoj preporuci br. 7 Evropske komisije za borbu protiv rasizma i netolerancije, usvojenoj 13. decembra 2002. godine (General Policy Recommendation no. 7 of the European Commission against Racism and Intolerance on national legislation to combat racism and racial discrimination). Preporuka sadrži prikaz ključnih komponenata na kojima bi trebalo da se bazira politika suzbijanja rasizma i rasne diskriminacije. Iako naslov preporuke govori o rasizmu, u tekstu je precizirano da se predložene mere ne odnose samo na rasizam i rasnu diskriminaciju, već i na svako predubeđenje na osnovu kog se iskazuje prezir prema licu ili grupi lica na bazi rase, boje kože, jezika, vere, nacije, nacionalnog ili etničkog porekla, odnosno na bazi koga se licu ili grupi lica pridaju odlike superiornosti. Države se obavezuju da relevantnim zakonskim odredbama penalizuju namerno pozivanje javnosti na nasilje, mržnju ili disrkiminaciju, javno vređenje i klevetanje, kao i iznošenje pretnji ukoliko su zasnovani na rasi, boji, jeziku, veri, naciji, kao i nacionalnom i etničkom poreklu. Pravni sistem treba da pruži mogućnost za primenu delotvornih i proporcionalnih sankcija, što treba da podrazumeva i odgovarajuće sporedne i alternativne sankcije.

Kada je reč o pomenutoj preporuci, treba imati u vidu da ona i te kako naglašava nužnost poštovanja prava na slobodno izražavanje, koje ne sme biti ekstenzivno ograničeno kako bi se olakšalo suzbijanje govora mržnje. Tako načelo br. 3 predviđa da države treba da obezbede da uplitanje u slobodu izražavanja bude usko ograničeno, te da se ograni-

čenje primenjuje na zakonit i nearbitraran način i na bazi objektivnih kriterijuma. Takođe, u duhu tekovina vladavine prava, u slučaju ograničavanja ili onemogućavanja slobode govora o određenim temama mora biti omogućena nezavisna sudska kontrola. Izuzetno je značajno da se ostvari ravnoteža između garantovanja slobode izražavanja i poštovanja ljudskog dostojanstva, odnosno zaštite ugleda ili prava drugih. U tom smislu, načelo br. 4 predviđa da nacionalno zakonodavstvo i praksa država članica treba da omoguće takav kontekst u kome će sudovi zaista biti u mogućnosti da procene da li su manifestovani slučajevi navodnog govora mržnje toliko uvredljivi za pojedince ili grupe da ne zaslužuju obim zaštite koji je inače zagarantovan relevantnim međunarodnim dokumentima. Načelo br. 2 stipuliše da bi na listu mogućih krivičnih sankcija trebalo dodati nalog za obavljanje društveno korisnog rada. Kada je reč o razlozima za favorizovanje društveno korisnog rada, u obrazloženju preporuke se navodi kako praksa ukazuje na to da izricanje kazne zatvora ili novčane kazne licu osuđenom za govor mržnje u mnogim slučajevima zapravo ne rezultira promenom stavova i ideja. Sa druge strane, društveno koristan rad se može prilagoditi potrebama koje proizilaze iz konkretnog delikta, te može obuhvatiti rad u neposrednom interesu grupe lica čija je prava osuđeni ugrozio ili povredio.

Evropska konvencija za zaštitu ljudskih prava i osnovnih sloboda (1950, skraćeno: EKLJP) predstavlja dokument koji se ne sme zaobići kako kada je reč o garantovanju slobode izražavanja, tako i kada je u pitanju zaštita prava i sloboda građana. Tako čl. 10 EKLJP predviđa da svako ima pravo na slobodu izražavanja, što uključuje slobodu mišljenja i slobodu primanja i prenošenja informacija i ideja, bez mešanja javne vlasti. Sa druge strane, čl. 10 EKLJP utvrđuje da uživanje slobode izražavanja istovremeno uključuje i odgovarajuće obaveze i odgovornosti, te da se može podvrgnuti formalnostima, uslovima, ograničenjima ili sankcijama predviđenim zakonom a koje su neophodne u demokratskom društvu u interesu nacionalne sigurnosti, teritorijalnog integriteta ili javne sigurnosti, radi sprečavanja nereda ili zločina, zaštite zdravlja i morala, ugleda ili prava drugih, sprečavanja širenja poverljivih informacija ili u interesu očuvanja autoriteta i nepristrasnosti sudstva.

Sva prava zagarantovana konvencijom, shodno čl. 14 EKLJP, građani uživaju bez diskriminacije po bilo kom osnovu, poput: pola, rase,

boje kože, jezika, veroispovesti, političkog ili drugog mišljenja, nacionalnog ili socijalnog porekla, veze sa nekom nacionalnom manjinom, imovnog stanja, rođenja ili drugog statusa. No član 17 EKLJP predviđa i zabranu zloupotrebe prava tako da se tekst EKLJP ne može tumačiti na način da podrazumeva pravo bilo koje države, grupe ili lica da se upuste u delanje usmereno na poništavanje bilo kog od prava i sloboda ili na njihovo ograničavanje u većoj meri od one koja je predviđena putem EKLJP.

3. Krivično delo izazivanje nacionalne, rasne i verske mržnje i netrpeljivosti u pozitivnom pravu Republike Srbije

Osnovni oblik krivičnog dela izazivanje nacionalne, rasne i verske mržnje i netrpeljivosti iz čl. 317 KZ čini onaj ko izaziva ili raspiruje nacionalnu, rasnu ili versku mržnju ili netrpeljivost među narodima ili etničkim zajednicama u Srbiji, pri čemu je za ovaj oblik dela predviđena kazna zatvora od šest meseci do pet godina. Treba napomenuti da je osnov za inkriminisanje ovog dela dat zapravo i u samom Ustavu RS (2022), imajući u vidu da čl. 49 najvišeg pravnog akta predviđa da je zabranjeno i kažnjivo kako izazivanje, tako i podsticanje rasne, nacionalne, verske ili druge neravnopravnosti, mržnje i netrpeljivosti. Takođe, Zakon o zabrani diskriminacije RS (2021) zabranjuje govor mržnje, to jest izražavanje ideja, informacija i mišljenja kojima se podstiče diskriminacija, mržnja ili nasilje protiv lica ili grupe lica zbog njihovog ličnog svojstva (čl. 11).

Dakle, radnja krivičnog dela se sastoji bilo u izazivanju, bilo u raspirivanju mržnje i netrpeljivosti na nacionalnoj, rasnoj ili verskoj osnovi. Pri tome izazivanje podrazumeva postupanje koje inicijalno stvara negativna osećanja kojih prethodno nije bilo, dok raspirivanje obuhvata podsticanje i jačanje već postojećih negativnih osećanja. Radnja je opredeljena alternativno, što znači da će delo postojati bilo da se produkuje razdor među grupama koje mu inače nisu bile sklone, bilo da se postupa u cilju podsticanja već postojećih tenzija. Bitno je da se mržnja i netrpeljivost stvaraju ili raspiruju među narodima ili etničkim zajednicama koji žive u Srbiji. Kada su u pitanju narodi ili etničke zajednice u Srbiji,

treba konsultovati Zakon o zaštiti prava i sloboda nacionalnih manjina (2018). Naime, shodno čl. 2 ovog zakona, nacionalna manjina je svaka grupa državljana Republike Srbije koja je po brojnosti dovoljno reprezentativna, te pripada nekoj od grupa stanovništva koje su u dugotrajnoj i čvrstoj vezi sa teritorijom Republike Srbije i poseduju obeležja kao što su jezik, kultura, nacionalna ili etnička pripadnost, poreklo ili veroispovest po kojima se razlikuju od većine stanovništva i čiji se pripadnici odlikuju brigom da zajedno održavaju svoj zajednički identitet, uključujući kulturu, tradiciju, jezik ili religiju. Istim zakonom precizirano je da se nacionalnim manjinama smatraju i sve grupe državljana koje se nazivaju ili određuju kao narodi, nacionalne i etničke zajednice, nacionalne i etničke grupe, nacionalnosti i narodnosti a ispunjavaju uslove u pogledu reprezentativnosti i specifičnih zajedničkih obeležja (čl. 2 st. 2).

Osnovni oblik krivičnog dela može izvršiti bilo koje lice bez obzira na pripadnost manjinskoj ili većinskoj grupi, društveni položaj i slično. Delo je dovršeno samim preduzimanjem jedne od alternativno definisanih radnji, s obzirom da nije nužno da su mržnja i netrpeljivost zaista i izazvani ili pak dodatno rasplamsani. Naime, dovoljno je da su radnje podobne da izazovu navedena osećanja među pripadnicima naroda i etničkih zajednica u Srbiji. Ovde i nastaje osnovni problem u vezi sa inkriminacijom koju analiziramo jer se postavlja pitanje: kako proceniti podobnost radnje da izazove ili raspiri mržnju i netrpeljivost? Tako se čini da se ponekad već pežorativno izražavanje o pojedinim pripadnicima nacionalnih, rasnih i verskih grupa smatra dovoljnim za postojanje krivičnog dela. Iako je vređanje na nacionalnoj, rasnoj i verskoj osnovi bez svake sumnje neprihvatljivo ne treba gubiti iz vida to da postoje i druge inkriminacije koje bi mogle obuhvatati različita neprimerena izražavanja poput uvrede ili pak ugrožavanja sigurnosti, ukoliko se uz upotrebu uvredljivih epiteta kod pasivnog subjekta izaziva i strah za ličnu bezbednost. Dakle, treba biti oprezan i sagledati dati životni događaj u njegovom ukupnom kontekstu kako se određenim ličnim sukobima ne bi pridavao širi značaj od onog koji oni realno imaju. Takođe, treba imati u vidu da svaka radnja koja sadrži naznaku elemenata određene provokacije ne bi trebalo da bude izjednačena sa radnjom krivičnog dela izazivanje nacionalne, rasne i verske mržnje i netrpeljivosti. Naime, ne treba smetnuti s uma da se krivično pravo koristi kao poslednje ras-

položivo sredstvo za zaštitu najznačajnijih društvenih vrednosti, kao i to da su krivična dela najopasniji mogući delikti u kaznenom sistemu. Tako Ministarstvo unutrašnjih poslova Srbije (2021) obaveštava javnost da će podneti krivičnu prijavu protiv državljanina Severne Makedonije zbog toga što je u saobraćaju, na teritoriji Niša, spustivši prozor sa mesta suvozača rukama pokazivao simbol dvoglavog orla, čime je „aludirao na nacionalističke simbole". Postavlja se pitanje: da li se navedena radnja, sama po sebi, ali i u ukupnom kontekstu u kome je preduzeta, može smatrati podobnom da izazove ili raspiri mržnju, odnosno da li se u opisanom događaju stiču elementi krivičnog dela za čiji je osnovni oblik propisana zatvorska kazna od šest meseci do pet godina? Jasno je da se ovaj događaj suštinski razlikuje od onog zbog koga je, primera radi, Policijska uprava u Somboru podnela krivičnu prijavu za izazivanje nacionalne, rasne i verske mržnje i netrpeljivosti protiv dva mladića koji su se sumnjičili da su u dva navrata ispisivali grafite i poruke mržnje na Jevrejskoj opštini i romskim kućama u Somboru (MUP, 2011). Situacija postaje i značajno kompleksnija ukoliko je u pitanju izvršenje krivičnog dela putem društvenih mreža, što postaje sve aktuelniji i zastupljeniji problem. I ovde treba voditi računa o tome da li je radnja zaista podobna da izazove i raspiri mržnju i netrpeljivost, pri čemu posebno treba imati u vidu ograničenu ili neograničenu dostupnost objave, status, uticaj i popularnost onoga ko objavljuje, neposrednu temu o kojoj je reč, kao i aktuelne društvene okolnosti u kojima dolazi do plasiranja određenog sadržaja.

Što se tiče oblika krivice, delo podrazumeva umišljaj i to, po prirodi stvari, pre svega direktni. Mišljenja smo da je dovoljan i eventualni umišljaj, to jest da delo postoji i onda kada je učinilac svestan da svojim postupanjem može doprineti disharmoničnim odnosima, pa na to pristaje. Posredni motivi, koji pokreću učinioca, i razlozi zbog kojih on lično gaji negativna osećanja prema pripadnicima određenih grupa nisu od posebnog značaja.

Teži oblik dela postoji ukoliko je delo učinjeno prinudom, zlostavljanjem, ugrožavanjem sigurnosti, izlaganjem poruzi nacionalnih, etničkih ili verskih simbola, oštećenjem tuđih stvari, te skrnavljenjem spomenika, spomen-obeležja ili grobova. U tom slučaju učinilac će se kazniti zatvorom od jedne do osam godina. Pojmove *prinuda*, *zlostav-*

ljanje i *ugrožavanje sigurnosti* treba shvatati onako kako ih KZ inače opredeljuje u svojim odredbama, što se odnosi i na ostale kvalifikovane načine izvršenja krivičnog dela. Sudska praksa i životno iskustvo daju dovoljno jasne kriterijume za prepoznavanje izlaganja poruzi određenih simbola, jednako kao što je jasno šta podrazumeva oštećenje stvari i skrnavljenje predmeta koji se čuvaju sa posebnim pijetetom. Za razliku od osnovnog oblika krivičnog dela koji podrazumeva pre svega verbalno ili simboličko izražavanje, ovaj kvalfikovani oblik bi trebalo da podrazumeva manje problema u praktičnoj implementaciji.

Najteži oblik dela postoji onda kada se osnovni ili kvalifikovani oblik dela preduzima putem zloupotrebe položaja ili ovlašćenja, odnosno ukoliko je usled izvršenja dela došlo do nereda, nasilja ili drugih teških posledica za zajednički život naroda, nacionalnih manjina ili etničkih grupa koje žive u Srbiji, kada će se učinilac kazniti zatvorom od jedne do osam godina, odnosno od dve do deset godina.

4. Praksa Evropskog suda za ljudska prava i govor mržnje

Evropski sud za ljudska prava (skraćeno: ESLJP) iznedrio je veoma bogatu praksu po pitanju sankcionisanja govora mržnje uz istovremeno uvažavanje slobode izražavanja, a uvid u slučajeve iz prakse ove institucije moguće je ostvariti pristupanjem bazi HUDOC (https://hudoc.echr.coe.int). Po pravilu, ESLJP uopšte ne zalazi u pitanja u vezi sa definisanjem bića krivičnih dela kojima se posredno ili neposredno inkriminiše govor mržnje, s obzirom da je propisivanje inkriminacija u suverenoj nadležnosti nacionalnih vlasti, ali se i te kako bavi pitanjem proporcionalnog odnosa između zaštite legitimnih interesa koji bi mogli biti ugroženi govorom mržnje, s jedne strane, i garantovanja slobode izražavanja, s druge strane. Naime, shodno odredbama EKLJP, nesporno je da se mora poštovati sloboda izražavanja jednako kao što je nesporno i da ona može biti ograničena ukoliko je osnov sužavanja precizno propisan zakonom i ukoliko služi zaštiti izvesnih veoma važnih interesa.ESLJP u načelu ne odobrava ekstenzivno ograničavanje slobode izražavanja, jer sloboda iznošenja mišljenja nije ograničena samo na izjašnjavanje o pitanjima o kojima postoji opšti konsenzus, već naprotiv obuhvata i

prezentovanje stavova o uznemiravajućim, pa čak i šokantnim temama čije otvaranje može izazvati uznemirenje javnosti (Gunduz protiv Turske, predstavka br. 35071/97, odluka od 14. juna 2004, §37). Sa druge strane, mora postojati svest o tome da sloboda izražavanje nije neograničena i da se ne može koristiti na način koji dovodi u pitanje ostvarivanje opštih interesa i poštovanje prava drugih lica. ESLJP pri tome ne procenjuje kako će konkretna država opredeliti razloge koji čine legitimnim organičavanje slobode govora, ali i te kako ceni da li je država u ograničavanju sloboda i prava otišla predaleko neosnovano uskraćujući ili sužavajući prava i slobode (Gunduz protiv Turske, §38-41). Tako je u predmetu Gunduz protiv Turske, gde je aplikantu izrečena zatvorska kazna u trajanju od dve godine - zato što je kao predstavnik specifične islamske veske grupe iznosio stavove suprotstavljene postulatima demokratske kulture, ESLJP zaključio da se država oglušila o obavezu poštovanja slobode izražavanja. Naime, u datom slučaju Gunduz je u televizijskoj emisiji, koja je trajala četiri časa, debatovao s različitim sagovornicima, zaključivši pri tome da je tursko državno uređenje u osnovi usmereno na svetogrđe i da je svako ko uvažava demokratske vrednosti nevernik. ESLJP je ustanovio da je tema emisije bila usmerena na diskutovanje i predstavljanje sukobljenih ideja, te da aplikantovo izlaganje, samo po sebi, nije moglo izazvati posebno značajne posledice po državni i društveni poredak niti po prava i slobode građana jednako kao što nije bilo ni usmereno na grubo vređanje bilo koje individualizovane grupe. To što je govornik istakao da se nada da će doći vreme kada Turska neće biti sekularna i demokratska država ne podrazumeva govor usmeren na izazivanje nereda jer on ni u jednom momentu nije propagirao nasilno rušenje postojećeg poretka. Kako je u pitanju bio televizijski sadržaj, osmišljen kao debata predstavnika različitih političkih filozofija, izricanje kazne od dve godine, zbog navodnog govora mržnje, predstavlja kršenje zagarantovanih sloboda.

Zalaganje za slične postulate pronalazimo i u odluci donetoj u predmetu Jersild protiv Danske (predstavka br. 15890/89, odluka od 23. septembra 1994), gde je presuđeno da je država postupila suprotno garancijama o slobodi izražavanja oglasivši novinara krivim za krivično delo koje sadrži govor mržnje i to zbog toga što je intervjuisao mlade pripadnike bande okupljene oko rasističkih ideja i potom pripremio

prilog za televizijsku emisiju. Naime, u višečasovnom televizijskom programu mladići su, između ostalog, iznosili mišljenje o migrantima, kao o osnovnom uzroku različitih društvenih problema u Danskoj. Koristili su vrlo grube i uvredljve izraze. Emisija je bila posvećena tada aktuelnom fenomenu ksenofobije. ESLJP je zauzeo stanovište da je danski sud osnovano osudio pripadnike bande za govor mržnje, ali da je u slučaju novinara krivična osuda bila direktno suprotstavljena slobodi izražavanja proklomovanoj u međunarodnim dokumentima. Naime, mediji treba da se bave različitim temama i stavovima, pri čemu u konkretnom slučaju novinar nije ni na koji način podržao rasističke stavove koji su iznošeni, već je, u skladu sa svojim pozivom, učestvovao u informisanju publike (Jersild protiv Danske, §26–31). Izlaganje različitih mišljenja, pa i predrasuda, bilo je potrebno u cilju upoznavanja sa društvenim problemima kakvi su kriminalno ponašanje mladih i ksenofobija, tako da je novinar zapravo doprineo da stavovi pripadnika određenih grupa izađu na videlo, pa čak i da se razotkrije njihova besmislenost i neutemeljenost.

Kada se rasističke i ksenofobične ideje iznose na način koji se ne može dovesti u vezu sa primerenom diskusijom i skretanjem pažnje na goruće probleme, ESLJP utvrđuje da takvo izražavanje prevazilazi okvire predviđene čl. 10 EKLJP. Tako je u predmetu Kilin protiv Rusije (predstavka br. 10271/12, odluka od 11. maja 2021) ESLJP utvrdio da nema povrede prava na slobodu govora u slučaju kada je podnosilac predstavke uslovno osuđen na 18 meseci zatvora zato što je na društvenoj mreži objavio video-zapis u kom se pežorativno govori o Azerbejdžancima i o navodnoj potrebi da im se Rusi suprotstave. Naime, iako je podnosilac tvrdio, između ostalog, da je snimak bio namenjen umetničkom predstavljanju teme i to za ograničen broj gledalaca na društvenoj mreži, sud je utvrdio da je ovakvo izražavanje moglo služiti prevashodno izazivanju mržnje i sukoba među pripadnicima različitih naroda, te da kao takvo iziskuje penalizovanje. Osim toga, uslovna osuda na 18 meseci zatvora ne predstavlja preterano strogu sankciju za krivično delo takvog nivoa društvene opasnosti.

ESLJP takođe naglašava da, kada je reč o povredi čl. 10 EKLJP, posebno treba imati u vidu kontekst u kome je određeni sadržaj plasiran, odnosno ukupne društvene prilike u kojima postoje ili ne postoje tenzi-

je između pripadnika različitih grupa (Arslan protiv Turske, predstavka br. 23462/94, odluka od 8. jula 1999, §44). Ukoliko u postojećim prilikama u konkretnom nacionalnom okviru već postoje određene tenzije, onda i nacionalne vlasti mogu na rigidniji način ceniti i ograničavati slobodu izražavanja a kako bi zaštitile druge, takođe veoma značajne, društvene vrednosti.

Međutim, treba primetiti da ESLJP u nekim situacijama možda i nije sasvim dosledan u svojim odlukama. Tako, primera radi, u predmetu Arslan protiv Turske, ESLJP konstatuje da iako su u književnom delu aplikanta istaknute određene dominantno negativne ideje o jednom narodu i njegovoj kulturi to, samo po sebi, ne mora biti od posebnog značaja ukoliko se ima u vidu, i pored kompleksnih političkih prilika u Turskoj, da izražavanje kroz knjige po pravilu ne uspeva da dopre do većeg broja čitalaca, kao što to mogu učiniti razne forme izražavanja putem masovnih medija (§48). Ukoliko, uz postojanje ovakve odluke isti sud utvrđuje da iznošenje ksenofobičnih ideja putem profila na društvenoj mreži i to profila otvorenog od strane korisnika koji nije popularna ličnost, kao u predmetu Kilin protiv Rusije, može predstavljati atak na harmonične međunacionalne odnose, čini se da ta institucija možda i ne raspolaže adekvatnim kriterijumima za procenu situacija u kojima je povređena sloboda izražavanja. Treba naglasiti da i u predmetu Terentiev protiv Rusije (predstavka br. 10692/09, odluka od 28. avgusta 2018) ESLJP ističe da sadržaj koji pojedinac objavi na široj javnosti nepoznatom blogu sa ograničenim brojem korisnika nema jednaku težinu kao objave na popularnim internet stranicama, te da države treba da reaguju samo na ozbiljnije slučajeve podsticanja na mržnju.

5. Završna razmatranja

Srbija poštuje međunarodnim dokumetnima ustanovljene obaveze u pogledu sprečavanja govora mržnje, te je, u tom smislu, u pozitivnom krivičnom zakonodavstvu, između ostalog, zastupljeno i krivično delo izazivanje nacionalne, rasne i verske mržnje i netrpeljivosti. Sama inkriminacija je adekvatno osmišljena. Međutim, pri praktičnoj primeni zakona ne treba polaziti od pretpostavke da je svaki oblik neprimerenog

i na predrasudama zasnovanog izražavanja po automatizmu dovoljan za izazivanje i raspirivanje mržnje među narodima i etničkim zajednicama u Srbiji. U vezi sa navedenim treba imati u vidu da je broj osuđujućih presuda za krivično delo iz čl. 317 KZ znatno manji od broja podnetih krivičnih prijava u vezi sa datom inkriminacijom. Tako je, shodno podacima Republičkog zavoda za statistiku Srbije, u 2020. godini krivična prijava podneta protiv 28 lica, dok je svega osam lica oglašeno krivim za izazivanje nacionalne, rasne i verske mržnje i netrpeljivosti. Istaknuto bi moglo da govori u prilog tome da sudovi brižljivo procenjuju koje su radnje realno podobne da izazovu ili rasplamsaju mržnju i netrpeljivost. Istovremeno ne postoje podaci koji bi govorili o tome da li se primenjuju alternativne sankcije koje bi bile značajne s aspekta budućeg tolerantnijeg ponašanja osuđenih iako međunarodni standardi snažno podržavaju njihovu primenu. Ne treba gubiti iz vida ni to da se na diskriminatorno postupanje može reagovati i primenom sredstava iz domena drugih grana pozitivnog prava.

Konačno, posebno je bitno da se u domenu suzbijanja diskriminatornog ponašanja i provociranja sukoba među različitim grupama građana ima u vidu ograničena primenljivost i delotvornost krivičnog prava. Naime, krivično pravo nije pogodno sredstvo za širenje tolerancije, međusobnog razumevanja i kulture uvažavanja različitosti u najširem mogućem smislu. Ove teme iziskuju strateški, kompleksan i pažljivo osmišljen pristup, kao i dugoročno angažovanje velikog broja društvenih aktera među kojima su obrazovni sistem, mediji i predstavnici centralnih i lokalnih vlasti. Krivičnom pravu treba pribegavati samo u slučaju drastičnog ugrožavanja i povređivanja najznačajnijih društvenih vrednosti, odnosno onda kada krivično pravo preostane jedino raspoloživo sredstvo u aresenalu drugih „oružja".

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INCITEMENT OF NATIONAL, RACIAL AND RELIGIOUS HATE AND INTOLERANCE IN THE LIGHT OF THE RIGHT TO FREEDOM OF SPEECH

Abstract: This article examines the criminal offence of instigating national, racial and religious hatred and intolerance as defined in Art. 317 of the Criminal Code of the Republic of Serbia. The analysis will focus on the guarantees regarding freedom of speech, considering the fact that today, in comparative legal frameworks, criminal prosecution is used as one of the means to suppress hate speech. Admittedly, there are situations when it is necessary to prosecute those who speak of members of different national, racial and religious groups in derogatory or hostile terms. However, we must remember that limiting freedom of expression is not acceptable in a society based on the rule of law and democratic culture. The paper emphasizes the essential conclusions drawn from the practice of the European Court of Human Rights regarding the sanctioning of hate speech. Using normative-logical and comparative-legal methods, the aim of this paper is to examine to what extent the national positive legal solutions comply with internationally established standards.

Keywords: criminal offence, hate speech, freedom of expression

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1. Introduction

Today we are witnessing an ever-increasing array of possibilities for expressing different ideas, beliefs and life philosophies. With the expansion of social networks and the general availability of content creation and marketing tools, nearly anyone can talk about what they think and feel to anyone who is interested. Reporting local events and individual conflicts, which would otherwise likely go unnoticed, has become easier than ever, which increasse the risk of misinterpretation and resulting confrontation. On the other hand, we live in an era of glorification of human rights and freedoms, which insists that everyone has the right to personal dignity and no one should be denied rights and freedoms due to their personal characteristics. A logical question follows: how then to prevent the cacophony of voices, where the loudest could call for disrespect and discrimination against those they dislike or hold prejudice against? Freedom of speech should not suffer either, because the rule of law, as a crucial legacy of Western civilization, cannot rest on censorship and extensive bans.

A growing number of international universal and regional legislation demands that nations implement increasingly complex projects and tasks. related to guaranteeing human rights and freedoms, i.e. prohibiting discrimination. Some goverment agencies therefore have introduced criminal offenses that prohibit instigating discrimination, hatred and conflicts between members of different groups. At first glance, this approach seems like an effective and legitimate solution. However, if we scratch the surface, there are many challenges involved. We might ask ourselves, is it possible to have a set of objective criteria upon which to judge what and how it is permissible to speak? In other words, is criminal law is an adequate tool for suppressing hate speech and encouraging tolerance?

The criminal offense of instigating national, racial and religious hatred and intolerance from Art. 317 of the Criminal Code of the RS (2019, abbreviated: CC) belongs to the group of criminal offenses against the constitutional order and security of the Republic of Serbia. Indisputably, however, the essence of this criminal offense is the prejudice that motivate the perpetrators, which indirectly endangers personal rights and freedoms.

In order to understand the essence of this criminal offense, it is necessary to explain the concepts of hatred and intolerance. In the related literature, hatred is described as one of the most intense negative emotions, often intertwined with feelings such as anger, fury, contempt and disgust. It arises in situations where we judge the actions of others as dishonest, immoral and malicious (Fischer, Halperin, Canetti and Jasini, 2018, p. 310). Sternberg explains that hate is not actually one feeling; it contains several components that can manifest differently in different situations. Hate, therefore, can be expressed through the desire to distance oneself, or as fear and anger that cause the need for defense, and through the determination to continuously view and evaluate the hated individuals as inferior (Sternberg, 2003). All hatred is actually counter-hatred or a reaction to real or imaginary previous hatred, which implies that the one who hates perceives himself as a victim of the existence of the hated individual and believes that everything would be fine if the hated individual did not exist (Delić, 2015, p. 8). Intolerance has a lower negative potential than hatred (Stojanović, 2006, p. 689). Contempt, on the other hand, should not be equated with hatred and intolerance because it implies a negative attitude that involves ignoring, but not taking any actions (Stojanović, 2006, p. 690). In the Serbian positive criminal legislation, with amendments to the Criminal Code from 2012, a special mandatory aggravating circumstance was introduced that is assessed when determining the punishment: if the offence was committed out of hatred due to belonging to a certain race, religion, nationality, ethnicity, gender, sexual orientation or gender identity of another person (Art. 54a). This acknowledges the fact that certain criminal offenses are motivated by hatred based on prejudice. Unlike this solution, which introduces hate crimes into national law, the aim of instigating national, racial and religious hatred and intolerance is not to punish because a criminal offense, such as causing serious bodily injury, was committed against a member of a minority group due to hatred of the group. The purpose of this criminal offense (Art. 317 CC) is to prohibit any actions done with the intention to initiate or encourage negative feelings between members of different national, religious and racial groups. Therefore, in the case of a hate crime, the perpetrator manifests his or her own hatred towards a group of persons, while in the case of causing

national, racial and religious hatred and intolerance, he or she tries to incite conflicts and damage more or less harmonious relations. Such illegal behavior undermines the very foundations of the social and legal order, which, according to the RS Constitution (2006), is based on the rule of law, protection of national minorities, inalienability of human and minority rights, preservation of human dignity and prohibition of discrimination.

The concepts of race and religion do not require additional explanations. Nationality, however, has a more complex definition. Thus, the Western European approach equates nationality with citizenship, defining the nation as a set of individuals united under a common law and a common assembly, while the Central European approach does not consider the state and the nation to be the same, but finds that the nation is a community of language, culture and history, which does not necessarily coincide with the framework of the state (Lukić, Košutić and Mitrović, 1999, p. 108).

2. International Documents, Criminal Offenses of Discrimination and Hate Speech

Indisputably, international legal documents stipulate that nations are obliged to suppress hatred based on national, racial, or religious identity and other similar grounds, and prohibit behavior that inflames hatred and intolerance. Article 4 of the UN International Convention on the Elimination of All Forms of Racial Discrimination (1965) stipulates that states condemn all propaganda and all organizations that are guided by ideas or theories based on the superiority of one race or group of persons of a certain skin color or of a certain ethnic origin over another. States are obliged to punish as a criminal offense any instance of dissemination of ideas based on superiority or racial hatred, instigating racial discrimination, and all acts of violence or incitement to violence on discriminatory grounds. States must also suppress racial discrimination as any instance of discriminating or limiting freedoms of individuals or prioritizing the rights and freedoms of one group based on racial identity and background (Article 1, Item 1).

The Recommendation No. R (97) 20 of the Committee of Ministers to member states on "hate speech" (1997) adopted by the Council of Europe is particularly significant in this respect. The adoption was motivated by the desire to suppress all forms of expression which incite racial hatred, xenophobia, anti-Semitism and all forms of intolerance, since they undermine democratic security, cultural cohesion and pluralism. Principle no. 2 stipulates that the governments of the member states should establish or maintain a sound legal framework consisting of civil, criminal and administrative law provisions on hate speech which enable administrative and judicial authorities to reconcile in each case respect for freedom of expression with respect for human dignity and the protection of the reputation or the rights of others. To this end, governments of member states should examine ways and means to review the existing legal framework in order to ensure that it applies in an adequate manner to the various new media and communications services and networks.

General Policy Recommendation no. 7 of the European Commission against Racism and Intolerance on national legislation to combat racism and racial discrimination, adopted on December 13, 2002, is another important document. The recommendation contains an overview of the key components on which the policy of combating racism and racial discrimination should be based. Although the title of the recommendation mentions racism, the text specifies that the proposed measures do not only refer to racism and racial discrimination, but also to any belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons. The state law should penalise the following acts when committed intentionally public incitement to violence, hatred or discrimination, public insults and defamation or threats against a person or a group of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin, when committed intentionally. The law should provide for effective, proportionate and dissuasive sanctions for the abovementioned offences, as well as for ancillary or alternative sanctions.

The ECRI Recommendation also emphasizes that the exercise of freedom of expression, may only be restricted with a view of combating and suppression of hate speech. Principle no. 3 stipulates that states should ensure that interference with freedom of expression is restricted, and that the restrictions are applied in a lawful and non-arbitrary manner and on the basis of objective criteria. Also, in the spirit of the rule of law, in the case of limiting or preventing the freedom of speech on certain topics, independent judicial control must be enabled. It is extremely important to achieve a balance between guaranteeing freedom of expression and respecting human dignity, i.e., protecting the reputation or rights of others. Principle no. 4 foresees that the national legislation and practice of the member states should provide such a context in which the courts will really be able to assess whether the manifested cases of alleged hate speech are so offensive to individuals or groups that they do not deserve the scope of protection otherwise guaranteed by the relevant international documents. Principle no. 2 stipulates that an order to perform community service should be added to the list of possible criminal sanctions. The explanation of the recommendation states that practice indicates that the imposition of a prison sentence or a fine on a person convicted of hate speech in many cases does not actually result in a change of attitudes and ideas. On the other hand, community work can be adapted to the specific offense, and can include work in the immediate interest of a group of persons whose rights the offender threatened or violated.

The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950, abbreviated: ECHR) is an essential document both for guaranteeing freedom of expression and protecting the rights and freedoms of citizens. Art. 10 of the ECHR stipulates that everyone has the right to freedom of expression, which includes freedom of opinion and freedom to receive and transmit information and ideas, without interference by public authorities. On the other hand, Art. 10 establishes that freedom of expression simultaneously includes corresponding obligations and responsibilities, and that it can be subjected to formal conditions, restrictions or sanctions provided by law and which are necessary in a democratic society in the interest of national security, territorial integrity or public safety, in order to prevent

disorder or crimes, protecting health and morals, reputation or rights of others, preventing the dissemination of confidential information or in the interest of preserving the authority and impartiality of the judiciary.

Pursuant to Art. 14 of the ECHR, citizens enjoy all the rights without discrimination on any basis, such as: gender, race, skin color, language, religion, political or other opinion, national or social origin, connection with a national minority, property status, birth or other status. But Article 17 of the ECHR also provides for the prohibition of the abuse of these rights, so the text of the ECHR should be interpreted to imply the right of any state, group or person to engage in actions aimed at nullifying any of the rights and freedoms or restricting them to a greater extent than stipulated by the ECHR.

3. Criminal Offense of Instigating National, Racial and Religious Hatred in Positive Law of the Republic of Serbia

The basic form of the criminal offense is instigating national, racial and religious hatred and intolerance from Art. 317 of the CC is committed by the person who causes or incites national, racial or religious hatred or intolerance among peoples or ethnic communities in Serbia. Thus type of offense is punishable by imprisonment from six months to five years. It should be noted that the basis for criminalizing this act is actually given in the Constitution of the RS (2022). Article 49 of the Constitution stipulates that it is forbidden and punishable both to cause and to incite racial, national, religious or other inequality, hatred and intolerance. The Act on Prohibition of Discrimination of the RS (2021) prohibits hate speech, i.e., expressing ideas, information and opinions that incite discrimination, hatred or violence against a person or group of persons because of their personal characteristics (Art. 11).

Therefore, the action of the criminal offense consists either in provoking or inciting hatred and intolerance on a national, racial or religious basis. At the same time, provoking implies an action that initially creates negative feelings that were previously absent, while inciting includes encouraging and strengthening already existing negative feelings. The action is determined alternatively, which means that the act will exist either to create discord among groups that were otherwise not prone

to it, or to act in order to incite already existing tensions. It is important that hatred and intolerance are created or fueled among peoples or ethnic communities living in Serbia. With regard to ethnic communities in Serbia, the Law on the Protection of the Rights and Freedoms of National Minorities (2018) should be consulted. According to Art. 2 of this law, a national minority is any group of citizens of the Republic of Serbia that is sufficiently representative in terms of numbers, and belongs to one of the population groups that have a long-term and strong relationship with the territory of the Republic of Serbia and possess characteristics such as language, culture, national or ethnic affiliation, origin or religion by which they differ from the majority of the population and whose members are distinguished by their concern to maintain their common identity, including culture, tradition, language or religion. The same law specifies that all groups of citizens who are called or defined as peoples, national and ethnic communities, national and ethnic groups, and meet the requirements regarding representativeness and specific common characteristics are considered national minorities (Art. 2 para. 2).

The basic form of this criminal offense can be committed by any person, regardless of the minority or majority group affiliation, social position, etc. The act is completed by taking one of the alternatively defined actions, since it is not necessary that hatred and intolerance are actually caused or additionally ignited. It is enough that the actions are capable of causing such feelings among members of the people and ethnic communities in Serbia. Then the question arises: how to assess the suitability of an action to cause or incite hatred and intolerance? It seems that sometimes pejorative expressions about individual members of national, racial and religious groups are considered sufficient for the existence of a criminal offense. Although insulting a person on national, racial and religious grounds is without a doubt unacceptable, we should not lose sight of the fact that there are other incriminations that could include various inappropriate expressions such as verbal abude or endangerment of safety, if the object of abuse fears for their personal safety. Therefore, one should be careful and look at a given event in its overall context so that certain personal conflicts are not given a wider importance than the one they actually have. We should bear in mind that any action containing elements of provocation should not be equat-

ed with the criminal offense of inciting national, racial and religious hatred and intolerance. Criminal law is used as the last available means for the protection of the most important social values, as well as that criminal acts are the most dangerous possible offenses in the penal system. Thus, the Ministry of Internal Affairs of Serbia (2021) informed the public that it would file a criminal complaint against a North Macedonia citizen because while driving in a car, in the territory of Nis, he lowered the window from the passenger seat and showed the symbol of the double-headed eagle with his hands, thereby "alluding to nationalist symbols". The question is whether the described event contains the elements of a criminal offense which is punishable by the sentence of up to five years. It is clear that this event is fundamentally different from the one for which, for example, the Police Department in Sombor filed a criminal complaint for inciting national, racial and religious hatred and intolerance against two young men who were suspected of writing graffiti and messages on two occasions of hatred in the Jewish Municipality and Roma houses in Sombor (MUP, 2011). The situation becomes significantly more complex when this offence is committed via social networks, which is becoming a widespread problem. Here, too, the law should take care as to whether the action can really provoke and incite hatred and intolerance. The limited or unlimited availability of the post, the status, influence and popularity of the poster, the immediate topic in question, should be taken into account. as well as the current social circumstances in which certain content is marketed.

As for the form of guilt, the offense implies direct intent and premeditation. We are of the opinion that eventual intent is also sufficient, i.e., that the offense exists even when the perpetrator is aware that their actions may contribute to disharmonious relations, and they still agree to it. Indirect motives, which motivate the perpetrator, and the reasons for which they harbor negative feelings towards members of certain groups are not of particular importance.

A more serious form of offense includes the offense committed by coercion, abuse, endangerment of safety, desecration of national, ethnic or religious symbols, damage to other people's property, and desecration of monuments, memorials or graves. In that case, the perpetrator will be punished with imprisonment from one to eight years. The concepts

of coercion, abuse and endangerment of safety should be understood as defined by the CC, which also applies to other ways of committing a criminal offense. Jurisprudence and life experience provide sufficiently clear criteria for recognizing exposure to the desecration of certain symbols, just as it is clear what damage to property and desecration of objects that are kept with special piety entails. In contrast to the basic form of the criminal offense, which primarily involves verbal or symbolic expression, this qualified form should entail fewer problems in practical implementation.

The most serious form of offense exists when the basic or qualified form of the offense is committed through abuse of position or authority, i.e., if the offense resulted in disorder, violence or other serious consequences for the life of citizens, national minorities or ethnic groups living in Serbia. The perpetrator will be punished with imprisonment from one to eight years, or from two to up to ten years.

4. European Court of Human Rights Practices and Hate Speech

The European Court of Human Rights (abbreviated: ECtHR) has produced a very rich practice in the matter of sanctioning hate speech while respecting freedom of expression, and an insight into cases from the practice of this institution can be obtained by accessing the HUDOC database (https://hudoc.echr.coe.int). As a rule, the ECtHR does not at all go into issues related to the definition of the nature of criminal acts that directly or indirectly incriminate hate speech, given that incrimination is within the sovereign competence of national authorities. It deals with the issue of the proportional relationship between the protection of legitimate interests which could be threatened by hate speech, on the one hand, and the guarantee of freedom of expression, on the other hand. According to the provisions of the ECHR, it is indisputable that freedom of expression must be respected just as it is indisputable that it can be limited if the basis for the restriction is precisely prescribed by law and if it serves to protect certain very important interests. Freedom of expression is not limited only to expressing opinions on issues on which there is a general consensus but includes expressing views on

disturbing and even shocking topics which may cause public anxiety (Gunduz v. Turkey, application no. 35071/97, decision of June 14, 2004, §37). On the other hand, there must be an awareness that freedom of expression is not unlimited and that it cannot be used in a way that calls into question the realization of general interests and respect for the rights of other persons. In doing so, the ECtHR does not evaluate how a specific state will determine the reasons that make it legitimate to restrict freedom of speech, but also how it assesses whether the state in limiting freedoms and rights has gone too far by unjustifiably denying or narrowing rights and freedoms (Gunduz v. Turkey, §38-41). Thus, in the case of Gunduz v. Turkey, where the applicant was sentenced to two years in prison – because, as a representative of a specific Islamic religious group, he expressed views opposed to the principles of democratic culture, the ECtHR concluded that the state ignored the obligation to respect freedom of expression. Gunduz debated with other interlocutors in a television show, which lasted for four hours, concluding that the Turkish state system is basically aimed at sacrilege and that anyone who respects democratic values is an infidel. The ECtHR established that the topic of the show was aimed at discussing and presenting conflicting ideas, and that the applicant's presentation could not cause particularly significant consequences for the state and social order, nor for the rights and freedoms of citizens, just as it was not aimed at gross insult to any individualized group. The fact that the speaker pointed out that he hopes that the time will come when Turkey will not be a secular and democratic state does not imply a speech aimed at causing disorder, because at no point did he propagate the violent overthrow of the existing order. As it was a television content, designed as a debate between representatives of different political philosophies, the imposition of a sentence of two years, due to alleged hate speech, represents a violation of guaranteed freedoms.

Support for similar postulates can also be found in the decision made in the case of Jersild v. Denmark (application no. 15890/89, decision of September 23, 1994), where it was ruled that the state acted contrary to the guarantees of freedom of expression by declaring a journalist guilty of a criminal offense containing hate speech and that because he interviewed young members of a gang gathered around racist

ideas and then prepared an item for a television show. In the multi-hour television program, the young men, among other things, expressed their opinion about migrants, as the root cause of various social problems in Denmark. They used very rude and insulting expressions. The show was dedicated to the current phenomenon of xenophobia. The ECtHR took the position that the Danish court had justified the conviction of the members of the gang for hate speech, but that in the case of the journalist, the criminal conviction was directly opposed to the freedom of expression promulgated in international documents. The media should deal with different topics and attitudes, and in this case the journalist did not in any way support the racist attitudes that were expressed, but, in accordance with his call, participated in informing the audience (Jersild v. Denmark, §26 -31). Exposure of different opinions, including prejudices, was necessary in order to get acquainted with social problems such as criminal behavior of young people and xenophobia, so that the journalist actually contributed to the views of members of certain groups coming to light, and even to exposing their senselessness and groundlessness.

When racist and xenophobic ideas are expressed in a way that cannot be related to an appropriate debate and drawing attention to pressing issues, the ECtHR determines that such expression exceeds the scope provided by Art. 10 ECHR. Thus, in the case of Kilin v. Russia (application no. 10271/12, decision of May 11, 2021), the ECtHR found that there was no violation of the right to freedom of speech in the case where the applicant was sentenced to 18 months in prison for posting on a social network a video in which he speaks pejoratively about Azerbaijanis and the alleged need for the Russians to oppose them. Although the applicant claimed, among other things, that the recording was intended for an artistic presentation of the topic and for a limited number of viewers on the social network, the court determined that such expression could primarily serve to cause hatred and conflict between members of different nations, and that as such requires penalization. In addition, a conditional sentence of 18 months in prison does not represent an overly severe sanction for a crime of such a level of social danger.

The ECtHR also emphasizes that, regarding the violation of Art. 10 of the ECHR, one should especially consider the context in which certain content is placed, i.e. the overall social circumstances in which

there are or are not tensions between members of different groups (Arslan v. Turkey, application no. 23462/94, decision of July 8, 1999, §44). If tensions already exist in the current circumstances within the specific national framework, then the national authorities can value and restrict freedom of expression more rigidly in order to protect other important, social values.

However, we should note that the ECHR may not be completely consistent in its decisions in some situations. In the case of Arslan v. Turkey, the ECtHR stated that although the literary works of the applicant highlighted certain dominantly negative ideas about a nation and its culture, this, in itself, may not be of particular importance in light of the complex political circumstances in Turkey, and that expression via books as a rule fails to reach large audiences, compared to various forms of expression via mass media (§48). In line with this decision, if the ECHR determines that expressing xenophobic ideas via a social network profile not owned by a popular figure, as in the case of Kilin v. Russia, can constitute an attack on harmonious inter-ethnic relations, it seems that that institution it may not have adequate criteria for evaluating situations in which freedom of expression is violated. It should be emphasized that in the Terentiev v. Russia case (application no. 10692/09, decision of August 28, 2018) the ECtHR points out that the content published by an individual on a blog unknown to the general public with a limited number of users does not have the same weight as publications on popular websites, and that states should only react to more serious cases of incitement to hatred.

5. Concluding Remarks

Serbia respects the obligations laid down in international documents regarding the prevention of hate speech. In this respect, positive criminal legislation includes the criminal offense of inciting national, racial and religious hatred and intolerance. The incrimination itself is adequately designed. However, in practice, one should not start from the assumption that any form of inappropriate and prejudice-based expression is automatically sufficient to cause and incite hatred between peoples and ethnic communities in Serbia. Regarding the above, it should

be borne in mind that the number of convictions for criminal offenses arising from Art. 317 of the Criminal Code is significantly lower than the number of filed criminal reports related to the given incrimination. According to the data of the Republic Institute of Statistics of Serbia, in 2020 criminal charges were filed against 28 persons, while only eight persons were found guilty of inciting national, racial and religious hatred and intolerance. This could mean that the courts carefully assess which actions are likely to cause or inflame hatred and intolerance. At the same time, there are no data to show whether alternative sanctions are applied, although international standards strongly support their application. Alternative sanctions would be helpful in developing a more tolerant conduct among offenders. We should not lose sight of the fact that discriminatory behavior can be punished by applying means from the other branches of positive law.

Finally, it is especially important to keep in mind the limited applicability and effectiveness of criminal law in suppressing discriminatory behavior and preventing conflicts among different groups of citizens. Criminal law is not a suitable tool for spreading tolerance, mutual understanding, and respect for diversity in the broadest sense. These topics require a strategic, complex and carefully designed approach, as well as the long-term engagement of many social institutions, including the education system, the media and federal and local governments. Criminal law should used only in case of drastic endangerment and violation of crucial social values, i.e., when criminal law remains the only available weapon in the arsenal.

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KRIVIČNOPRAVNI ASPEKT NEPOSTUPANJA PO SUDSKIM ODLUKAMA „PARNIČNIH“ SUDOVA U VEZI SA KRIVIČNIM DELOM ODUZIMANJE MALOLETNOG LICA – ANALIZA SUDSKE PRAKSE

Rezime: U radu, autor ispituje koja ponašanja predstavljaju radnju izvršenja krivičnog dela oduzimanje maloletnog lica iz čl. 191 st. 1 Krivičnog zakonika Republike Srbije kada roditelji, nakon prestanka zajednice života, samostalno vrše roditeljsko pravo na osnovu odluke „parničnog“ suda i jednom roditelju dete bude povereno, te kada se radi o održavanju ličnih odnosa između roditelja i dece. Pokazano je da i u teoriji postoje suprotstavljena mišljenja u pogledu pojedinih pitanja. Analizom sedam novijih odluka drugostepenih sudova pokazano je da i sudovi imaju suprotne stavove po pojedinim pitanjima u istim ili sličnim životnim situacijama. Početna hipoteza rada je da postoji pravna nesigurnost kada je u pitanju postupanje sudova u vezi sa ovim krivičnim delom, kada se radi o analiziranim situacijama. Korišćen je dogmatsko-normativni metod, te komparativni metod kada su analizirane pojedine sudske odluke koje su upoređene sa relevantnim ranijim odlukama.

Ključne reči: *poveravanje dece, održavanje ličnih odnosa između roditelja i dece, krivičnopravni aspekti, oduzimanje maloletnog lica.*

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1. Uvod

Odnosi između roditelja i dece spadaju u jedne od najvažnijih odnosa u svakom društvu. Iz tog razloga države kroz porodično zakonodavstvo normiraju ove odnose. Međutim, zaštitom ovih odnosa bavi se i krivično pravo, kao „ultima ratio“. U porodičnom zakonodavstvu i teoriji, u skladu sa čl. 1 Konvencije o pravima detata (UN Convention on the Rights of the Child, UN doc. GA/RES/ 44/25 (1989)), termin *dete* koristi se za ljudsko biće koje nije navršilo 18 godina života, ako se zakonom punoletstvo ne stiče ranije, dok Krivični zakonik Republike Srbije koristi izraz *maloletno lice* za lice koje nije navršilo 18 godina. Dakle, ova dva termina su sinonimi i u radu će se koristiti oba, shodno zakonskoj terminologiji. U situacijama kada dođe do prekida zajednice života, bračne ili vanbračne, u kojoj su rođena i deca, nužno dolazi do pitanja, ukoliko ne mogu da postignu sporazum, koji će roditelj vršiti roditeljsko pravo. U tim slučajevima sud svojom odlukom o vršenju roditeljskog prava odlučuje, između ostalog, i o tome kojem će se roditelju poveriti dete i na koji način će se utvrditi način održavanja ličnih odnosa sa drugim roditeljem.

Predmet ovog rada je utvrđivanje na koji način i u kojim situacijama država reaguje krivičnopravno kada lica koja su u obavezi da poštuju odluku „parničnog“ suda o poveravanju dece ili o održavanju ličnih odnosa sa drugim roditeljem to ne čine. Krivično delo oduzimanje maloletnog lica, koje u našoj državi reguliše ove situacije, određeno je čl. 191 Krivičnog zakonika. Cilj rada jeste da se utvrdi koja su to ponašanja koja predstavljaju radnju izvršenja ovog krivičnog dela kako bi se postigla pravna sigurnost, budući da, kako će biti pokazano, sudska praksa beleži kontradiktorne odluke, te da i u teoriji postoje različita shvatanja po određenim pitanjima. U radu su prikazani i statistički podaci Republičkog zavoda za statistiku koji se odnose na broj razvedenih brakova u 2022. godini, te statistika koja se odnosi na broj prijava, optuženja i presuda u 2022. godini za krivično delo oduzimanje maloletnog lica.

2. Krivično delo oduzimanje maloletnog lica

Pre nego što se krene u utvrđivanje sadržine krivičnog dela potrebno je ukratko prikazati koji su to slučajevi kada će „parnični" sud doneti odluku o vršenju roditeljskog prava. Tako „jedan roditelj sam vrši roditeljsko pravo na osnovu odluke suda kada roditelji ne vode zajednički život, a nisu zaključili sporazum o vršenju roditeljskog prava; jedan roditelj sam vrši roditeljsko pravo na osnovu odluke suda kada roditelji ne vode zajednički život, a zaključili su sporazum o zajedničkom ili samostalnom vršenju roditeljskog prava, ali sud proceni da taj sporazum nije u najboljem interesu deteta; jedan roditelj sam vrši roditeljsko pravo na osnovu odluke suda kada roditelji ne vode zajednički život ako zaključe sporazum o samostalnom vršenju roditeljskog prava i ako sud proceni da je taj sporazum u najboljem interesu deteta" (Porodični zakon, čl. 77 st. 3–5). Dok drugu i treću situaciju nije potrebno dodatno analizirati, prva situacija, u kojoj jedan roditelj sam vrši roditeljsko pravo na osnovu odluke suda kada roditelji ne vode zajednički život a nisu zaključili sporazum o vršenju roditeljskog prava, zahteva dodatno objašnjenje iz razloga što obuhvata više mogućnosti koje su sve relevantne za predmetno krivično delo. To bi bili slučajevi kada „[...] su roditelji prekinuli bračnu zajednicu, a nisu se još razveli (faktička separacija), zatim usled prekida zajednice života vanbračnih roditelja, u slučaju da vanbračni roditelji nikad nisu živeli u vanbračnoj zajednici a ne mogu da se saglase o vršenju roditeljskog prava, zatim u slučaju razvoda ili poništaja braka" (Cvejić Jančić, 2009: 319). U svim ovim slučajevima roditeljsko pravo će se vršiti na osnovu odluke suda. Odluka suda mora da bude pravnosnažna i izvršna.[2]

Ilustracije radi, prema Izveštaju Republičkog zavoda za statistiku za 2022. godinu, koji se odnosi na 2022. godinu kao poslednji objavljeni izveštaj, razvedeno je 9.813 brakova, nasuprot 32.821 zaključena braka,

[2] Za izvršnost građanskih sudskih oduka videti više: Šarkić, N. i Vavan, Z. (2021). Postupci izvršenja sudskih odluka u porodičnim odnosima. *Izbor sudske prakse: stručno-informativni časopis*, 2, 17–21; Vavan, Z. (2020). *Izvršenje sudskih odluka iz odnosa roditelja i dece*. Doktorska disertacija. Pravni fakultet Univerziteta Union u Beogradu.

od kojih je razvedenih brakova sa decom 5.151, ili 52,5% od ukupno razvedenih brakova. Kada se ovim brojevima dodaju one vanbračne zajednice sa decom u kojima je zajednica života prestala, o kojima ne postoje precizni podaci, jasno je da se radi o velikom broju slučajeva u kojima će sud morati svojom odlukom da uredi pomenute odnose.

2.1. Oduzimanje maloletnog lica u pozitivnom pravu i teoriji

Krivično delo oduzimanje maloletnog lica u našem krivičnom zakoniku svrstano je u glavu XIX – Krivična dela protiv braka i porodice, prema objektu zaštite za koji naš zakonodavac smatra da je pretežan. Tako se u teoriji krivičnog prava navodi „ovim krivičnim delom se štiti pravo određenih lica da se staraju o maloletnom licu čime se, posredno, po pravilu, štite i interesi maloletnog lica“ (Stojanović, 2020: 633), dok nešto drugačije „propisivanjem ovog krivičnog dela štite se interesi maloletnog lica, o kome su najpre njegovi roditelji pozvani da se staraju, a tek u slučaju da njih nema ili ukoliko su lišeni roditeljskih prava, druga lica (usvojilac, staralac, drugo lice ili ustanova kojoj je maloletno lice povereno)“ (Mrvić Petrović, 2019: 148).

Krivično delo ima dva osnovna oblika i dva teža oblika kojima su dodate određene okolnosti koje ih čine težim. Prvi osnovni oblik čini onaj „ko maloletno lice protivpravno zadrži ili oduzme od roditelja, usvojioca, staraoca ili drugog lica, odnosno ustanove, kojima je ono povereno ili onemogućava izvršenje odluke kojom je maloletno lice povereno određenom licu […]“ (Krivični zakonik, čl. 191 st. 1). Radnja izvršenja ovog osnovnog oblika propisana je alternativno, kao radnja zadržavanja, oduzimanja ili onemogućavanja izvršenja odluke o poveravanju maloletnog lica određenom licu. Lice koje ne postupa po presudi kojom je odlučeno o vršenju roditeljskog prava može preduzimanjem bilo koje od ove tri alternativno određene radnje izvršenja ući u zonu krivične odgovornosti, kako će to biti pokazano.

Čini se da je za predmet ovog rada najznačajnija radnja onemogućavanje izvršenja odluke kojom je maloletno lice povereno određenom licu, pa će ona na prvom mestu biti i analizirana. Onemogućavanje može da bude upereno protiv bilo koje odluke državnog organa kojom se maloletno lice poverava nekome, pa tako, pored sudske presude kojom se

određuje kojem roditelju se poverava dete, i kad organ starateljstva, u okviru svojih nadležnosti, odlučuje upravnim aktom. Za predmet ovog rada od značaja je nepostupanje po sudskoj odluci. Navedeno je da sudska odluka mora da bude izvršna i to „[…] da je valjani izvršni naslov postojao u vreme izvršenja krivičnog dela, čime i nastaje obaveza okrivljenog da maloletno lice preda ovlašćenom licu ili ustanovi. Stoga na postojanje dela nema uticaja okolnost da je po vanrednom pravnom leku (reviziji) bila naknadno ukinuta presuda o dodeli maloletnog lica drugom licu" (Mrvić Petrović, 2019: 150). Suština kod ove radnje izvršenja krivičnog dela jeste da se roditelj kome je dete povereno sudskom presudom sprečava u vršenju svog prava i dužnosti bilo kojom podobnom radnjom, npr. promenom boravka ili skrivanjem maloletnog lica. Na primerima sudske prakse pokazani su neki od načina kako se krivično delo može izvršiti ovom radnjom izvršenja. U teoriji postoji saglasnost o tome da je za ostvarivanje krivičnog dela dovoljno samo preduzimanje radnje, bez obzira da li je bilo s uspehom. Dakle, za postojanje krivičnog dela ovom radnjom izvršenja nije od značaja da je nastupila posledica krivičnog dela.

Radnja zadržavanja, kojom se ostvaruje krivično delo, pretpostavlja da se maloletno lice nalazilo kod roditelja koji preduzima radnju izvršenja krivičnog dela. Njome se maloletno lice sprečava da se vrati kod roditelja kojem je sudskom odlukom povereno da samostalno vrši roditeljsko pravo. „Ono može da se učini svim radnjama kojima se postiže onemogućavanje pasivnog subjekta da bude s onom osobom koja je ovlašćena da se stara o njemu. To uključuje i navođenje maloletnog lica da ostane kod izvršioca ili davanje saglasnosti za takav postupak maloletnog lica" (Mrvić Petrović, 2019: 148). U našoj teoriji sporno je to da li radnja zadržavanja može da se izvrši uz prinudu. Kako navodi Stojanović (Stojanović, 2020: 634), „suprotno shvatanje, prisutno u našoj teoriji i praksi, koje polazi od toga da je prinuda i lišavanje slobode samo sredstvo izvršenja ovog krivičnog dela, nije prihvatljivo. […] u tom slučaju bi oduzimanje maloletnika korišćenjem prinude, ili lišavanjem njegove slobode, bilo privilegovano, za šta ne postoji nijedan razlog". Prema Stojanoviću, postojalo bi zasebno krivično delo prinude.

U teoriji se, takođe, pravi razlikovanje između ovog krivičnog dela i krivičnog dela otmice.[3] „Osnov za razlikovanje je pobuda izvršenja budući da, suprotno otmici, oduzimanje maloletnika nije upravljeno na lišenje slobode kretanja i odlučivanje pasivnog subjekta. […] smatramo da je jedan od ključnih osnova za razlikovanje činjenica da je oduzimanje maloletnika sračunato na dugoročno, čak i trajno zadržavanje pasivnog subjekta, dok je kod opšteg krivičnog dela otmice ovo zadržavanje jednokratno i privremeno“ (Milošević, 2008: 18–19). U teoriji porodičnog prava postoji učenje o otmici dece od strane jednog od roditelja. Navodi se da „savremeni problem koji nastaje povodom vršenja roditeljskog prava, a koji pogađa interes deteta da raste i razvija se uz oba roditelja, javlja se u slučaju otmice dece od strane jednog roditelja, koji dete protivpravno odvodi iz zemlje, sakriva ga od drugog roditelja i onemogućava kontakte deteta i roditelja“ (Cvejić Jančić, 2009: 320). Potrebno je napomenuti da se ovde ne radi o krivičnom delu otmice, već da bi moglo postojati krivično delo oduzimanje maloletnog lica, ukoliko bi bili ispunjeni zakonski uslovi.[4]

Radnja oduzimanja predstavlja aktivnu radnju jednog roditelja čijim se preduzimanjem pasivni subjekt odvodi od roditelja koji samostalno vrši roditeljsko pravo. U delu teorije postoji stav da ne sme biti korišćena prinuda (kao i kod radnje zadržavanja), ali i da ne znači da mora postojati saglasnost maloletnog lica za odvođenje ili zadržavanje. Kada je u pitanju postojanje saglasnosti maloletnog lica za odvođenje ili zadržavanje, u teoriji se smatra da „ako maloletno lice samoinicijativno napusti lice kome je povereno i dobrovoljno boravi kod drugog lica, samim tim nije ostvarena radnja izvršenja. U tom slučaju obično propuštanje da se maloletno lice preda licu kome je povereno, nije dovoljno za postojanje radnje izvršenja, odnosno ne može se smatrati rad-

[3] Videti više: Kovačević, M. (2018) Oduzimanje maloletnog lica i krivičnopravna reakcija. *Zbornik radova pravnog fakulteta u Novom Sadu*, 4, 1731–1746.

[4] O međunarodnoj otmici dece videti više: Stanivuković M. i Đajić S. (2022). Pravo roditelja na povratak u zemlju porekla u svetlu Haške konvencije o građanskopravnim aspektima međunarodne otmice dece i Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda. *Anali pravnog fakulteta u Beogradu*, 1, 123–158; Kovaček Stanić, G. (2012) Porodičnopravni aspekti međuarodne, roditeljske otmice dece. *Anali Pravnog fakulteta u Beogradu*, 2, 74–94.

njom izvršenja" (Stojanović, 2020: 634). Suprotno tome, „krivično delo postoji i onda kada je maloletno lice zadržano s njegovim pristankom i potpunom saglasnošću, pa čak i na njegovu inicijativu (presuda Vrhovnog suda Srbije Kzz. 53/91). U tom slučaju, pri odmeravanju kazne, ove okolnosti mogu da se uzmu kao olakšavajuće okolnosti" (Mrvić Petrović, 2019: 149). Analizom dve novije odluke sada Vrhovnog suda u narednom delu rada utvrđeno je da i najviši sud ima u svojoj praksi u potpunosti suprotne odluke za postojanje saglasnosti maloletnog lica za zadržavanjem, kada je u pitanju postojanje krivičnog dela.

Za postojanje radnji zadržavanja i oduzimanja zajedničko je to što moraju biti preduzete protivpravno. Zakonodavac unosi protivpravnost kao element bića krivičnog dela, što znači – da bi postojalo krivično delo, radnje moraju da budu preduzete protivno zakonskom ovlašćenju, u konkretnom slučaju da ga čini onaj roditelj koji, prema sudskoj odluci, ne vrši samostalno roditeljsko pravo. Kada je u pitanju saglasnost roditelja koji vrši samostalno roditeljsko pravo, u teoriji se smatra da „u tim slučajevima pristanak roditelja kome je dete povereno na staranje da dete duže ostane kod drugog roditelja isključuje protivpravnost radnje krivičnog dela" (Mrvić Petrović, 2019: 149). Kako će biti pokazano na primeru kod analize sudske prakse, ovakav stav teorije je u skladu sa postupanjem sudova. Kazna za ovaj osnovni oblik krivičnog dela je novčana kazna ili zatvor do tri godine.

Drugi osnovni oblik ovog krivičnog dela preduzima onaj „ko onemogućava izvršenje odluke nadležnog organa kojom je određen način održavanja ličnih odnosa maloletnog lica sa roditeljem ili drugim srodnikom" (Krivični zakonik, čl. 191 st. 3). Za preduzimanje radnje izvršenja ovog oblika krivičnog dela važi sve što je navedeno kod prethodnog oblika krivičnog dela. Specifičnost ovog oblika krivičnog dela u odnosu na prethodno odnosi se na to ko može biti učinilac krivičnog dela. Tako ovaj oblik krivičnog dela, iako može da ga izvrši bilo koje lice, najčešće čini onaj roditelj koji je ovlašćen sudskom odlukom da samostalno vrši roditeljsko pravo, a oštećeni krivičnim delom je roditelj koji ne vrši samostalno roditeljsko pravo, ali je sudskom odlukom uređen način održavanja ličnih odnosa između maloletnog lica i njega. Tako dolazimo do posebnosti ovog oblika a to je da se štiti pravo deteta da održava lične odnose sa roditeljem sa kojim ne živi, a koje je određeno čl. 61 Porodič-

nog zakona. Na primerima sudskih odluka u radu je pokazano na koji način roditelj koji samostalno vrši roditeljsko pravo može biti učinilac ovog oblika krivičnog dela. Kazna za ovaj oblik krivičnog dela je novčana kazna ili zatvor do dve godine.

Krivično delo ima dva teža oblika „ako je delo iz stava 1. učinjeno prema novorođenčetu“ (Krivični zakonik, čl. 191 st. 2) i „ako je delo iz stava 1. i 2. učinjeno iz koristoljublja ili drugih niskih pobuda ili je usled dela teže ugroženo zdravlje, vaspitanje ili školovanje maloletnog lica ili je delo učinjeno od strane organizovane kriminalne grupe“ (Krivični zakonik, čl. 191 st. 4). Takođe, propisan je fakultativni osnov za oslobađanje od kazne, u smislu da „učinioca dela iz st. 1, 2. i 4. koji dobrovoljno preda maloletno lice, licu ili ustanovi kojoj je ono povereno ili omogući izvršenje odluke o poveravanju maloletnog lica, sud može osloboditi od kazne“ (Krivični zakonik, čl. 191 st. 5). U st. 6 čl. 191 propisano je da „ako izrekne uslovnu osudu za delo iz st. 1. do 4. ovog člana, sud može odrediti obavezu učiniocu da u određenom roku preda maloletno lice, licu ili ustanovi kojoj je maloletno lice povereno ili omogući izvršenje odluke kojom je maloletno lice povereno određenom licu ili ustanovi, odnosno odluke kojom je određen način održavanja ličnih odnosa maloletnog lica sa roditeljem ili drugim srodnikom“.

3. Oduzimanje maloletnog lica u sudskoj praksi

Analiza određenih sudskih odluka novije prakse koje su upoređene s nekim ranijim odlukama pruža osnova da se bolje shvati na koje sve načine sud tumači ovo krivično delo, budući da sud primenjuje pravo na konkretan slučaj, kao i to da se odredi koje sve radnje mogu da dovedu do krivične odgovornosti. Takođe, analizom odluka sudova dolazi se do uvida u kom stepenu sudovi donose međusobno protivrečne ili saglasne odluke, kao i u kom stepenu je sudska praksa usaglašena sa pravnom doktrinom. Naravno, ova analiza ne predstavlja konačan sud koja su to sve moguća ponašanja koja predstavljaju radnju izvršenja krivičnog dela, ali pruža jasniji uvid na koji način sud tumači i primenjuje ovo krivično delo. Sudske odluke koje su analizirane predstavljaju javno dostupnu sudsku praksu.

Pre same analize pojedinih sudskih odluka, a radi jasnijeg uvida, potrebno je prikazati statističke podatke u pogledu krivičnog dela oduzimanje maloletnog lica. Prema poslednjem dostupnom Biltenu Republičkog zavoda za statistiku „Punoletni učinioci krivičnih dela u Republici Srbiji, 2022. Prijave, optuženja i osude", za krivično delo oduzimanje maloletnog lica prijavljeno je ukupno 304 lica, optuženo je 51 lice, dok je oglašeno krivim za navedeno krivično delo ukupno 37 lica. Protiv dva lica postupak je obustavljen u toku sudskog krivičnog postupka. Od ukupnog broja lica koja su oglašena krivim, dva lica su osuđena na kaznu zatvora od tri do šest meseci, sedam lica je osuđeno na novčanu kaznu, za 27 lica je izrečena uslovna osuda i jedno lice je osuđeno na kaznu rada u javnom interesu.

Vrhovni kasacioni sud odlučivao je presudom Kzz 565/2022 od 01. 06. 2022. godine o zahtevu za zaštitu zakonitosti koji je protiv pravnosnažnih presuda Osnovnog suda u Kraljevu K 13/21 od 24. 11. 2021. godine i Višeg suda u Kraljevu Kž1 18/22 od 22. 02. 2022. godine podneo branilac okrivljenog, zbog povrede krivičnog zakona. Presudom je zahtev za zaštitu zakonitosti odbijen kao neosnovan. Prvostepenom presudom okrivljeni je oglašen krivim zbog izvršenja krivičnog dela oduzimanje maloletnog lica iz čl. 191 st. 1 Krivičnog zakonika i to radnjom onemogućavanja izvršenja presude. Drugostepenom presudom potvrđena je prvostepena presuda. Pravnosnažnom presudom utvrđeno je da je okrivljeni u vremenskom periodu od 20. 04. 2018. godine do 15. 03. 2019. godine onemogućio izvršenje pravnosnažne i izvršne presude Osnovnog suda u Kraljevu P2 463/16 od 19. 10. 2017. godine kojom je vršenje roditeljskog prava povereno majci i to na način što je maloletnog sina zadržao kod sebe, prihvatajući njegovu želju da se ne vrati kod majke. Ovde je zanimljivo primetiti da je sud radnju zadržavanja podveo pod radnju onemogućavanja izvršenja odluke iako radnja zadržavanja predstavlja samostalnu propisanu radnju izvršenja ovog krivičnog dela. Vrhovni kasacioni sud je zaključio da je za zadržavanje a time i onemogućavanje izvršenja sudske odluke dovoljno to što se okrivljeni, kao otac, saglasio sa tim da maloletni boravi kod njega, nakon što je maloletni napustio majku kojoj je povereno vršenje roditeljskog nadzora nad njim. Iz ovog primera jasno proizilazi da je sud obično saglašavanje da maloletno lice boravi kod okrivljenog kvalifikovao kao dovoljno

kako bi se izvršilo ovo krivično delo, što je sporno u delu teorije, kako je pokazano.

Sasvim suprotno mišljenje sadržano je u jednom ranijem rešenju najvišeg suda Srbije. Naime, Vrhovni sud Srbije je u rešenju Kžm 141/2009 od 14. 09. 2009. godine zauzeo stav da nije dovoljno obično propuštanje da se maloletno lice preda licu kojem je povereno kako bi se preduzela radnja izvršenja zadržavanja, odnosno našao je da je potrebno više od običnog saglašavanja za postojanje dela. Vrhovni sud tom prilikom konstatuje da zadržavanje pretpostavlja da učinilac sprečava da se maloletno lice vrati licima koja se o njemu staraju, odnosno odbija da ga preda, te da je maloletno lice dobrovoljno došlo kod učinioca, što nije slučaj. Volja za zadržavanjem maloletnog lica treba da bude ispoljena ili prema maloletnom licu ili prema licu koje ima ovlašćenje da se o njemu stara kroz određene radnje. Ovakav stav Suda poklapa se sa učenjem dela teorije, kako je pokazano.

U sledećoj odluci najvišeg suda Srbije, dakle presudom Vrhovnog kasacionog suda Kzz 257/2022 od 21. 04. 2022. godine usvojen je zahtev za zaštitu zakonitosti branioca okrivljene protiv pravnosnažnih presuda za delo iz st. 3 čl. 191 Krivičnog zakonika, onemogućavanje izvršenja odluke nadležnog organa kojim je određen način održavanja ličnih odnosa maloletnog lica sa roditeljem ili drugim srodnikom. Činjenično stanje je takvo da je okrivljena majka maloletnog lica i da je ona sudskom presudom „parničnog“ suda dobila da vrši samostalno roditeljsko pravo, dok je sa ocem istom odlukom uređen način održavanja ličnih odnosa između njega i maloleletnog lica. Pobijanom presudom okrivljena je oglašena krivom za delo tako što maloletno lice nije predala dedi. Vrhovni kasacioni sud je poništio pravnosnažnu presudu sa obrazloženjem da ne postoji objektivni element krivičnog dela jer presudom, kojom je uređen način održavanja ličnih odnosa, nije ni utvrđeno da se maloletno lice predaje dedi, već da je utvrđen način održavanja ličnih odnosa između maloletne, kao ćerke i oca, te stoga ne postoji ni krivično delo. Za postojanje krivičnog dela potrebno je da je onemogućavanje održavanja ličnih odnosa, u konkretnom slučaju onemogućeno je ocu a ne nekom od drugih srodnika. Iz ove presude vidi se da po stavu najvišeg suda radnja predaje mora da se izvrši licu tačno određenom

sudskom odlukom, da nije dovoljno da je to učinjeno prema nekom drugom licu za koga nije utvrđeno to pravo a koje nastupa umesto lica određenog odlukom.

Naredni primer je relevantan za predmet ovog rada iz razloga što pokazuje stav suda prema vremenu zadržavanja koje je potrebno da bi se izvršilo krivično delo onemogućavanje izvršenja odluke nadležnog organa kojom je određen način održavanja ličnih odnosa maloletnog lica sa roditeljem ili drugim srodnikom. Zanimljivost ovog slučaja je što se odbrana pozivala na delo malog značaja kao osnov za isključenje protivpravnosti krivičnog dela. Naime, „krivično delo je ono delo koje je zakonom predviđeno kao krivično delo, koje je protivpravno i koje je skrivljeno" (Krivični zakonik, čl. 14 st. 1), te protivpravnost predstavlja element krivičnog dela koji se pretpostavlja. Dozvoljeno je utvrđivati da ne postoji element protivpravnosti, kao opšti element krivičnog dela, u kojem slučaju nema ni postojanja krivičnog dela. Delo malog značaja, kao jedan od elemenata koji isključuje protivpravnost krivičnog dela, postoji kada stepen krivice nije visok, ako su štetne posledice odsutne ili neznatne i ako opšta svrha krivičnih sankcija ne zahteva izricanje krivične sankcije" (Krivični zakonik, čl. 18 st. 2) i ako se radi o delima za koje je propisana kazna zatvora do tri godine ili novčana kazna. Tako je drugostepenom presudom Višeg suda u Čačku Kž 81/2022 od 21. 04. 2022. godine utvrđeno da je „prvostepeni sud detaljno cenio sve okolnosti konkretnog slučaja, pre svega da se maloletna deca nalaze pod posebnom zaštitom društvene zajednice, koja im pruža zaštitu uvek kada interesi dece to zahtevaju, a roditelji svoja prava i dužnosti u pogledu staranja, podizanja i vaspitavanja svoje dece ostvaruju u skladu sa potrebama i interesima dece, što znači da se moraju poštovati pravnosnažne presude sudova u pogledu modela viđanja zajedničkog maloletnog deteta, a kada je okrivljeni maloletnog oštećenog zadržao duže od prema presudi dozvoljenog, čime je učinio nešto što je protivpravno, i skrivljeno i time onemogućio izvršenje sudske odluke" (Viši sud u Čačku, 81/2022). Sud je utvrdio da dužina zadržavanja nije relevantna za postojanje krivičnog dela, već da je standard najboljeg interesa maloletnog deteta prekršen radnjom okrivljenog, te da se ne može raditi o delu malog značaja. U ovom slučaju, prema oceni suda, postoji krivično delo.

Nasuprot prethodnom primeru pokazaćemo u potpunosti drugačiji stav Apelacionog suda u Beogradu u presudi Kž1 5368/2012 od 31. 10. 2012. godine, svojom nešto ranijom odlukom, po identičnom pitanju. U odluci, ovaj sud je utvrdio da je otac svoju maloletnu decu zadržao dan duže u odnosu na vreme koje je utvrđeno pravnosnažnom sudskom odlukom, te da ne postoji krivično delo oduzimanje maloletnog lica u vezi sa vršenjem roditeljskog prava jer po maloletnu decu nije nastupila štetna posledica. Sud je našao da je zakonski zastupnik maloletnih oštećenih „[…] krivičnu prijavu protiv okrivljenog podnela 1. 9. 2011. godine, dakle osam dana od dana kada joj je okrivljeni trebao da vrati decu, da zbog nevraćanja dece nije kontaktirala ni policiju, ni centar za socijalni rad, da je, kako je sama navela, već 27. 8. 2011. godine, znala da se maloletni oštećeni nalaze u S., da okrivljeni time što je maloletne oštećene zadržao dan duže jeste učinio nešto što je protivpravno i skrivljeno, ali na to pristao zbog njihove udobnosti, da po maloletne oštećene nije nastupila štetna posledica, a po oštećenu neznatna (obzirom da joj je faktički onemogućeno da svoje pravo nad decom vrši jedan dan), i da je stepen krivice okrivljenog u konkretnom slučaju nizak, obzirom da je štetna posledica odsutna, to jeste, neznatna, i da opšta svrha sankcija u ovom slučaju ne zahteva izricanje krivične sankcije“ (Apelacioni sud u Beogradu, 5368/2012). Na ovom primeru vidi se da je sud stava da jedan dan zakašnjenja u postupanju po sudskoj odluci predstavlja delo malog značaja, zbog odsutnosti štetnih posledica, usled čega ne postoji krivično delo u konkretnom slučaju.

Sledeći primer nam pokazuje da krivično delo onemogućavanja izvršenja odluke nadležnog organa, kojom je određen način održavanja ličnih odnosa maloletnog lica sa roditeljem sa kojim ne živi, iz st. 3 čl. 191 Krivičnog zakona može da izvrši roditelj koji vrši roditeljsko pravo. Tako je Viši sud u Čačku svojom presudom Kž 120/2020 od 01. 10. 2020. godine odbio žalbu branioca okrivljene i potvrdio prvostepenu presudu kojom je utvrđeno da je presudom „parničnog“ suda okrivljenoj povereno samostalno vršenje roditeljskog prava, dok je sa ocem utvrđen način održavanja ličnih odnosa, da je okrivljena u danu kada je trebalo da preda dete ocu dete odvela sa sobom, bez saglasnosti oca, čime je onemogućila oca da provede sa detetom vreme onako kako je to utvrđeno sudskom odlukom, čime nije ispoštovala utvrđeni model

viđanja. Sud je dalje konstatovao da je okrivljena bila svesna da nema saglasnost oca sa izmenom modela viđanja. Tako je sud zaključio da „sve navedeno ukazuje da je okrivljena svesno, bez saglasnosti bivšeg supruga, koji joj je u više navrata telefonskim porukama jasno stavio do znanja da nije saglasan da dete vodi sa sobom, a sve kao posledica očigledno loših odnosa bivših supružnika nakon razvoda braka, a činjenica da je dete po povratku iz V.b. nekoliko dana boravilo kod oca mimo utvrđenog modela viđanja, je bez uticaja na drugačiju ulogu suda u ovoj krivičnopravnoj stvari" (Viši sud u Čačku, 120/2020). Na ovom primeru vidimo, takođe, da radnja izvršenja krivičnog dela iz st. 3 može da se preduzme odvođenjem maloletnog lica u drugo mesto od mesta boravka. Još jedna stvar koju je zanimljivo primetiti jeste da je okrivljena oglašena krivom jer nije imala saglasnost oca za odvođenje deteta mimo utvrđenog modela viđanja, iako je nakon toga dete provelo kod oca nekoliko dana isto mimo utvrđenog modela viđanja. Razlika je u tome što se okrivljena saglasila sa tim da dete provede kod oca nekoliko dana više mimo utvrđenog modela viđanja, čime je isključena protivpravnost krivičnog dela, dok ona takvu saglasnost oca nije imala.

Viši sud u Nišu je svojom presudom Kž 266/2015 od 25. 08. 2015. godine promenu prebivališta deteta i odvođenje u drugu zemlju od strane okrivljene, a bez saglasnosti oca, podveo pod radnju izvršenja onemogućavanje odluke nadležnog organa, kojom je određen način održavanja ličnog odnosa. Tako sud konstatuje da, prema Porodičnom zakonu, roditelj koji ne vrši roditeljsko pravo ima pravo da o pitanjima koja bitno utiču na život deteta odlučuje zajednički i sporazumno sa drugim roditeljem, te da je istim zakonom određeno da se promena prebivališta deteta smatra pitanjem koje bitno utiče na život deteta. Sud konstatuje da okrivljena nije pokrenula postupak za lišenje roditeljskog prava oca, niti postoji takva odluka, te da je bila dužna da o ovom bitnom pitanju obavesti oca radi donošenja zajedničke odluke o promeni prebivališta.

4. Zaključak

Analizom krivičnog dela oduzimanje maloletnog lica sa aspekta nepostupanja po presudi „parničnog“ suda u situacijama kada nakon prestanka zajednice života sa decom dvoje ljudi sud svojom odlukom odredi kom će roditelju biti povereno dete i reguliše način održavanja ličnih odnosa maloletnog lica sa drugim roditeljem ispitano je u kojoj meri sudovi, kada primenjuju ovo krivično delo na konkretne situacije, postupaju na jednak način i da li postoji odstupanje po nekim pitanjima u shvatanjima sudova, čime se stvara pravna nesigurnost.

Obradom zakonskog obeležja krivičnog dela, te analizom teorije krivičnog prava i sedam sudskih odluka karakterističnih za postavljena pitanja zaključak je da u praksi sudova u analiziranim situacijama postoji odstupanje, te da čak i isti sud u vremenskom periodu odstupa od sopstvene prakse po identičnom pitanju, čime je početna hipoteza rada potvrđena.

Tako kada je u pitanju saglašavanje okrivljenog lica sa boravkom maloletnog lica kod njega, suprotno odluci kojom je rešeno o samostalnom vršenju roditeljskog prava, najviši sud u državi ima dva potpuno različita stava. Kako smo pokazali, i u teoriji krivičnog prava ovo pitanje je suprotstavljeno obrađeno. Takođe, u sudskoj praksi je sporno pitanje da li postoji delo malog značaja u situaciji kada se maloletno lice zadrži neznatno duže u odnosu na način kako je to uređeno sudskom odlukom.

Svi ovi primeri sudske dihotomije, koji su prikazani u radu, govore u prilog činjenici da je prisutna pravna nesigurnost kada je u pitanju postupanje sudova prilikom primene krivičnog dela na konkretne životne situacije. Rad je ispunio svoj cilj, ukoliko je na konretnim primerima uspeo da ukaže na stepen razlikovanja sudske prakse po određenim identičnim pitanjima. Pravna nesigurnost u krivičnom pravu ne bi smela biti tolerisana, ako imamo u vidu da se krivičnim pravom uskraćuju najvažnije čovekove vrednosti, ukoliko se lice oglasi krivim.

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ABDUCTION OF A MINOR: NON-COMPLIANCE WITH COURT DECISIONS OF LITIGATION COURTS AND JUDICIAL PRACTICE ANALYSIS

This paper examines which actions constitute the criminal offence detainment or abduction of a minor as defined by Art. 191 para. 1, Criminal Code of the Republic of Serbia, in the following situations: upon termination of the partnership, the parents independently exercise parental rights based on the decision of the "litigation" court; one parent is given sole custody; maintaining contact between parents and children. Among scholars, there are conflicting opinions regarding these issues. The analysis of seven recent decisions of the second-instance courts showed that the courts also have opposing views on certain issues in the same or similar life situations. The paper starts from the hypothesis that there is legal uncertainty regarding court decisions about this offence. For the analysis of individual court decisions and comparison with relevant earlier decisions, the dogmatic-normative method and comparative method were used.

Key words: *child custody, maintaining relationships between parents and children, criminal law, abduction of a minor*

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1. Introduction

The relationship between parents and children is one of the most important relationships in any society. For this reason, states regulate these relationships through family legislation. However, criminal law also deals with the protection of these relationships, as an "ultima ratio". In family legislation and theory, in accordance with Art. 1 of the Convention on the Rights of the Child (UN doc. GA/RES/ 44/25 (1989)), the term child is used for a human being who has not reached the age of 18, if the legal age of majority is not attained earlier, while the Criminal Code of the Republic of Serbia uses the term minor for a person who has not reached the age of 18. Therefore, these two terms are synonyms, and both will be used in the paper, in accordance with the legal terminology. When the married or cohabiting community in which children were born breaks down, one of the primary questions is which parent will exercise parental rights. In those cases, the court decides, among other things, which parent will be given custody of the child and how the contact with the other parent will be maintained.

The aim of this paper is to determine how and in which situations the state prosecutes the persons who are obliged to respect the decision of the litigation court on child custody or maintaining contact and fail to do so. The criminal offence detainment or abduction of a minor is defined in Art. 191 of the Criminal Code of the Republic of Serbia. The paper will identify the behaviors which constitute this criminal offence with the aim of achieving legal certainty, since judicial practice records contradictory decisions, and that even in theory there are different understandings on certain issues. The paper also presents statistical data from the Republic Institute of Statistics relating to the number of divorces in 2022, as well as statistics relating to the number of reports, accusations and verdicts in 2022 for the criminal offence abduction of a minor.

2. Abduction of a Minor

Before determining the nature of the criminal offence, it is necessary to briefly describe the cases when the litigation court makes a decision on child custody. Thus, "one parent alone exercises parental rights based on a court decision when the parents do not live together and have not concluded an agreement on the exercise of parental rights; one parent alone exercises parental rights on the basis of a court decision when the parents do not live together and have concluded an agreement on joint or independent exercise of parental rights, but the court judges that this agreement is not in the best interest of the child; one parent alone exercises parental rights based on a court decision when the parents do not live together if they conclude an agreement on the independent exercise of parental rights and if the court judges that this agreement is in the best interest of the child" (Family Law, Art. 77 par. 3-5) . While the second and third instance do not need to be further analyzed, the first instance, in which one parent alone exercises parental rights based on a court decision when the parents do not live together and have not concluded an agreement on the exercise of parental rights, requires additional explanation because it involves several possibilities that are all relevant to the criminal offence in question. These would be cases when "[...] the marriage has broken down, but the parents have not yet divorced (de facto separation), due to the termination of the common-law marriage of the parents, when the common-law parents have never lived in a common-law union and cannot agree on the exercise of parental rights, then in the case of divorce or marriage annulment" (Cvejić Jančić, 2009: 319). In all these cases, parental rights are exercised based on the court's decision. The court's decision must be legally binding and enforceable.[2]

For instance, according to the Report of the Republic Institute of Statistics for 2022, which 9,813 marriages were divorced, against 32,821

[2] For enforceability, see Šarkić, N. & Vavan, Z. (2021). Procedures for the execution of court decisions in family relations. *Court Practice Journal*, 2, 17–21; Vavan, Z. (2020). *Enforcement of court decisions in parents-children relationships*. Doctoral dissertation, Faculty of Law Union University Belgrade.

concluded marriages, of which 5,151, or 52.5%, were divorced marriages with children, of the total number of divorced marriages. When we add to these numbers those extramarital unions with children in which the union was dissolved, for which there is no precise data, it is clear that we are dealing with a large number of cases in which the court will have to regulate the aforementioned relationships.

2.1. Abducting a Minor: Theory and Positive Law

The criminal offence abducting a minor in Serbian criminal code is classified under Chapter XIX - Criminal offences against marriage and family, according to the object of protection that the legislator considers to be predominant. Thus, in the theory of criminal law, it is stated that "this criminal offence protects the right of certain persons to take care of a minor, which indirectly, as a rule, also protects the interests of the minor" (Stojanović, 2020: 633); or, in other words, "by prescribing this criminal offence, the interests of a minor are protected, for whom his parents are first responsible, and only in the event that they are not present or if they are deprived of parental rights, other persons (adoptive, guardian, other person or institution to which the minor is entrusted) may be responsible" (Mrvić Petrović, 2019: 148).

This criminal offence has two basic forms and two more serious forms to which certain circumstances have been added that make them more serious. The first basic form is committed by a person "who unlawfully detains or abducts a minor from a parent, adoptive parent, guardian or another person or institution, entrusted with care of the minor, or whoever prevents enforcement of the decision granting custody of a minor to a particular person [...]" (Criminal Code, Art. 191 para. 1). The action of execution of this basic form is prescribed alternatively, as the action of detaining, abducting or preventing the execution of the decision on entrusting a minor to a certain person. A person who does not act according to the court decision by which it was decided on the exercise of parental rights can enter the zone of criminal responsibility by undertaking any of these three alternatively specified enforcement actions, as the following sections will show.

It appears that the most relevant action is preventing the execution of the decision by which a minor is entrusted to a certain person, so it will be analyzed first. Non-compliance can be directed against any decision of a state body that entrusts a minor to someone, and thus, in addition to a court verdict that determines which parent the child is entrusted to, and when the guardianship authority, within its competences, decides by administrative act. For the subject of this paper, non-compliance with the court decision is important. It was stated that the court decision must be enforceable and that "[…] a valid enforceable title existed at the time of the criminal offence which creates the obligation of the defendant to hand over the minor to an authorized person or institution." Therefore, the existence of the offence is not affected by the circumstance that the judgment on the assignment of a minor to another person was later revoked by an extraordinary legal remedy (revision)" (Mrvić Petrović, 2019: 150). Essentially, the parent to whom the child is entrusted by a court judgment is prevented from exercising his right and duty by changing residences or hiding a minor. Examples of judicial practice show some of the ways in which this criminal offence can be committed. Scholars agree that just taking an action consititutes a criminal offence, regardless of whether it was successful. Therefore, for the existence of a criminal offence, it is not important that the consequence of the criminal offence occurred.

The action of detention assumes that the minor was with the parent who undertakes the criminal offence, preventing the minor from returning to the parent who has the sole custody. "It can be done by all the actions that achieve the inability of the passive subject to be with the person who is authorized to take care of him. This includes inducing a minor to stay with the perpetrator or giving consent for such a procedure by a minor" (Mrvić Petrović, 2019: 148). Serbian legal scholars have debated whether the act of detention can be carried out under duress. As Stojanović states (Stojanović, 2020: 634), "the opposite understanding, present in our theory and practice, which starts from the fact that coercion and deprivation of liberty is only a means of committing this criminal act, is not acceptable." […] in that case, taking a minor by using coercion, or depriving him/her of freedom, would be privileged, for which there is no reason". According to Stojanović, there would be a separate criminal offence of coercion.

Scholars also make a distinction between this crime and the crime of kidnapping[3]. "The basis for the distinction is the motive for committing the offence since, contrary to kidnapping, the abduction of a minor is not aimed at the deprivation of freedom of movement and the decision of a passive subject." […] we believe that one of the key bases for distinguishing is the fact that the abduction of minors is a long-term, even permanent retention of a passive subject, while in the case of the general criminal offence of kidnapping, this retention is one-time and temporary" (Milošević, 2008: 18-19). In the theory of family law, it is stated that "a modern problem arising from the exercise of parental rights, which affects the child's interest in growing and developing with both parents, occurs in the case of child abduction by one parent, who illegally takes the child out of the country, hides the child from the other parent and prevents contact between the child and the parents" (Cvejić Jančić, 2009: 320). It should be noted that this does not consitutute the criminal offence of kidnapping, but the criminal offence of abducting a minor.[4]

Abducting a minor is an action of a parent by which the passive subject is taken from the parent who has sole custody. Some legal scholars believe that coercion must not be used (as in the case of detention), but it does not mean that the minor must consent to being taken or detained. As to a minor's consent for removal or detention, it is considered that "if a minor leaves the person to whom he/she is entrusted on his/her own initiative and voluntarily resides with another person, the offence has not been committed." In that case, the usual failure to hand over the minor to the person who holds custody is not sufficient for the existence of coercion, i.e., it cannot be considered coercion" (Stojanović, 2020: 634). On the contrary, "a criminal offence also exists when a minor is

[3] See: Kovačević, M. (2018). Detaining a Minor: Criminal Code Sanctions. *Novi Sad Faculty of Law Journal*, 4, 1731–1746.

[4] For international child abduction, see: Stanivuković M. & Đajić S. (2022). The right of parents to return to their country of origin in light of the Hague Convention on the Civil Aspects of International Child Abduction and the European Convention for the Protection of Human Rights and Fundamental Freedoms. *Annals of Belgrade Law Faculty*, 1, 123–158; Kovaček Stanić, G. (2012) Family and Law Aspects of International Child Abduction by Parents. *Annals of Belgrade Law Faculty*, 2, 74–94.

detained with his/her full consent, even on his/her initiative (judgment of the Supreme Court of Serbia Kzz. 53/91). In that case, when determining the punishment, these circumstances can be taken as mitigating circumstances" (Mrvić Petrović, 2019: 149). The analysis of two recent decisions of the Supreme Court in the following section revealed that the highest court has made completely opposite decisions regarding the existence of minor's consent in the case of detainment or abduction.

Detaining and abducting a minor are both offences that must be undertaken unlawfully. The legislation introduces illegality as an element of the existence of a criminal offence, which means that for a criminal offence to exist, actions must be taken against legal authority – in this case, by the parent who, according to the court decision, does not have legal custody. When it comes to the consent of a parent holding sole custody, in theory it is considered that "in those cases, the parent who has sole custody agreeing to let the minot stay longer with the other parent excludes the existence of the criminal offence" (Mrvić Petrović, 2019: 149). As the analysis of court practice will show, this opinion is in accordance with the actions of the courts. The penalty for this basic form of crime is a fine or imprisonment for up to three years.

The second basic form of this criminal offence is undertaken by the person "who prevents the execution of the decision of the competent authority, which determines the manner of maintaining personal relations of a minor with a parent or other relative" (Criminal Code, Article 191, Paragraph 3). Everything stated for the previous form of criminal offence applies in this case as well. The only difference is who can be the perpetrator: this form of criminal offence, although it can be committed by anyone, is most often committed by the parent holding sole custody, and the victim is the parent who does not have sole parental rights independently, but the court decision regulates the manner of contact between the minor and the parent. This protects the child's right to maintain personal relations with the parent with whom he/she does not live, which is determined by Art. 61 of the Family Law. Using examples of court decisions, the paper shows how the parent who has sole custody can be the perpetrator of this form of criminal offence. The penalty for this form of crime is a fine or imprisonment for up to two years.

The criminal offence has two more serious forms: "if the offence referred to in paragraph 1 was committed against a newborn" (Criminal Code, Art. 191, para. 2) and "if the offence referred to in paragraphs 1 and 2 is committed for gain or other base motives, or the offence results in serious impairment of health, care or education of the minor, or where the offence is committed by an organized criminal group" (Criminal Code, Article 191, para. 4). Also, an optional basis for exemption from punishment is prescribed, in the sense that "the perpetrator of the offence from para. 1, 2, and 4. who voluntarily surrenders a minor to the person or institution to which he is entrusted or facilitates the execution of the decision on the entrustment of a minor, the court may exempt him from punishment" (Criminal Code, Article 191, paragraph 5). Further, para. 6 Art. 191 stipulates that "if the court pronounces a suspended sentence for offences specified in paragraphs 1 through 4 of this Article, the court may order the offender to hand over the minor within a set period of time to a person or institution having custody of the minor, or to comply with enforcement of the decision granting custody of the minor to a particular person or institution, i.e. the decision stipulating the manner of maintaining personal relationship between the minor and a parent or other relative."

3. Abducting a Minor: Judicial Practice

The analysis of some recent court decisions, in comparison with some earlier decisions, provides a basis to better understand how courts interpret this criminal offence and to determine which actions can lead to criminal liability. Analyzing the decisions of the courts, we can see to what degree the courts make opposing or unanimous decisions, as well as to what degree the judicial practice is harmonized with the legal doctrine. Of course, this analysis is not a final judgment as to which potential actions consitute the act of committing a criminal offence; however, it provides a clearer insight into how the court interprets and applies this criminal offence. The court decisions that have been analyzed are all publicly available judicial proceedings.

Before analyzing these court decisions, and for the sake of a clearer insight, it is necessary to present statistical data regarding the criminal offence of confiscation of a minor. According to the latest available Bulletin of the Republic Institute of Statistics "Community perpetrators of criminal offences in the Republic of Serbia, 2022. Reports, accusations and convictions", 304 persons were reported for the criminal offence abducting of minor, 51 persons were accused, while 37 persons were found guilty. Cases against two persons were suspended during the criminal court proceedings. Of the total number of persons who were found guilty, two persons were sentenced to three to six months in prison, seven persons were sentenced to a fine, 27 persons were given a suspended sentence, and one person was sentenced to community work.

The Supreme Court of Cassation decided with the judgment Kzz 565/2022 of June 1, 2022, on the request for the protection of legality, which is against the final judgments of the Basic Court in Kraljevo K 13/21 of November 24, 2021, and the High Court in Kraljevo Kž1 18/22 of February 22, 2022, filed by the defense attorney of the defendant, due to a violation of the criminal law. The verdict rejected the request for protection of legality as unfounded. The first-instance verdict found the defendant guilty of committing the crime abducting a minor under Art. 191 st. 1 of the Criminal Code by preventing the execution of the judgment. The second-instance verdict confirmed the first-instance verdict. The legally binding verdict established that the defendant, in the period from 04/20/2018 to 03/15/2019, prevented the execution of the legally binding and enforceable judgment of the Basic Court in Kraljevo P2 463/16 of 10/19/2017, which the exercise of parental rights entrusted to the mother and in such a way that he kept the minor son with him, accepting his wish not to return to his mother. It is interesting to note here that the court subsumed the action of detainment under the action of preventing the execution of the decision, even though the action of detainment represents an independent prescribed action for the execution of this criminal offence. The Supreme Court of Cassation concluded that the fact that the defendant, as the father, agreed to the minor staying with him, after the minor left his mother, who was entrusted with parental supervision over him, was sufficient for the retention and thus the impossibility of the execution of the court decision. It clearly

follows from this example that the court usually qualified the agreement that a minor resides with the defendant as sufficient in order to commit this criminal offence, which has been shown to be disputable.

The completely opposite opinion can be found in an earlier decision of the highest court of Serbia. Namely, the Supreme Court of Serbia, in its decision Kžm 141/2009 of September 14, 2009, took the position that it is not enough to simply fail to hand over a minor to a person entrusted with it in order to commit detainment. The court ruled that more than simple agreement is necessary in order for this to be a crimimal offence. The Supreme Court states that detainment assumes that the perpetrator prevents the minor from returning to their guardian(s), i.e., refuses to hand them over, and that the minor voluntarily came to the perpetrator, which is not the case. The will to keep a minor should be expressed either towards the minor or towards the person who has custody. This position of the Court coincides with the opinion of some scholars.

In the next decision of the highest court of Serbia, i.e. the judgment of the Supreme Court of Cassation Kzz 257/2022 of April 21, 2022, the request for the protection of the legality of the defendant's defense attorney against the final verdicts for the offence from para. 3 art. 191 of the Criminal Code, preventing the execution of the decision of the competent authority, which determined the way of maintaining contact between a minor and a parent or other relative. The factual situation is such that the defendant is the mother of a minor and that she was granted sole custody by the court verdict of the litigation court, while the manner of maintaining contact between the father and the minor was regulated by the same decision. The contested verdict found the defendant guilty of the act of not handing over the minor to the grandfather. The Supreme Court of Cassation overturned the legally binding verdict with the explanation that there is no objective element of the criminal offence because the verdict, which regulated the way of maintaining personal relationships, did not establish that the minor should be handed over to the grandfather, but that the way of maintaining contact between the minor and her father, and therefore there is no crime. For the existence of a criminal offence, it is necessary to prevent contact, in this case it was the father and not any other relative. This judgment shows

that, according to the opinion of the highest court, the act of handing over must be performed to a person specified by a court decision, that it is not enough that it was done to some other person for whom that right has not been established and who acts instead of the person specified by the decision.

The following example is relevant to the subject of this paper because it shows the court's attitude towards the detainment time required to commit the criminal offence of preventing the execution of the decision of the competent authority, which determined the way to maintain contact between a minor and a parent or other relative. The interesting thing about this case is that the defense referred to an act of minor importance as a basis for excluding the illegality of the criminal offence. Namely, "a criminal offence is an offence set forth by the law as criminal offence, which is unlawful and committed with guilty mind/mens rea" (Criminal Code, Article 14, paragraph 1), and illegality is an element of the criminal offence that is assumed. It is allowed to establish that there is no element of illegality, as a general element of a criminal offence, in which case there is no existence of a criminal offence. An offence of minor significance is that in which the degree of the offender's responsibility is not high, if consequences are absent or insignificant or eliminated by the offender, and where the general purpose of imposing criminal sanctions does not require sanctioning" (Criminal Code, Article 18, para. 2) and if it is about acts for which a prison sentence of up to three years or a fine is prescribed. Thus, the second-instance judgment of the High Court in Čačak Kž 81/2022 dated April 21, 2022 established that "the first-instance court assessed in detail all the circumstances of the specific case, primarily that minor children are under the special protection of the social community, which provides them with protection always when the interests of the children require it, and parents exercise their rights and duties regarding the care, upbringing and education of their children in accordance with the needs and interests of the children, which means that legally binding judgments of the courts must be respected regarding the model of seeing a common minor child, and when the defendant kept the minor injured party longer than allowed according to the verdict, thereby doing something that is illegal and hidden and thus prevented the execution of the court decision" (Higher

Court in Čačak, 81/2022). The court determined that the length of detainment is not relevant to the existence of a criminal offence, but that the standard of the best interest of a minor child was violated by the action of the defendant, and that it cannot be a case of minor importance. In this case, according to the court's opinion, there is a criminal offence.

In contrast to the previous example, we will show a completely different stand of the Appellate Court in Belgrade in judgment Kž1 5368/2012 of October 31, 2012, in its somewhat earlier decision, on an identical issue. In the decision, this court found that the father kept his minor children a day longer than the time determined by the legally binding court decision, and that there is no criminal offence of abducting a minor in connection with the exercise of parental rights, because there were no adverse consequences for the minor children. The court found that the legal representative of the minor victims "[…] filed a criminal complaint against the defendant on September 1, 2011, i.e., eight days from the day when the defendant was supposed to return the children to her, that due to the non-return of the children, she did not contact the police or social services, that, as she herself stated, already on August 27, 2011, she knew that the minor victims were in S., that the defendant, by detaining the minor victims for a day longer, did something that was illegal, but agreed to it because of their comfort, that there was no harmful consequence for the minor victims, and for the victim it was insignificant (considering that she was effectively prevented from exercising her right over the children for one day), and that the degree of guilt of the defendant in the specific case is low, considering that the harmful consequence is absent or insignificant, and that the general purpose of the sanctions in this case does not require the imposition of a criminal sanction" (Appellate Court in Belgrade, 5368/2012). In this example, the court is of the opinion that one day of delay in acting on a court decision represents an offence of minor importance, due to the absence of harmful consequences, as a result of which there is no criminal offence in the specific case.

The following example shows us that the criminal offence of preventing the execution of the decision of the competent authority, which determines the way of maintaining personal relations of a minor with

a parent with whom he does not live, from para. 3 art. 191 of the Criminal Code can be executed by a parent having sole custody. Thus, the High Court in Čačak, in its judgment Kž 120/2020 of October 1, 2020, rejected the appeal of the defendant's defense attorney and confirmed the first-instance verdict, which found that the judgment of the civil court entrusted the defendant with the independent exercise of parental rights, while it was established with the father way of maintaining contact, that the defendant took the child with her on the day when she was supposed to hand over the child to the father, without the father's consent, thereby preventing the father from spending time with the child as determined by the court decision, thus failing to comply with the established model of visitation. The court further noted that the defendant was aware that she did not have the father's consent to the change in the visitation model. Thus, the court concluded that "all of the above indicates that the defendant knowingly, without the consent of her ex-husband, who made it clear to her on several occasions via telephone messages that he did not agree to take the child with him, all as a consequence of the obviously bad relations between the ex-spouses after divorce, and the fact that the child after returning from V.b. stayed with his father for a few days without the established model of visitation, has no influence on the different role of the court in this criminal matter" (Higher Court in Čačak, 120/2020). In this example, we also see that the act of committing a criminal offence from para. 3 can be taken by taking the minor to another place from the place of residence. Another thing that is interesting to note is that the defendant was declared guilty because she did not have the consent of the father to take the child outside the established pattern of contact, although after that the child spent several days with the father also outside the established pattern of contact. The difference is that the defendant agreed to spend the child with the father for a few more days beyond the established model of visitation, thereby ruling out the illegality of the criminal act, while she did not have such consent from the father.

In judgment Kž 266/2015 dated August 25, 2015, the High Court in Niš ruled that the change of the child's residence and taking him to another country by the defendant, without the consent of the father, as preventing the decision of the competent authority, which determined

the method of contact. Thus, the court states that, according to the Family Law, a parent who does not exercise parental rights has the right to decide on issues that significantly affect the child's life jointly and by agreement with the other parent, and that the same law stipulates that the change of the child's residence is considered an issue that significantly affects the life of the child. The court states that the defendant did not initiate proceedings for the deprivation of the father's parental rights, and there is no such decision, and that she was obliged to inform the father about this important issue in order to make a joint decision on the change of residence.

4. Conclusion

Analyzing the criminal offence of abducting a minor from the aspect of non-compliance with the judgment of a litigation court in situations where, after the termination of the cohabitation with the children of two people, the court determines by its decision which parent will be entrusted with the child and regulates the way of maintaining personal relations of the minor with the other parent. We examined to what extent the courts, when applying this criminal offence to concrete situations, act in an equal way and whether there is a deviation on some issues in the understandings of the courts, which creates legal uncertainty.

Upon analyzing the legal features of the criminal offence, the theory of criminal law, and seven court decisions characteristic of the issues raised, the conclusion is that there is a deviation in the practice of the courts in the analyzed situations, and that even the same court in a period of time deviates from its own practice on an identical issue, whereby the initial hypothesis of the paper was confirmed.

Thus, when it comes to the defendant's agreement with the stay of a minor, contrary to the decision that decided on the independent exercise of parental rights, the highest court in the country has two completely different positions. Even in the theory of criminal law, this issue is debatable. In judicial practice, it is a disputed question whether there is a deed of minor importance in a situation where a minor is detained slightly longer than the way it is regulated by a court decision.

All these examples of judicial dichotomy confirm that there is legal uncertainty when it comes to the actions of the courts when applying the criminal offence to specific life situations. The aim of the paper was to emphasize the differences judicial practice on certain identical issues with concrete examples. Legal uncertainty in criminal law should not be tolerated since criminal law may deprive a person of the most important human values, if they are found guilty.

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ENGLISH FOR SPECIFIC PURPOSES: ASSESSMENT OF THE CURRENT ESP CURRICULUM AT THE FACULTY OF LAW AND BUSINESS STUDIES DR LAZAR VRKATIĆ

Abstract: The aim of this paper is to determine the effectiveness of the ESP courses within the English language studies at the Faculty of Law and Business Studies Dr Lazar Vrkatić (FLV) from the students' perspective. These courses constitute a major part of the curriculum, and it is therefore important to assess their effectiveness. Another aim is to provide a description of these courses which includes goals and outcomes and course contents.

The English studies curricula traditionally include courses that develop theoretical and communicative competencies comprising language skills but also linguistic, literature-related and cultural knowledge. However, another aspect that has become increasingly important in the past twenty years is the ESP competence. Within the English language program at the FLV the students are offered courses in Business and Legal English, as these areas have proven especially important for their future careers.

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Assessment of the courses on the part of students was conducted during the spring semester in 2021 with 37 students (including 29 recent graduates). They were offered an online questionnaire with the aim of assessing the impact of the courses on the students' education, academic and professional skills and competencies and their applicability for the students' professions. The results show that the students' overall perception of the ESP courses is that they are useful and that learning outcomes are adequate skills and competencies. The respondents also provided constructive criticism by pointing out not only strengths (quality instructors, adequacy of topics, usefulness of the courses etc.) but also weaknesses (need for modernization of some topics, increase of the practical work and class load, etc.).

It can be stated that the ESP courses at FLV are generally of adequate quality, however, some ideas and implications for the future curriculum and syllabi improvements are offered in the concluding remarks.

Key words: ESP, curriculum, syllabi, goals, competencies, course content

1. Introduction

The English Studies curricula at the tertiary level traditionally include courses that develop theoretical and communicative competencies: language skills, linguistic, literature-related and cultural knowledge. Another aspect that has become increasingly important in the past twenty years is the English for Specific Purposes (ESP) competence. The English Language program at the Faculty of Law and Business Studies (FLV) offers courses in Business and Legal English, as these areas have proven especially important for students' future careers. At FLV, the aimed competencies of the English Language studies (Bachelor) include communicative competence both as an independent goal and an inseparable aspect of all other competencies. The aim of this paper is therefore to determine the quality of the ESP courses within the English language curriculum at FLV by an analysis of the students' assessment

of the courses' impact on their academic and professional development. The students' assessment can thus be seen as an indicative measurement of the courses' effectiveness for achieving certain competencies and enhancing employability.

1.1. On ESP communicative competencies

The concept of communicative competence was first introduced by Dell Hymes (1966, 1972), as a response to the perceived inadequacy of Chomsky's definition of "linguistic competence" (1965) from a sociolinguistic perspective (as cited in Celce-Murcia et al. 1995: 10). The notions that language proficiency involves both the knowledge of phonology, morphology, syntax, etc. and that the social knowledge about how and when to use utterances appropriately underlie the communicative approach to second language teaching and learning. The seminal model of communicative competence was developed by Canale and Swain (1980, pp. 1-8) and further elaborated by Canale in 1983. This model specified four components of communicative competence: grammatical, sociolinguistic, discourse and strategic competence. Celce-Murcia et al. (1995, pp. 10-11) narrowed down the broad concept of sociolinguistic competence and named it "sociocultural competence", stating that it is necessary to possess sociocultural knowledge to successfully employ the resources in other components (linguistic, strategic, actional and discourse competence). In 2007, Celce-Murcia modified her model of communicative competence, renaming actional competence as interactional competence, and adding one more component – formulaic competence. Sociocultural competence, or "how to express messages appropriately within the overall social and cultural context of communication", is relevant to language learning in the broadest sense, and therefore to language for specific purposes as well (Celce-Murcia 2007, pp. 46-49). As she further elaborates, formulaic competence, defined as the ability to use appropriate formulaic language, and interactional competence (consisting of actional, conversational, and non-verbal competence) are components of communicative competence that is especially relevant for ESP learners and teachers.

The status of English as a global language has led to the growing assertiveness of non-native speakers who see English as a tool with which they can express their own values and identities, create their own intellectual property, and export their goods and services to other countries (see Graddol, 1998, pp. 2-4; James, 2009, pp. 46-47; Novakov, 2016, p. 1). This inevitably involves learning specialized vocabulary and register related to different domains, which is the goal of the ESP competence. Non-native speakers, therefore, would need to possess a level of expertise in a specific domain and the ESP knowledge in the same domain in order to communicate and do business effectively in a globalized world. The students of English, on the one hand, possess a higher level of communicative competence than the average non-native English speaker, and that includes the ESP competence. On the other hand, their knowledge of a specific domain such as law is often lacking, compared to legal professionals and law students, for instance.

Since the 1960s, ESP has grown to become one of the most prominent topics in English language learning, teaching, and research, due to three main reasons: the rise of English as a global language, shift towards communicative competence in language learning, and learner-oriented approach (Luka, 2014, p. 8). As observed by Anthony (2018), ESP is

> an approach to language teaching that targets the current and/or future academic or occupational needs of learners, focuses on the necessary language, genres and skills to address these needs, and assists learners in meeting these needs through the use of general and/or discipline-specifics teaching materials and methods (Anthony, 2018, as cited in Wozniak, 2020, p. 172)

Most of the definitions of ESP (Hutchinson & Waters, 1987, pp. 16-20; St. John, 1996, pp. 3-7; Dudley-Evans & St. John, 1998, pp. 2-10) reflect Anthony's description, and can be broken down into several features:

- ESP learners tend to be adults
- ESP is goal-oriented (learners learn it because they need it for practical application)
- ESP courses are based on stakeholders' needs analysis
- learners need a special professional vocabulary.

Basturkmen (2010, p. 3) also concludes that "ESP courses are narrower in focus than ELT courses" because they center on analysis of learners' needs which can be viewed in terms of the students' work- or study-related needs, not personal needs or general interests.

Observing the identified characteristics of ESP courses in general, it can be stated that the tertiary education students represent an adequate population for implementation of such courses in many respects, the most generic one being that they are of the right age and cognitive maturity to be able to acquire abstract concepts. Following, and in line with the current economic and political trends in Serbia and the region, the needs analysis is such that it warrants the implementation of ESP courses that encompass the areas of business and law[4]. Some of the goals the ESP courses should include are developing skills (general communicative skills, but also the more professional ones, namely translating) and knowledge of specific vocabulary, and of course, some basic content knowledge in these areas.

In the following sections of the paper, the ESP courses within the English language program at FLV will be described in terms of the theoretical foundations. They will also be described in more detail, focusing on the specified goals, aims and contents. To provide context and to present the rationale behind the introduction of the ESP courses, a short history of the English program is provided at the beginning of the following section (Section 2). This segment provides a substitution for an actual needs analysis – the circumstances described below serve as the grounds upon which the needs have been identified in the general job market.

In Section 3 the research aim is presented, which is to comment on the quality of the ESP courses' outcomes based on the students' assessment. The outcomes are viewed in terms of the competencies gained and the applicability of the gained skills (communicative skills, translation) and knowledge (specific vocabulary) in their field of work. Several research questions have been formulated in order to arrive at conclusions.

[4] Some similar study programs: University of Montenegro; Mediteran University, Montenegro; Eötvös Loránd University, Hungary.

2. English language curriculum at FLV: Changes in the name and courses

When the FLV English program was first founded in 2006, it was called *Business and Legal English Studies*[5], in line with the overall goals and objectives of the institution, which was to provide a practical and applicable higher education. One of the objectives was for the program to provide competencies that were market-oriented and applicable. Within the English language program, such competencies included communicative (translation, pragmatic, sociolinguistic and grammatical) as well as professional skills necessary for the transition from academic to business world (fundamentals of law, economics, business communication, IT courses). The program included courses that were designed to equip students with the content knowledge in Business English, Legal English, Translation, Law, Economics, etc. With Serbia involved in the EU integrations process and the influx of foreign investments, it seemed sensible to educate professionals who could be involved in the translation of legal documents, interpreting in business and legal settings, and other kinds of business communication.

In 2010 the program name was changed to *English Language Studies*[6], now reflecting the more traditional approach to the study of English at the tertiary level in Serbia. This change was a reluctant one, brought on as a necessity to accommodate for the lack of flexibility of the employers, mostly in education, who expressed severe skepticism towards diploma holders with a novel program name. The curriculum was expanded to include more linguistic disciplines, teaching methodology, and literature courses. The inertness of the labor market and administration in Serbia, as was briefly mentioned, was one of the reasons, which meant that the professional title of Bachelor of English Philology (180 ESPB) was not recognized/verified quickly enough, and graduates were being dismissed in favor of state university graduates, who still earned the earlier title of English Language and Literature Graduate. On top of that, for most graduates, it was still easier to find employment in

[5] The original name was *Poslovno-pravni engleski jezik*.

[6] The changed name *Engleski jezik*

the education system than in business or industry; therefore, they needed teaching competencies and a readily recognizable degree title.

Since the institutional objective was flexibility and adaptability of its programs, the FLV English program has continued to adapt and change, but the core component is still made of ESP courses. The knowledge and skills that the students obtain have proven to be an asset on the labor market.

As mentioned above, the FLV English language curriculum encompasses courses in Business and Legal English, as these domains have proven especially important for the students' future careers. The analysis of the courses will include the following aspects: goals and outcomes, content/syllabi, and teaching methods. In line with the latest trends on the labor market, the course syllabi were updated before the latest accreditation cycle in 2018/19. A number of changes were introduced, e.g., the ESP courses were moved to the higher years of study. Additionally, the syllabi contents were updated, and the IT field was introduced into the Business English courses as knowledge in this field provides students with necessary professional skills and tools.

The ESP courses at the FLV English program consist of the Business English strand (three courses) and the Legal English strand (three courses). The courses used to be labelled as 1, 2, and 3 (e.g., Business English 1, Business English 2, etc.), but in the second accreditation cycle (2014), the course titles were changed to reflect the course contents: Business Correspondence in English, English for Banking, English for Finance; Introduction to Legal English, English for Corporate Law, Legal English for Modern Business. In the 1st and 2nd accreditation cycle, all ESP courses were mandatory; in the last cycle (2020) the final courses for both strands (English for IT and Finance and Legal English for Modern Business) became elective.

The overall goal of BE courses is to introduce students to the contemporary English language of business (business correspondence, banking, finance). The overall outcomes of these courses are that students understand the BE register and style, have acquired extensive BE vocabulary, and can communicate (in speech and writing) in business settings.

The overall goal of LE courses is to introduce students to the fundamentals of English legal terminology, register, and style, and to introduce students to Legal English vocabulary related to contract law, corporate law, and property law. The overall outcomes of these courses are that students understand the LE register and style, understand differences between common and civil law, understand specific features of the UK and US legal systems, have acquired extensive LE vocabulary related to contract law, corporate law, and property law, and can communicate (in speech and writing) in legal settings.

3. Aim of the research and research methods

The aim of the paper is to gain an understanding of the courses' effectiveness through the students' assessment. We wanted to establish the impact of these courses on the students' academic and professional development, which required an insight into the knowledge, skills and overall competencies developed during the courses. Several other points of interest were made, including the students' comments and recommendations for the improvement of these courses, as well as their desire to continue professional development in these areas as indications of an awakened interest or the lack thereof. Further on, based on the information retrieved form the students, the aim is to establish whether the courses achieve their stated goals and outcomes, and if not, to offer recommendations for their improvement.

The method consisted of an online survey, administered at the end of the spring semester in 2021, aiming to gather both quantitative and qualitative data (described in detail in the following text).

Questions in the survey reflected the following research questions:

Are the courses useful in general?

Are they applicable in our graduates' professions?

What competencies/outcomes have the students acquired?

What are the key strengths of the courses?

What are the areas in need of improvement?

Is there a difference in the students' assessment of legal and business strands of courses?

The instrument used for the research was an online questionnaire (Google Forms) constructed by the authors for the purpose of this research. The questionnaire consisted of 27 items total, divided into three sections as follows: general section (7 questions), Business English (BE) section (10 questions) and Legal English (LE) section (10 questions). The two ESP sections mirrored one another but hosted specific competencies and skills gained in each strand of courses.

The purposive sample consisted of 37 participants, current 3rd (N=5) and 4th (N=3) year students and recent graduates (N=29) of the English program, who responded to the online questionnaire during the spring semester 2021. In each section, the participants had multiple choice questions, yes/no questions, and open-ended questions which allowed for longer answers. The data were analysed quantitatively using descriptive statistic procedures where appropriate, and qualitatively (for open-ended questions). Categorizing was carried out by the researchers, inductively (Cohen et al., 2000, pp. 283-284). Illustrative examples of verbalizations were given verbatim and underlined where specific wording was of direct importance.

4. Results

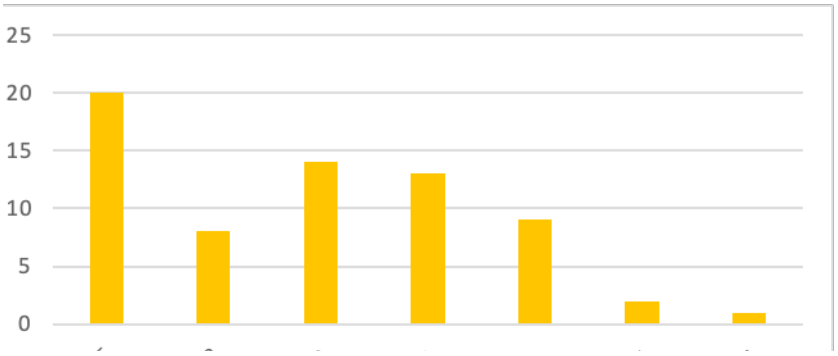
4.1. General section

In this section, we aimed to establish general but relevant data about the participants, namely, to establish the relevance and validity of their subsequent assessment of the ESP courses. The questions included: their status (year of study or having graduated), employment status (and job title/description); general interest during studies; self-assessment of their motivation during studies and average grade during studies/previous year.

24 respondents stated that they are currently employed, only 7 of them working in non-educational vocations.

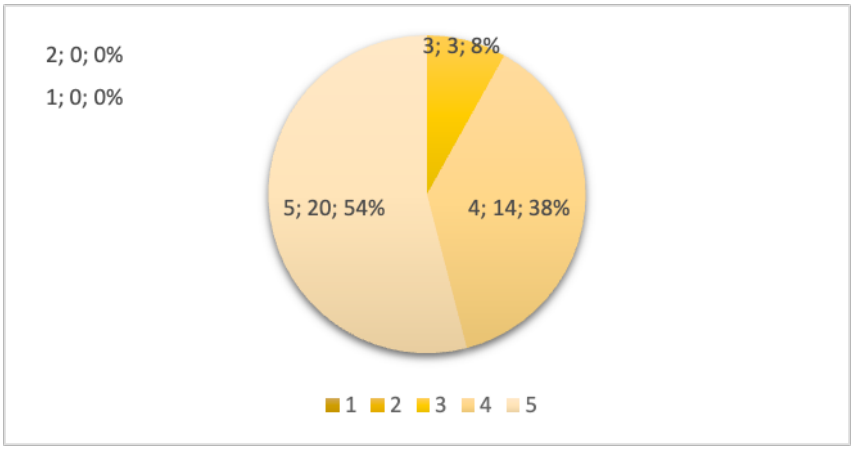
In response to the question pertaining to their area of interest, respondents were allowed to check more than one option, as well as to provide other interests, not listed in the answer sheet. The following breakdown was achieved: 20 respondents (54.1%) claim to be interested in teaching to younger or adult learners, with 8 of them (21.6%) being interested in teaching ESP. 14 respondents (37.8%) are interested in translation as an area of expertise, 13 (35.1%) in English linguistics, and 9 (24.3%) in English literature. Additional interests provided by respondents were writing (2) and intercultural studies (1) (see Chart 1 below).

Chart 1. Respondents' interest in the field



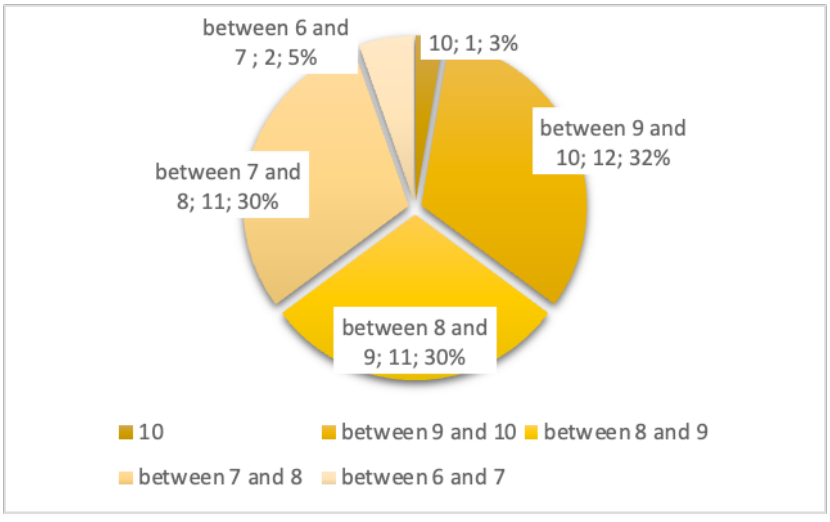
On a scale from 1 to 5, all the respondents assessed their motivation during studies as very high, averaging 4,32, with the following breakdown: 20 respondents (54.1%) marked it as 5, 8 (37.8%) respondents as 4, and only 3 (8.1%) of them marked it as 3, as shown in the Chart 2 below.

Chart 2. Self-assessed general motivation during the studies



The respondents' reported GPA is also high; 65% of the students' GPA is above 8.00. One student reported GPA of 10.00 GPA, 12 respondents reported 9.00-10.00 GPA, 11 students reported 8.00-9.00 GPA, 11 respondents have the GPA between 7.00 and 8.00, and two respondents reported GPA between 6.00 and 7.00, as shown in the Chart 3.

Chart 3. Respondents' GPA.



4.2 Business English section

In this part of the paper, the results pertaining to the BE will be explicated, however, some of the charts will be presented following the LE results in order to illustrate differences of the students' perceptions of these two ESP strands.

In the section focusing on the Business English set of courses, the following questions were posed:

1. Have you had previous knowledge in this area? (yes/no)
2. Have the BE courses fulfilled your expectations? (5-point Likert scale answer)
3. Follow up question: elaborate on your answer. (open-ended question)
4. BE courses proved to be useful (5-point Likert scale answers)
5. In BE courses I gained the following competencies and skills (Check-box options offered and an open option)

   I have acquired relevant terminology

   I am using business register adequately

   I can use required grammatical structures

   I can write business letters and participate in other forms of business communication

   I can translate business related texts

   I have acquired other business-related skills

   Other _____
6. Have you had a chance to use the gained skills and competencies at your job? (yes/no)
7. Which of these courses proved to be most useful? (Choice of the three options: Business Correspondence in English, English for Banking, English for Finance).

8. Suggest ways to improve these courses. (Check-box options offered:
   Change of topics
   More classes
   More practical projects
   A different textbook
   Inclusion of additional areas
   Other _____
9. Elaborate on your answer. (Open-ended question)
10. Would you pursue professional development in this area? (yes/no)

Only 30% of the respondents had some previous knowledge of Business English (see Chart 11 given in section 4).

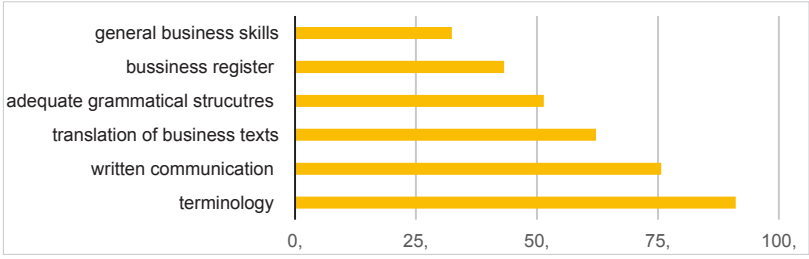
Question "Have the BE courses fulfilled your expectations?" revealed an average of 3.9 (on a scale from 1 to 5). 11 respondents (29.7%) awarded the highest grade (5), 17 respondents (45.9%) awarded 4, 4 respondents (10.8%) awarded 3, 4 (10.8%) respondents awarded 2, and only 1 respondent awarded 1.[7]

To the question "Were the BE courses useful?" on a scale 1-5, the average grade awarded was 4.6 out of 5. The overwhelming majority of respondents (27, i.e., 73%) considered the courses useful (awarded 5/5), with only 6 respondents (16.2%) awarding 4, and 4 respondents (10.8%) awarding 3. There were no grades lower than 3.

The next question required respondents to mark the learning outcomes that apply to them. The learning outcomes will be discussed by order of frequency and shown in the Chart 4. Most of the respondents (34, 91.9%) state that they have acquired business terminology; 28 respondents (75.7%) state that they can write business letters and other types of business correspondence; 23 respondents (62.2%) state that they can translate business related texts; 19 respondents (51.4%) can use adequate grammatical structures; 16 (43.2%) state that they are skilled in using business register and 12 respondents (32.4%) state that they have acquired general business skills.

[7] For questions 1, 2 and 3 Charts 10 and 11 are given in the section 4 of the paper.

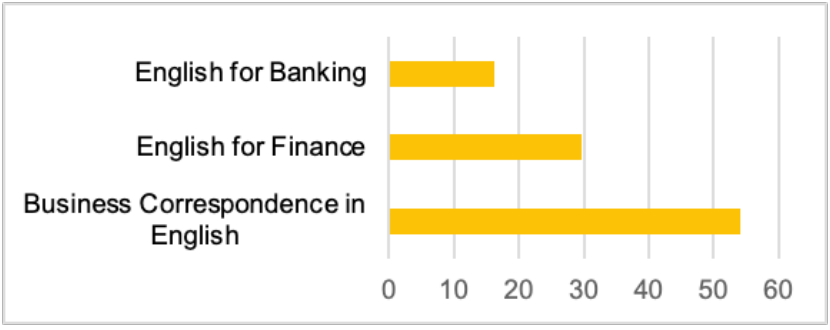
Chart 4. Acquired skills and competencies in the BE strands



The acquired skills have been reported as having been used in the respondents' jobs with 22 respondents (59.5%) while 15 respondents (40.5%) state that they have not had that opportunity yet (Chart is given in section 4).

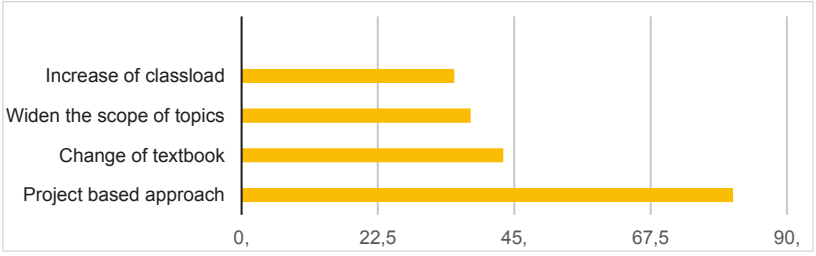
When choosing the most useful BE course attended, most respondents (20, 54.1%) state that the most useful BE course was Business Correspondence in English. This course is the first in the BE strand, providing the fundamentals of Business English. The next course by usefulness is English for Finance (11 respondents, 29.7%), which is the final course in the BE strand. English for Banking, the second course in the BE strand ranked third, with 6 respondents who opted for it (16.2%), as can be observed in Chart 5.

Chart 5. The most useful course in the BE strand (expressed in %)



The next question prompted respondents to mark the best ways in which the BE courses could be improved. The overwhelming majority (30 respondents, 81.1%) state that a project-based approach to learning would be the best way to improve the BE courses. 16 respondents (43.2%) suggest that changing the course book would also be the way to improve the courses. 14 respondents (37.8%) suggest expanding the topics to include other areas of business, while 13 respondents (35.1%) think that the class load per week should be higher, as shown in Chart 6.

Chart 6. Suggested improvements to BE courses (expressed in %)



The respondents were given the opportunity to elaborate on their answers in the open-ended question that follows. Based on their elaboration on the negative aspects of the course, we identified the following three features:

1. inadequacy of the textbook
2. translation as the main teaching method
3. lack of practical projects

Textbox 1. Illustrations of respondents' verbalizations of the BE courses' weaknesses[8]

Textbook

- *The textbook should be updated*

- *The textbook is outdated, limited, containing too much theoretical knowledge which is impossible to acquire because we are students of language, not economics.*

Translation

-The classes were focused exclusively on translating textbook materials, the contents of which were familiar only to the students who had finished an economics vocational school.
-Less translating in class

Lack of practical projects

- *Higher class load and more practical projects would help students use the skills and terminology more effectively and apply them in more interesting tasks.*

- *We took more of a theoretical approach to things; I think there should have been more practical work*

Based on the respondents' elaboration on the positive aspects of the BE strand, we identified the following three features:

1. Course contents (vocabulary, terminology)
2. Expertise of instructors
3. Interesting topics

[8] Students' answers were translated from Serbian into English to accommodate for the international readership.

Textbox 2. Illustrations of respondents' verbalizations of the BE courses' strengths

Course content
- *Course materials were useful*
- *The terminology was explained clearly and concisely*
- *The course focused on the most important topics*
- *Lots of useful vocabulary and interesting units*

Teaching quality
- *In a word – teachers!*
- *Professor [] and [] were both excellent.*
- *Professor [] put in a lot of effort, as well as the assistant [], who tried to relate every aspect of the course with everyday life and work*
  Interesting topics
- *Interesting, I wouldn't have minded if there had been more work to do*
- *Very interesting*

Most respondents (29, 78.4%) state that they would like to continue to improve their knowledge in Business English (Chart 11 is given in section 4).

4.3. Legal English section

The questionnaire consisted of the following questions:

1. Have you had previous knowledge in this area? (yes/no)
2. Have the LE courses fulfilled your expectations? (5-point Likert scale answer)
3. Follow up question: elaborate on your answer. (open-ended question)
4. LE courses proved to be useful (5-point Likert scale answers)

5. In LE courses I gained the following competencies and skills (Check-box options offered and an open option)

   I have acquired relevant terminology

   I am using legal register adequately

   I can use required grammatical structures

   I can communicate about legal topics in writing and speech

   I can translate contracts and other legal texts

   I can differentiate between different law branches

   I understand the differences between the US, UK, and Serbian legal systems

   Other _____

6. Have you had a chance to use the gained skills and competencies at your job? (yes/no)
7. Which of these courses proved to be most useful? (Choice of the three options: Introduction to LE, English for Corporate Law, Legal English for Modern Business).
8. Suggest ways to improve these courses. (Check-box options offered:

   Change of topics

   More classes

   More practical projects

   A different textbook

   Inclusion of additional areas

   Other _____

9. Elaborate on your answer. (Open-ended question)
10. Would you pursue professional development in this area? (yes/no)

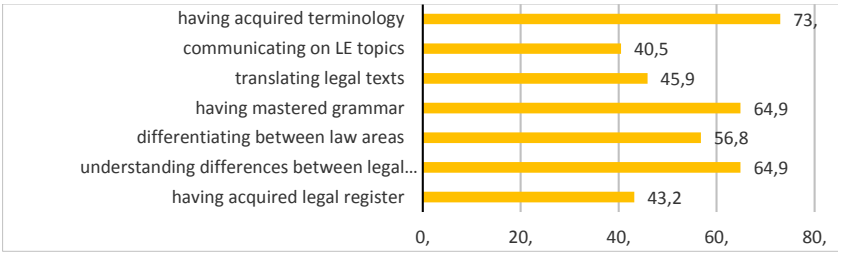
Most of the respondents (86.5%) did not have any previous knowledge of Legal English.

To the question "Have the LE courses fulfilled your expectations?", on a scale 1 – 5, the average grade awarded was 3.8 out of 5. 16 respondents (43.2%) awarded the highest grade (5), 7 respondents (18.9%) awarded 4, 7 respondents (18.9%) awarded 3, 4 (10.8%) respondents awarded 2, and 3 respondents (8.1%) awarded 1.

To the question "Were the LE courses useful?" on a scale 1-5, the average grade awarded was 4.6 out of 5. The overwhelming majority of respondents (24, i.e., 64.9%) considered the courses useful (awarded 5/5). 11 respondents (29.7%) awarded 4, and only one respondent awarded grades 3 and 2, respectively.

The next question required respondents to mark the learning outcomes that apply to them. The learning outcomes will be discussed by order of frequency and shown in Chart 7. Most of the respondents (27, 73%) state that they have learned legal terminology. 24 (64,9%) respondents state that they can use adequate grammatical structures and understand differences between the UK, US, and Serbian justice systems. 21 respondents (56.8%) can differentiate between areas of law, and 17 respondents (45.9%) can translate legal texts. 16 respondents (43.2%) state that they are skilled in using the legal register, and 15 respondents (40.5%) state that they can communicate about legal topics in writing and speech.

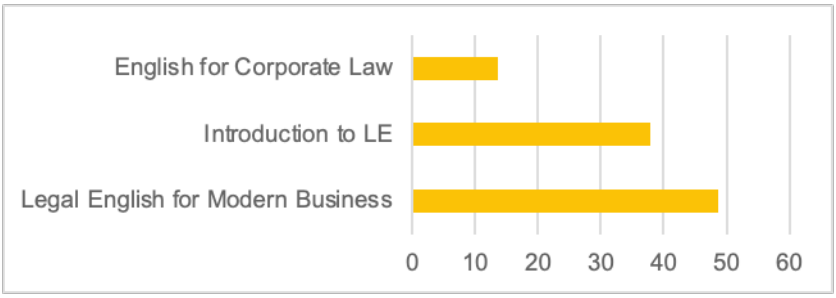
Chart 7. Skills and competencies acquired in the LE strand (expressed in %)



25 respondents (67.6%) state that they have not had the opportunity to use the acquired skills in their chosen career, while only 12 respondents (32.4%) state that they have had that opportunity.

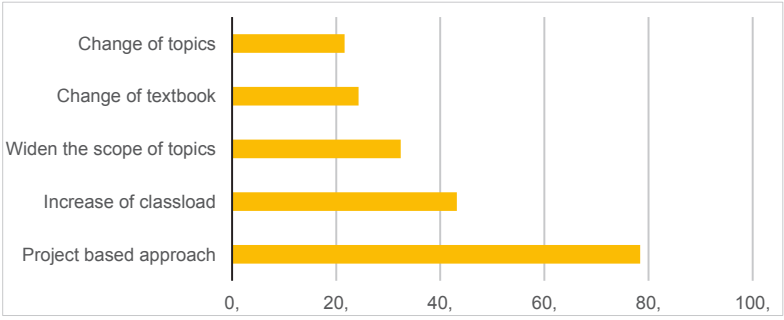
Most respondents (18, 54.1%) state that the most useful LE course was Legal English for Modern Business, which is the final course in the LE strand. The next course by usefulness is Introduction to Legal English (14 respondents, 37.8%), which provides the fundamentals of Legal English. English for Corporate Law, the second course in the LE strand, was judged as the most useful by 5 respondents (13.5%), as shown in the chart 8.

Chart 8. The most useful course in the LE strand (expressed in %)



The next question required respondents to mark the best ways in which the LE courses could be improved. Again, the overwhelming majority (29 respondents, 78.4%) state that a project-based approach to learning would be the best way to improve the LE courses. 16 respondents (43.2%) think that the class load per week should be higher and that it would improve the efficacy of LE courses. 12 respondents (32.4%) suggest expanding the course syllabus to include other topics. 9 respondents (24.3%) propose changing the course book, while 8 respondents (21.6%) propose a change of topics, as illustrated in the Chart 9.

Chart 9. Suggested improvements to LE courses (expressed in %)



The qualitative approach to this confirmed the numeric data. The respondents were again given the opportunity to elaborate on their answers in the open-ended question that follows. Their elaboration on the negative aspects of the course revealed three major areas for improvement:

1. lack of practical projects
2. more classes per week
3. topics (change and update)

Textbox 3. Illustrations of respondents' verbalizations of the LE courses' weaknesses

Lack of practical projects

- *It would have been useful to include practical application of the concepts. The biggest problem was the lack of practical work.*
- *I don't recall having any practical projects in this course, apart from translation.*
- *More practical work*

Class load

- *Maybe the class load should be higher because we're totally unfamiliar with the terminology*
- *More classes and practical projects would be helpful in learning the terminology which is extensive and sometimes a bit obscure.*

Inadequacy of topics

- *The EU Law is one of the more useful topics – I may be mistaken, but this topic was barely mentioned during the course*
- *Translation practice, such as: translating medical and other documents, court interpreter exam preparation, translating an examination of a foreign national*

Most respondents (25, 67.6%) state that they would still like to continue to improve their knowledge in Legal English, despite the complexity and their relative inexperience in the subject (Chart is given in the following section).

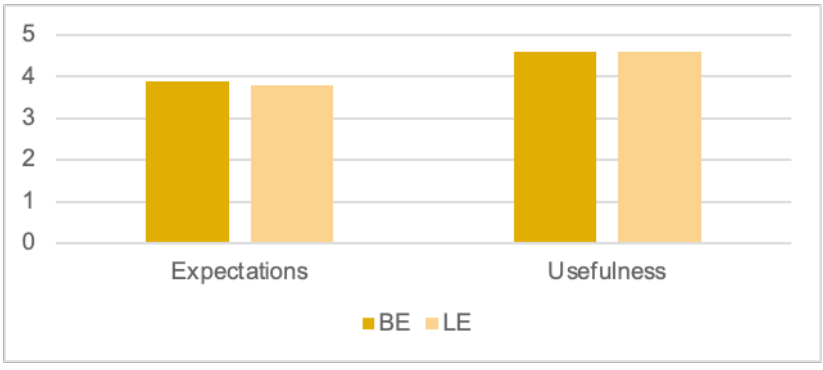
5. Discussion

The results obtained for BE and LE can now be compared and discussed. It can be observed that the respondents, mostly graduated students, reported high levels of motivation during studies (m=4.35) as well as academic excellence (65% of students scored GPA of 8 or higher). Of the overall sample (N=37), 29 respondents have obtained their

BA diplomas, and 24 report that they are employed. The high motivation and academic success at the studies suggest that the respondents represent a valid and relevant source of data. This became increasingly important in the questions pertaining to the weak points of the ESP courses. As students with high motivation and a solid rate of success, the respondents gave constructive, objective, and critical assessment of the courses from a positive attitude and not one that might show begrudging due to the lack of their own success.

As outlined in the introduction, in 2010 the curriculum was modified from a business oriented one to a more traditional one, focusing on teaching and translation competencies. This is once again confirmed in the respondents' answers, as the most prominent interests during their studies were teaching general English, translation, and linguistics, followed by literature and teaching ESP (s. Chart 1). It is not surprising to find out that 2/3 of the employed respondents reported working in educational settings. Therefore, students' assessment of the ESP courses' usefulness and the fulfillment of their expectations (s. Chart 10) is even more relevant.

Chart 10. Comparison of BE and LE: Fulfilment of expectations *and overall* usefulness

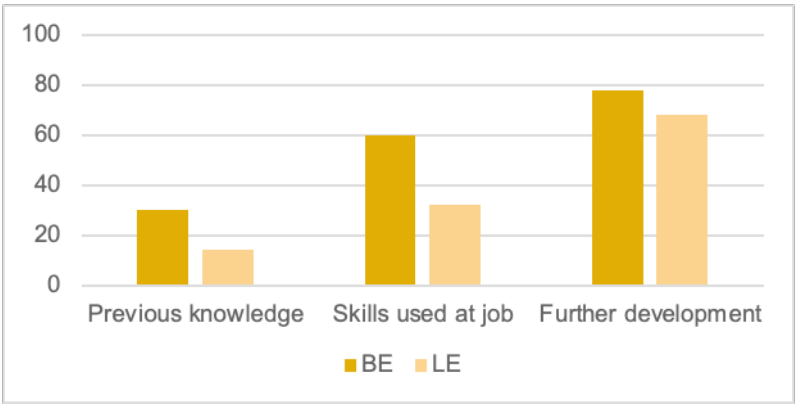


Irrespective of the respondents' evident inclination towards teaching and translation, the respondents claimed that their expectations were fulfilled to a satisfactory level (BE 3,9 and LE 3,8) estimated

the usefulness of the ESP courses very highly (4,6 both strands). Considering the students' previous knowledge, or rather the lack thereof (see Chart 11 below), these assessments attest to their overall satisfaction with the courses.

The respondents singled out the most useful course within the two strands (s. Chart 5 and 8, respectively). Business Correspondence in English and Legal English for Modern Business are believed to be the most useful courses by 54,1% and 48% respondents, respectively. The other two courses in each strand scored significantly lower (29,7 and 16,2; and 37,8 and 13,5%). These results should serve as a signal to the program administrators and instructors to critically assess the identified weakness and apply the suggested changes, especially when it comes to the courses that scored the lowest.

Chart 11. Comparison of BE and LE in terms of respondents' previous knowledge, acquired skills and further development (expressed in %)



Previous knowledge is one of the most prominent predictors in the acquisition of the new material and its successful long-term processing resulting in functional knowledge (Ausubel, 1968: 38). These findings, although not surprising, might seem contradictory given the students' success. However, as Biggs (1999: 38) proposes, apart from the previous knowledge, motivation and students' intentions and orientations will play the major role in successful learning.

When it comes to the applicability of the acquired skills at respondents' jobs, a major difference ($p<0.02$) between the BE and LE strands can be observed. Namely, merely 30% claim that they have had an opportunity to use the knowledge and skills acquired in the LE courses. Meanwhile, 60% of the respondents have reportedly used BE-related skills and competencies (see Chart 11). The reasons for this are multidimensional, ranging from the respondents' job type (mostly teaching) to their possible avoidance of such jobs. Some of the respondents criticized the inadequate balance of the theoretical and practical work in class, which may have resulted in the feelings of inadequacy for such tasks.

Textbox 4. Inadequate competencies for LE related tasks: respondents' verbalizations

- *I think I have not mastered legal terminology*
- *Not enough links between theory and practice, not related to real-life situations.*
- *I think there was room for more practical work, to get a better understanding of Legal English*
- *Lack of practical and real-life situations*
- *Law is really not my area of interest*

Examining the third aspect presented in the Chart 11, we can conclude that the respondents have expressed a positive attitude towards further academic and professional development in the areas of both Business and Legal English. Although a slightly higher number can be observed within the BE strand (78% comp. to 68% in LE strand), the difference is not statistically significant ($p<0.3$). This result is encouraging, as evidence of at least two positive outcomes: the ESP courses have proven to be useful, and their design and execution has been assessed as adequate overall.

Additionally, addressing the gained competencies in both strands as per results (see Chart 4 and 6, respectively), and comparing

them to the theoretical approaches to the ESP competencies stated in Section 1.1, and to the courses' goals as outlined in Section 2.1, it is safe to claim that the ESP courses are well-designed and adequately executed and that the learning outcomes are satisfactory and to the students' benefit. Some of their verbalized answers are illustrative of this conclusion.

Textbox 5. Respondents' verbalization of work-related benefits of the ESP courses

Legal English

- *An interesting and user-friendly course which introduces the basic legal terminology and explains the main concepts*
- *Interesting and useful*
- *After years of study, I can understand and translate legal texts*
- *We had lots of opportunity to gain Legal English skills: I can amend a contract, fill in the important details, and give advice as to which contract clauses can be a benefit or a detriment.*

Business English

- *The course explained the terminology clearly and concisely, so it was easy to use it further on. Lots of practical skills.*
- *Most important topics covered: from making a business plan to theoretical knowledge*
- *Well-structured courses, even for students with no previous knowledge*
- *It was terribly difficult for me, since I had no previous knowledge. I've learned a lot, however. Extremely useful courses for daily life and work.*
- *The most useful skill I gained is the practical application of Business English, which I've put to use in various positions in the IT sector. I had the advantage of knowing how to use vocabulary and structures related to business and finance, as well as how to reply to business emails.*

The respondents' criticism of some aspects of the courses can be seen in their detailed comments on the areas of improvement for both ESP strands, as given in Textboxes 1, 2 and 3. Students recommend several changes, but the most prominent one is the increase in practical work, for which some very specific suggestions were given: project-based approach, attending court proceedings, more writing, roleplay etc. Other than this, modernization and widening of topics have also been suggested, specifically including technological developments, ESP in other fields, as well as getting advice from alumni working in the business and legal sectors as to include topics and tasks likely to be found in the future careers. While the textbook used in the LE strands was deemed as adequate, most students strongly object to the BE textbook and recommend switching to a more modern and less economics-oriented material. Class load is identified as another area of possible improvement, with the emphasis on increasing the number of practical classes per week.

6. Concluding remarks

In this paper the authors analysed the ESP courses included in the English language program. The courses are divided into two major strands, Business and Legal English, each strand consisting of three separate but related courses. With respect to the current theoretical framework on the ESP competencies, as well as the goals and competencies outlined in the curriculum and the ESP courses' syllabi, research was carried out to determine whether the learning outcomes match the stated goals.

Most respondents evaluate both strands as useful and most of them state that they have acquired competencies and skills in both areas. However, the BE strand was identified as the more applicable in the respondents' careers. Despite that, the respondents would still like to further develop their knowledge in both areas.

It can be concluded that the ESP courses offered at FLV generally meet the contemporary attitudes and standards regarding the learning outcomes; however, there is room for improvement, evident-

ly. Making continuous improvement to the ESP courses should be one of the objectives of the English program. The respondents' answers offer different suggestions, such as publishing customized course books for the ESP courses, including more practical tasks and project-based work, providing students with opportunities to apply their knowledge in real-life situations (e.g., court interpreters in moot court, interpreters in business negotiations, translating contracts) increasing the class load per week, etc. Since the BE strand has been evaluated as the more applicable of the two, it might be advisable to make all BE courses mandatory in the next accreditation cycle. On the other hand, the LE strand has been evaluated as less applicable and therefore, the three LE courses might be condensed into two (Introduction to LE and LE for Modern Business) or conversely, an effort should be made to introduce new topics and try different teaching approaches.

A large number of respondents state that they would like to further develop and improve their knowledge in both BE and LE. In line with the contemporary concept of life-long learning, the English program might therefore provide opportunities for current students and alumni to do so by offering refresher or advanced courses in Business and Legal English, as well as courses in other ESP areas.

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ENGLESKI ZA POSEBNE NAMENE: PROCENA AKTUELNOG KURIKULUMA KURSEVA ENGLESKOG JEZIKA ZA POSEBNE NAMENE NA FAKULTETU ZA PRAVNE I POSLOVNE STUDIJE DR LAZAR VRKATIĆ

Rezime: Cilj ovog rada je da se ispitivanjem stavova studenata utvrdi efikasnost kurseva engleskog jezika za posebne namene. Ove grupe predmeta čine ključni deo studijskog programa Engleski jezik na Fakultetu za pravne i poslovne studije dr Lazar Vrkatić (FLV) te je izuzetno značajno ispitati njihovu efikasnost i svrsishodnost. Rad takođe ima za cilj da ponudi opis ovih predmeta, njihove ciljeve i ishode, kao i nastavni sadržaj.

Nastavni plan i program studija Engleskog jezika tradicionalno uključuje predmete koji za cilj imaju sticanje teorijskih i komunikativnih kompetencija razvijanjem jezičkih veština ali i usvajanjem znanja iz oblasti lingvistike, anglofone književnosti i kulture. Međutim, poslednjih dvadesetak godina akcenat se sve više stavlja na sticanje kompetencija u oblasti engleskog jezika za posebne namene. U okviru studija Engleskog jezika na FLV-u, studentima se nude kursevi Poslovnog i Pravnog engleskog jezika jer su se znanja iz ovih oblasti pokazala kao izuzetno značajna za njihove buduće karijere.

Procena svrsishodnosti kurseva sa aspekta studenata sprovedena je u toku prolećnog semestra 2021. godine na uzorku od 37 studenata (uključujući 29 skorašnjih diplomaca). Studentima je ponuđeno da popune onlajn upitnik kako bi se procenio uticaj pomenutih kurseva na njihovo obrazovanje, akademske i stručne veštine i kompetencije, kao i da bi se sagledala primenjivost stečenih znanja u budućoj profesiji studenata. Rezultati pokazuju da studenti u velikoj meri smatraju korisnim kurseve engleskog jezika za posebne namene kao i da su pohađanjem stekli adekvatne veštine i kompetencije. Ispitanici su takođe izneli konstruktivne kritike, navodeći ne samo prednosti (kvalitetan nastavnički

kadar, adekvatnost nastavnog sadržaja, korisnost stečenog znanja, itd.) već i određene slabosti ovih kurseva (potreba za osavremenjavanjem nastavnog materijala, stavljanje akcenta na primenu naučenog, povećanje radnog opterećenja studenata, itd).

Opšti je utisak da su kursevi engleskog jezika za posebne namene na FLV-u zadovoljavajućeg kvaliteta, ipak, u zaključku se iznose određeni predlozi i ideje u želji i sa ciljem da se postojeći kurikulum dodatno unapredi i modernizuje.

Ključne reči: Engleski jezik za posebne namene, kurikulum, silabus, ciljevi, kompetencije, sadržaj kursa

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All the papers submitted should begin by stating (in the left upper corner) **the last name and the first name** of the author in Times New Roman 12 pts. In the footnote introduced by an asterisk for every author his/her degree, institution where he/she works and contact data should be given in Times New Roman 10 pts.

The title of the paper in capital (upper-case) letters, in bold, should be written in the middle (Times New Roman 14 pts.)

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	In-text	In the list of references
Book		
Book with one author	As mentioned by Brown (2010, p. 64), … When considering the possibility for foreign language learners to acquire native-like pronunciation, Brown (2010), says: "This conclusion lends support for a neurologically based critical period, but principally for the acquisition of an authentic (nativelike) accent, and not very strongly for the acquisition of communicative fluency and other "higher-order" processes" (p. 64).	Brown, D. (2006). *Principles of language learning and teaching* (5th edition). Pearson Education.

Book with two authors	According to Boyle and Fisher (2007), …	Boyle, J., & Fisher, S. (2007). *Educational testing. A competence-based approach*. Blackwell Publishing.
Book with three and more authors	UPON THE FIRST MENTION: As suggested by Tsagari, Vogt, Froehlich, Csépes, Fekete, Green, Hamp-Kyons, Sifakis, and Kordia (2018), … UPON SUBSEQUENT MENTIONS: As suggested by Tsagari et al. (2018), …	Tsagari, D., Vogt, K., Froehlich, V., Csépes, I., Fekete, A., Green, A., Hamp-Lyons, L., Sifakis, N., & Kordia, S. (2018). *Handbook of assessment for language teachers*. European Commission.
Edited book	According to Birkle (2020), …	Birkle, C. (2020). "Obama sushi" and the ch(i)ang way of life: Transculturalting America and the world. In A. Izgarjan, D., Đurić, & S. Halupka-Rešetar (Eds.), *Aspects of Translationality in American Literature and American English* (pp. 28-59). Faculty of Philosophy, University of Novi Sad. http://digitalna.ff.uns.ac.rs/sadrzaj/2020/978-86-6065-632-4
Book with corporate authorship	As claimed by UNICEF (2007), …	UNICEF. (2007). *Promoting the rights of children with disabilities*. UNICEF Innocenti Research Centre.

Book with a foreign author	As indicated by Vasić (2021), …	Vasić, A. (2021). *Razvojna psihologija* [*Developmental psychology*]. Fakultet za pravne i poslovne studije dr Lazar Vrkatić, Univerzitet Union.
Periodicals		
Scientific journal with DOI	As claimed by Brantmeier and Vanderplank (2008, p. 460), …	Brantmeier, C., & Vanderplank, R. (2008). Descriptive and criterion-referenced self-assessment with L2 readers. *System*, *36*, 456-477. doi:10.1016/j.system.2008.03.001
Magazine	As Browne (2021) warns, … AY.3 is a new version of the Delta variant of the SARS-Cov-2 virus (Browne, 2021).	Browne, E. (2021, March 9). AY.3 COVID subtype explained as Delta variant spawns offshoots. *Newsweek*. https://www.newsweek.com/ay-3-covid-subtype-explained-delta-variant-offshoot-1625785
Newspaper	As claimed by Gerstein (2021), … As claimed by many authors (e.g., Gerstein, 2021), …	Gerstein, T. (2021, September 6). Why everyone should care about workers' rights. *The New York Times.* https://www.nytimes.com/2021/09/06/opinion/labor-workers-rights.html
Legal documents		
Law/ Rulebook/ Constitution	In accordance with the COVID-19 Hate Crimes Act (2021), …	COVID-19 Hate Crimes Act, 34 U.S.C. & 937 (2021). https://www.govinfo.gov/content/pkg/PLAW-117publ13/pdf/PLAW-117publ13.pdf

Online source		
Website whose author is known	As claimed by Gerstein (2021), … As claimed by many authors (e.g., Gerstein, 2021), …	Gerstein, T. (2021, September 6). Why everyone should care about workers' rights. *The New York Times*. https://www.nytimes.com/2021/09/06/opinion/labor-workers-rights.html
Website of an institution	As suggested by World Health Organization (2021), …	World Health Organization (2021, September 2). *World failing to address dementia challenge*. https://www.who.int/news/item/02-09-2021-world-failing-to-address-dementia-challenge
Dissertation/Thesis		
Unpublished master's or doctoral thesis	As suggested by Alnofaie (2013), …	Alnofaie, H. A. (2013). *The implementation of critical thinking as EFL pedagogy: Challenges and opportunities*. [Unpublished doctoral dissertation]. Newcastle University.
Presentation		
Conference presentation	According to Rutkowski and Meinck (2019), …	Rutkowski, D., & Meinck, S. (2019, June 24-25). *Using large-scale assessment data to inform policy and practice* [Workshop]. 8th IEA International Research Conference, Copenhagen, Denmark. https://www.iea.nl/news-events/irc/8th-international-research-conference/program

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