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ČASOPIS O VIKTIMIZACIJI, LJUDSKIM PRAVIMA I RODU Br. 2, godina 15, Jun 2012.

U ČAST DUŠANA COTIČA

Teme broja **UJEDINJENE NACIJE I GLOBALNI IZAZOVI KRIMINALA**
VIKTIMOLOGIJA: TEORIJA, PRAKSA, AKTIVIZAM

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U čast Dušana Cotiča

Ovaj broj Temide ima dve teme broja: *Ujedinjene Nacije i globalni izazovi kriminala* i *Viktimologija: teorija, praksa, aktivizam*. Nastao je kao rezultat saradnje dr Uglješe Zvekić, Ambasadora Republike Srbije pri Ujedinjenim Nacijama i drugim međunarodnim organizacijama u Ženevi, urednika prve teme, i dr Vesne Nikolić-Ristanović i dr Olivera Bačanovića, urednika druge teme.

Ovaj broj je rođendanski poklon urednika i autora, Redakcije i Saveta *Temide,* kao i celog Viktimološkog društva Srbije, našem dragom prijatelju, učitelju i kolegi, prof. dr Dušanu Cotiču.

Svi radovi objavljeni u ovom broju *Temide* su radovi autorki i autora koji su se odazvali pozivu urednika da napišu rad na pomenute teme, a u čast 90-tog rođendana profesora dr Dušana Cotiča.

Dr Uglješa Zvekić je inicirao uključivanje teme koja je najdirektnije povezana sa preovlađujućom oblašću međunarodnog angažmana dr Cotiča: *Ujedinjene Nacije i globalni izazovi kriminala.* U okviru ove teme bliski saradnici i prijatelji dr Cotiča pisali su o UN i doprinosu koji je dr Cotič dao programima vezanim za prevenciju i kontrolu kriminaliteta, a dr Uglješa Zvekić napisao je uvodni tekst.

U okviru teme *Viktimologija: teorija, praksa, aktivizam,* autorke i autori, većina takođe prijatelji i saradnici dr Cotiča, su pisali o dosadašnjem razvoju viktimologije na našim prostorima, sumirali i kritički analizirali dosadašnji razvoj u važnim viktimološkim oblastima, poput prava žrtve, anketa o viktimizaciji, odnosa ljudskih prava i bezbednosti u savremenom društvu, položaja žrtve u krivičnom postupku, odnosa prava žrtava i tradicionalnih kultura, i položaja žrtve u okviru restorativnopravnih mehanizama. Na kraju časopisa objavljena je i bibliografija radova dr Dušana Cotiča.

Dušan Cotič, počasni član Viktimološkog društva Srbije i Saveta *Temide,* je profesor, sudija, istraživač, aktivista, čovek ogromnog znanja, iskustva i energije, koji je uvek spreman da svoje znanje i iskustvo podeli sa drugima. Bio je pokretač velikih promena značajnih za prevenciju kriminala i zaštitu žrtava,

kako kod nas tako i u svetu. Bio je pomoćnik ministra pravde i sudija Saveznog suda u SFRJ, profesor krivičnog prava na Beogradskom univerzitetu, predsednik Jugoslovenskog udruženja za krivično pravo i kriminologiju, kao i glavni i odgovorni urednik Jugoslovenske revije za kriminologiju i krivično pravo. Od posebnog značaja su važne dužnosti koje je obavljao u okviru Ujedinjenih nacija, a o čemu, između ostalog, govore radovi u okviru prve teme ovog broja *Temide*. U periodu između 2006. i 2009. godine bio je predsednik Viktimološkog društva Srbije.

Ali, pre i iznad svega, dr Cotič je jedan predivan čovek, pun brige, pažnje i razumevanja za svoje kolege, saradnike i sve one koji su učili i uče od njega. Svojim savetima i nenametljivom podrškom u mnogome je doprineo uvođenju novih pristupa i organizacionih rešenja u Viktimološko društvo Srbije i časopis *Temida*. Posebno je značajan njegov doprinos međunarodnoj saradnji i uključivanju VDS u rad Međunarodnog naučnog i profesionalnog savetodavnog tela u okviru Programa Ujedinjenih nacija za sprečavanje kriminaliteta i krivično pravo (ISPAC).

Zahvaljujemo se svim autorima na uloženom trudu, posvećenosti i kvalitetu radova koje su napisali i time dali značajan doprinos razvoju viktimološke i kriminološke nauke, prakse i aktivizma. Verujemo da će radovi objavljeni u ovom broju, posebno oni koji opisuju aktivnosti, misiju, viziju i kvalitete dr Cotiča, poslužiti kao inspiracija i model mladim istraživačima, aktivistima i praktičarima u Srbiji. Čast nam je da u redovima VDS i *Temide* imamo profesora Cotiča i da smo imali i imamo tu privilegiju da od njega učimo i da sa njime sarađujemo.

Viktimološko društvo Srbije

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Dušan Cotič – tvorac modernog pristupa i programa Ujedinjenih Nacija za prevenciju kriminala i krivično pravosuđe

Uglješa Zvekić*

U istoriji programa Ujedinjenih Nacija za prevenciju kriminala i krivično pravosuđe ime Dušana Cotiča, našeg najistaknutijeg predstavnika u periodu od tri decenije (1970–1992) je najuže i najupečatljivije vezano za konceptualne promene u strateškom pristupu i razvoju institucionalnih odgovora na globalne promene u sadržini i obimu efekata kriminala na društva i međunarodne odnose. To je doba velikih geopolitičkih promena u odnosu velikih sila Istoka i Zapada („pad Berlinskog zida") koje su se odrazile i na promene u kvalitetu i geografskoj mobilnosti novih oblika i novih aktera kriminala. Dušan Cotič je bio ne samo učesnik, već i na najvažnijim rukovodećim funkcijama u tadašnjim strukturama programa UN za prevenciju kriminala i krivično pravosuđe–predsednik Komiteta za prevenciju i kontrolu kriminala (CPCC); predsednik Upravnog odbora Instituta Ujedinjenih Nacija za istraživanja kriminala i pravosuđa (UNICRI) i Upravnog odbora Evropskog Instituta Ujedinjenih Nacija za prevenciju i kontrolu kriminala (HEUNI–Helsinki, Finska), kao i podpredsednik Izvršnog odbora Međunarodnog naučnog i profesionalnog saveta za prevenciju kriminala i krivično pravosuđe (ISPAC–Milano, Italija). Dušan Cotič je bio učesnik petogodišnjih Kongresa Ujedinjenih Nacija za prevenciju krimi-

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nala i tretman osuđenika (kasnije za prevenciju kriminala i krivično pravosuđe) od 1960., a pre svega četiri Kongresa (Karakas, Venecuela, 1980.; Milano, Italija, 1985., Havana, Kuba, 1990. i Kairo, Egipat, 1995.) koji su bili stožeri novih strateških pristupa i institucionalnih odgovora. Sve te pomenute institucije su veoma značajno uticale na promene u strateškom pristupu prevenciji i borbi protiv kriminala u okviru Ujedinjenih Nacija, a i šire u međunarodnoj profesionalnoj, akademskoj i istraživačkoj zajednici, kao i na promene organizacije samih kapaciteta Ujedinjenih Nacija da pruže sveobuhvatnije, kvalitetnije i efikasnije odgovore na nove međunarodne izazove kriminala. Dušan Cotič, je, za svoj veliki doprinos razvoju programa Ujedinjenih Nacija za prevenciju kriminala i krivično pravosuđe, primio više značajnih priznanja od strane Ujedinjenih Nacija, među kojima se izdvajaju – ime uklesano u panel najeminentnijih međunarodnih stručnjaka iz ove oblasti i posebne plakete od strane gospođe Margaret Ansti, zamenice Generalnog Sekretara UN i direktorke Kancelarije Ujedinjenih Nacija u Beču (1980) i sada od gospodina Jurija Fedotova, zamenika Generalnog Sekretara UN i izvršnog direktora Kancelarije Ujedinjenih Nacija za borbu protiv droga i kriminala u Beču (dodeljenu povodom obeležavanja 90 godina Dr Dušana Cotiča).

Dušan Cotič, čija profesionalna delatnost izražava posebno sveobuhvatan sklop znanja, iskustva i funkcija akademskog (profesor), istraživačkog (IKSI), izdavačkog (gl. i odg. urednik Revije za krivično pravo i kriminologiju) i pravosudnog (tužilaštvo, podpredsednik Saveznog Suda) karaktera, pokretač je promena u politici prevencije kriminala i krivičnog pravosuđa u Ujedinjenim Nacijama, kao predstavnik i stručnjak iz tadašnje Jugoslavije, koja je i sama prolazila kroz velike promene u toj oblasti, kao i u položaju u međunarodnoj zajednici (pokret nesvrstanih). Sa izvesnog stanovišta moglo bi se reći da je rad, autoritet i uticaj Dušana Cotiča na razvoj programa prevencije kriminala Ujedinjenih Nacija odraz posebno plodotvornog sklopa njegovih ličnih profesionalnih vrednosti i integriteta, s jedne strane i cenjenog međunarodnog položaja tadašnje države, njene spoljne politike, kao i njene politike prevencije kriminala, s druge. Pored angažmana u programu prevencije kriminala, Dr Cotič je 70-ih godina prošlog veka bio član nacionalne komisije UNESCO-a, predsednik Odbora za društvene nauke i član nacionalne delegacije na Generalnoj skupštini UNESCO-a i regionalnim konferencijama.

Strateške promene u politici prevencije kriminala i krivičnom pravosuđu tog doba (a i danas) se ogledaju pre svega u sledećem:

1. kriminal iz individulanog dela počinioca prerasta u kolektivno delo (organizovani kriminal, korupcija, terorizam),
2. usredsređenost dotadašnje krivične i socijalne reakcije se premešta sa „počinioca" na „žrtvu" i na zajednicu,
3. kriminal se širi na nove oblasti kao što su: korupcija, pranje prljavog novca, životna sredina, trgovina ljudima, „cybercrime", itd.,
4. kriminal, u akcionom i pravosudnom smislu, iz „domaćeg" prerasta u „međunarodni",
5. suprotstavljanje ovim transformacijama kriminala zahteva promene u krivičnom pravosuđu i efikasnu međunarodnu saradnju,
6. krivično-pravna međunarodna saradnja mora da počiva na utemeljenim vrednostima Ujedinjenih Nacija, uz poštovanje teritorijalnog integriteta i suvereniteta država-članica, ali i usvajanje međunarodnih instrumenata, standarda, normi i pre svega konvencija, uz naglasak na poštovanje ljudskih prava,
7. kriminal je usko vezan za pitanja društveno-ekonomskog, političkog i kulturnog razvoja, a međunarodna krivično-pravna saradnja dobija nove podsticaje i oblike posle geopolitičkih promena simbolizovanih padom Berlinskog zida.

U svom radu u okviru Ujedinjenih Nacija Dušan Cotič je bio pionir u pogledu pokretanja međunarodnih studija i skupova koji se bave ovim strateškim promenama u prevenciji kriminala i krivičnom pravosuđu, kao što su: „Droge i kazne", krivično-pravna zaštita životne sredine, međunarodno istraživanje žrtava kriminala (ICVS[1]), razvoj i kriminal u Jugoslaviji, korupcija, organizovani kriminal, međunarodna krivično-pravna saradnja i modernizacija krivično-pravnih sistema. Posebno treba istaći njegov angažman u radu i usvajanju Deklaracije Ujedinjenih Nacija o nezavisnosti sudstva i Deklaracije o osnovnim principima pravde za žrtve kriminala i zloupotrebe moći. Ipak, najsnažniji intelektualni i politički uticaj Dušana Cotiča je izražen u dokumentu „Kriminal u svetu i odgovornost međunarodne zajednice: izjava o kraju samozadovoljstva" koji je razrađen, donet i usvojen pod njegovim predsedavanjem od strane Komiteta za prevenciju i kontrolu kriminala i dan danas najsnažnijeg i najkritičnijeg strateškog dokumenta o potrebi promena u sistemu Ujedinjenih Nacija, kako bi se pružili sistematični, programski, kvalitetni, efikasni odgovori

[1] International Crime Victim Survey.

novim izazovima kriminala u novonastalim geopolitičkim odnosima u svetu. Novi kvaliteti, oblici i akteri kriminala dobijaju dotada neviđenu geografsku pokretljivost: odgovori međunarodne zajednice na te karakteristike zahtevali su velike strukturalne i institucionalne promene u programu Ujedinjenih Nacija za prevenciju kriminala i krivično pravosuđe.

I upravo u toj oblasti je Dušan Cotič izvršio ogroman uticaj. U svojstvu predsedavajućeg Komiteta Ujedinjenih Nacija za prevenciju i kontrolu kriminala (sastavljenog od stručnjaka ili u saradnji sa stručnjacima, među kojima su bila velika imena kriminologije i pravosuđa kao što su Torsten Selin, Mark Ansel, Nils Kristi, Inkeri Antila, Manuel Lopez-Rej, Simon Rozes, Adedokum Adejemi, Ron Geijner, Đuzepe di Dženaro, itd.) pokrenuo je pripreme za gašenje Komiteta i njegovo pretvaranje u međuvladino telo: Komisiju Ujedinjenih Nacija za prevenciju kriminala i krivično pravosuđe. To je bio potez velike političke hrabrosti i moralnog integriteta kojim je Komitet stručnjaka, na čelu sa dr Dušanom Cotičem, „samog sebe žrtvovao" u ime budućnosti kojoj preti „bauk novog kriminala".

Usvajanjem rezolucije Generalne skupštine Ujedinjenih Nacija 45/158 iz 1991. godine usledile su međudržavne konsultacije i Ministarski sastanak u Versaju (Francuska) kojom su postavljeni temelji nove institucionalne i programske strukture prevencije kriminala i krivičnog pravosuđa. Nešto kasnije (1997) došlo je do spajanja programa Ujedinjenih Nacija protiv droga i programa Ujedinjenih Nacija za prevenciju kriminala, čime je nastala Kancelarija Ujedinjenih Nacija za borbu protiv droga i kriminala (UNODC) sa sedištem u Beču (Austrija). Rukovodeća tela te kancelarije su dve međuvladine Komisije: jedna za droge, a druga za kriminal.

Pomenuta pionirska studija Dušana Cotiča „Droge i kazne" (UN,1988.) je, u izvesnom smislu, bila preteča i naznaka budućih pravaca razvoja programa Ujedinjenih Nacija protiv droge i kriminala.

Dr Dušan Cotič je uticao na velike promene programa Ujedinjenih Nacija za borbu protiv droga i kriminala, koji je od standarda i normi kulminirao u dve konvencije Ujedinjenih Nacija (tzv. Palermo Konvencija protiv međunarodnog organizovanog kriminala i tzv. Medina Konvencija protiv korupcije) i koji je, od dve kancelarije (jednu za droge, a drugu za kriminal), prerastao u jednu Kancelariju Ujedinjenih Nacija za borbu protiv droga i kriminala (UNODC). Proces sjedinjavanja još uvek traje.

Dušan Cotič pripada malom krugu značajnih ličnosti s kraja prošlog veka koji su utemeljivači nove programske i strateške orijentacije, kao i institucio-

nalne arhitektonike Ujedinjenih Nacija u prevenciji droga i kriminala. Po institucionalnom položaju koji je tada zauzimao i moralnom autoritetu i integritetu bez sumnje i najznačajniji među njima.

O takvim kvalitetima, uticajima i dostignućima Dr Dušana Cotiča u okviru Ujedinjenih Nacija svedoče, na prisan i lep način, autori priloga ovog specijalnog izdanja Temide.

Dr Eduardo Vetere, dugogodišnji rukovodilac programa Ujedinjenih Nacija za prevenciju kriminala u Beču i izvršni sekretar nekoliko Kongresa Ujedinjenih Nacija, daje izvanredno plastičan opis načina na koje je Dušan Cotič „prekrojavao" sistem, program i institucije u okviru mreže aktera. Pri tome se posebno zadržao na periodu pre, u toku i neposredno posle XI Kongresa Ujedinjenih Nacija za prevenciju kriminala (1990.,Havana, Kuba), kao i na velikom intelektualnom i političkom uticaju Dušana Cotiča kao „predsednika" Komiteta, koji je sam sebe „skinuo sa vlasti".

Dr Mati Jutsen, dugogodišnji direktor Evropskog Instituta Ujedinjenih Nacija za prevenciju i kontrolu kriminala (HEUNI, Helsinki, Finska) opisuje period promena u kojima je Dr Dušan Cotič izabran za člana Upravnog odbora. To je vreme u kome su u Evropi Istok i Zapad jasno politički podeljeni, a ta podela se ogledala i u malom obimu saradnje između kriminoloških istraživačkih i akademskih institucija. Osnivanjem HEUNI trebalo je te podele smanjiti u unaprediti kriminološku i pravosudnu saradnju. Tragalo se za posebnom ličnošću koja dolazi iz Istočne Evrope, ali ima međunarodnu orijentaciju, ima akademski status i praktično iskustvo iz pravosuđa i dobro je poznata u Ujedinjenim Nacijama. Izbor za ovaj težak i komplikovan „idealni tip" bio je lak: Dr Dušan Cotič.

Dr Ana Alvaci del Frate, direktorka istraživanja u „Small Arms Survey", dugogodišnja vodeća istraživačica u Institutu Ujedinjenih Nacija za istraživanja kriminala i pravosuđa (UNICRI, Rim, Italija) i Kancelarije Ujedinjenih Nacija za borbu protiv droga i kriminala (UNODC, Beč, Austrija), na vrlo prisan način opisuje politički, institucionalni i istraživački ambijent u predposlednjoj deceniji prošlog veka. Tada je došlo do promena i u nazivu kriminološkog instituta Ujedinjenih Nacija u Rimu: od Instituta Ujedinjenih Nacija za društvenu odbranu (UNSDRI) u UNICRI. Ta promena u nazivu i statutu Instituta odražavala je promene u strateškom pristupu globalnom kriminalu. Dr Dušan Cotič je učestvovao u toj promeni kao član Upravnog odbora UNSDRI od 1982. i kao prvi predsednik novopostavljenog Upravnog odbora UNICRI. Sve to vreme Dr Cotič je bio aktivan saradnik u UNSDRI/UNICRI, autor studija i mentor mladim

istraživačima iz raznih krajeva sveta, koji su dolazili u Rim da produbе saznanja i iskustva iz oblasti međunarodnih uporednih kriminoloških istraživanja. Iz tog mentorskog rada Dr Dušana Cotiča ostala je njegova poznata maksima za komparativna kriminološka istraživanja: „Traži šta krivično-pravni sistemi imaju zajedničko, nađi neku vrstu zajedničkog minimalnog imenioca, istraži kroz studije slučaja primere pristupa i rešenja u kojima se krivično-pravni sistemi razlikuju, analiziraj i napravi sintezu".

Majkl Plazer, bivši šef kabineta zamenika Sekretara Ujedinjenih Nacija u Beču (Margaret Ansti), šef programa tehničke pomoći u UNODC i direktor regionalne kancelarije UNODC za Karibe, i Bred Popović (bivši saradnik UNODC u Bosni i Hercegovini) opisuju detaljno angažovanje Dr Dušana Cotiča u modernizaciji pravosudnog sistema Bosne i Hercegovine posle Dejtonskog sporazuma. Projekat pomoći se izvodio na celoj teritoriji Bosne i Hercegovine, ali sa dve paralelne komponente: u Federaciji i u Republici Srpskoj. Angažovanje Dušana Cotiča je prevazilazilo čisto tehnički karakter projekta: Dušan Cotič mu je, na sebi svojstven način, dao karakter „pomirenja". Prevedeni su svi osnovni standardi i norme Ujedinjenih Nacija iz oblasti prevencije, pravosuđa, policije i tretmana osuđenika, a u saradnji sa UNICRI je organizovan u Rimu prvi zajednički post Dejtonski seminar tužilaca i sudija iz Bosne i Hercegovine. Profesionalni, institucionalni, a pre svega ljudski pristup, Dušana Cotiča je zaista pretvorio ovaj tehnički skup u skup obnove međusobnog poštovanja između nosilaca pravosudnih funkcija iz Federacije i Republike Srpske.

Profesor Slavomir Redo, bivši dugogodišnji funkcioner programa Ujedinjenih Nacija za prevenciju kriminala u Beču, profesor kriminologije na Lazarski Univerzitetu u Varšavi (Poljska) posvetio je svoj prilog „Od univerzalnog do partikularnog kroz međukulturalne norme i praksu prevencije kriminala u Ujedinjenim Nacijama" temi kojoj je Dušan Cotič pridavao veliki značaj. To se ogledalo kako u Cotičevim komparativnim istraživačkim studijama tako i u artikulaciji novog strateškog pristupa prevenciji kriminala i institucionalnoj reorganizaciji Ujedinjenih Nacija, izraženog u pomenutom istorijskom dokumentu „Kriminal u svetu i odgovornost međunarodne zajednice: izjava o kraju samozadovoljstva". Suština vrednosne dimenzije se svodi na to da je u svakoj civilizaciji „tolerancija" osnovna vrednost koja mora da prožima i međunarodne odnose i saradnju između pravosudnih organa u borbi protiv droga i kriminala.

Dimitri Vlasis, Direktor odeljenja za borbu protiv korupcije i privrednog kriminala u Kancelariji Ujedinjenih Nacija za borbu protiv droga i kriminala u Beču, je svoj prilog u čast Dr Dušana Cotiča posvetio uspešnim primerima

međunarodne saradnje u borbi protiv privrednog kriminala. Okvir za takvu saradnju predstavlja Konvencija Ujedinjenih Nacija o korupciji (2003.) i mehanizmi za njenu primenu. U tom okviru poseban značaj ima i nezavisnost sudija. U tom smislu treba se podsetiti da je Dr Dušan Cotič bio jedan od glavnih autora Deklaracije o nezavisnosti sudija koje je usvojio Kongres Ujedinjenih Nacija u Milanu 1985., a kasnije je radio na prvom i drugom seminaru o anti-korupciji za zemlje Centrale i Istočne Evrope, koji su održani 1997. i 1998. u saradnji između UNICRI, UNODC i International FBI Academy u Budimpešti, Mađarska.

Na kraju ovih predmetnih napomena i pregleda priloga od strane kolega, saradnika, prijatelja i poštovalaca Dr Dušana Cotiča iz miljea Ujedinjenih Nacija, uzimam slobodu da dam jednu ličnu fus-notu o Dušanu.

Dušan je moj mentor, prijatelj i drugi otac.

Moja saradnja sa Dušanom je počela davne 1976.[2] godine kada sam (tada kao „moralno-politički nepodoban") dobio mesto u Institutu za kriminološka i sociološka istraživanja. Bez obzira na ovaj politički epitet i direktor IKSI pok. Prof Milan Milutinović, a kasnije i Prof. Dobrivoje Radovanović, i Dušan Cotič (tada podpredsednik Saveznog Suda i glavni i odgovorni urednik *Revije za krivično pravo i kriminologiju*) su me prihvatili i posebno podržali u radu. Zahvaljujući Dušanu, tada već aktivnom u UN miljeu, počeo sam da stičem saznanja o problemima i temama programa Ujedinjenih Nacija za prevenciju kriminala. Dušan me je „terao" da za Reviju prevodim dokumenta, koje je on donosio sa Kongresa Ujedinjenih Nacija i sa sastanaka Komiteta za prevenciju i kontrolu kriminala, i da pišem prikaze knjiga i članke. Dušan se posebno angažovao da se moja doktorska disertacija „Profesija sudija – sociološka analiza" (1983.) odštampa, smatrajući da je to važno za dalji razvoj položaja i nezavisnosti ove profesije u tadašnjoj Jugoslaviji. Nešto kasnije Dušan je lično i institucionalno podržao moju prijavu na konkurs za istraživača u Institutu Ujedinjenih Nacija za društvenu odbranu u Rimu (UNSDRI, kasnije UNICRI). Od tada, od 1984 godine do danas, Dušan je pratio moju karijeru, davao mi savete, usmeravao me i podržavao me. To čini i dan danas.

Sve ovo vreme delimo zajedničke vrednosti koje se odnose na profesionalnu posvećenost, integritet, toleranciju, uvažavanje kulturnih i političkih razlika i istrajnost i poštenje u radu.

Ponosan sam što je Dušan Cotič moj mentor, prijatelj i drugi otac.

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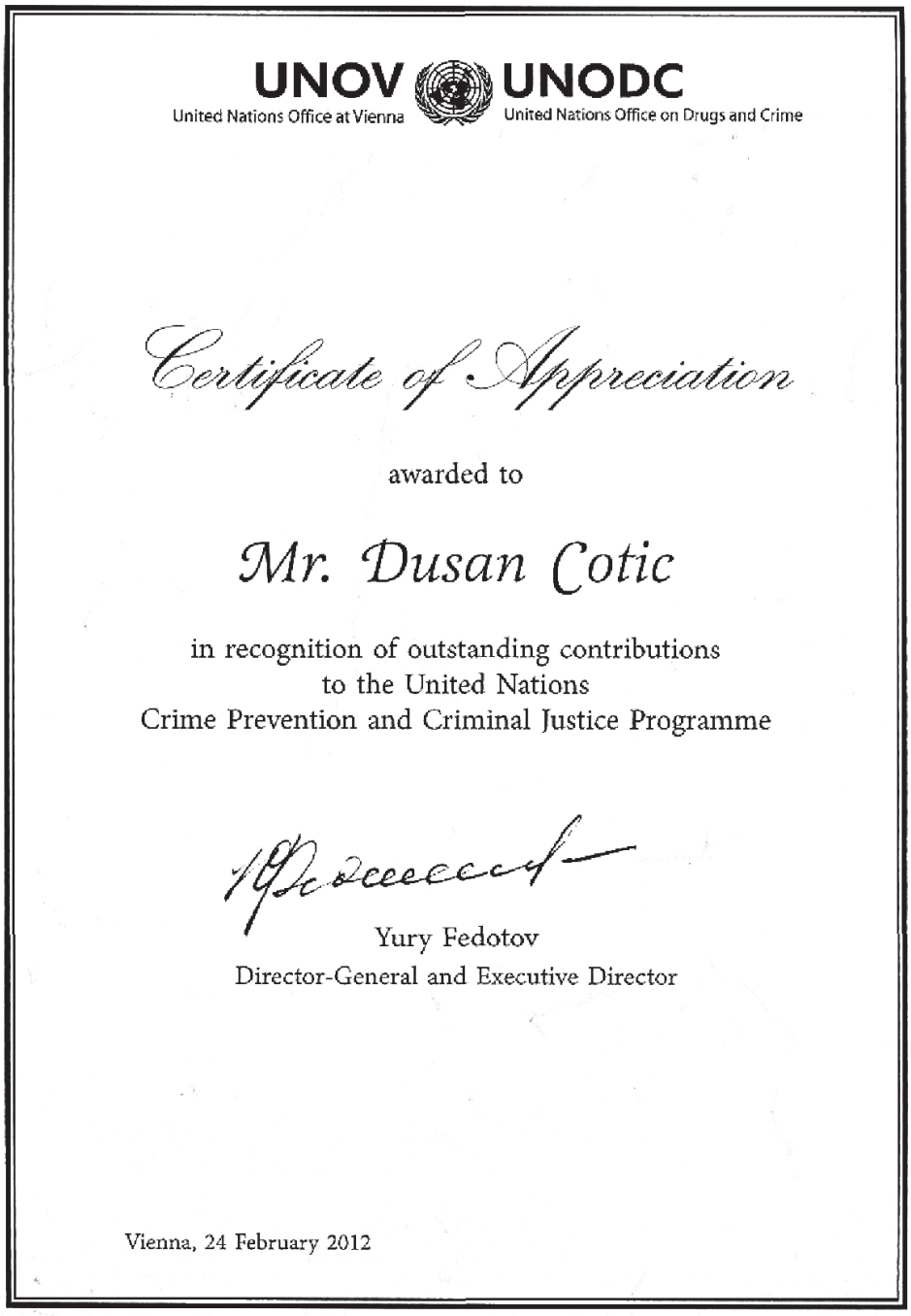
[2] Pukim slučajem deo vojnog roka u tadašnjoj JNA služio sam zajedno sa Marjanom, Dušanovim sinom. Lepo i dugotrajno porodično prijateljstvo postoji sa Dušanovom ćerkom Mirjanom i njenom porodicom u Ljubljani. Izražavam veliko poštovanje prema Dušanovoj supruzi, Milici.



UNOV United Nations Office at Vienna
UNODC United Nations Office on Drugs and Crime

Certificate of Appreciation

awarded to

Mr. Dusan Cotic

in recognition of outstanding contributions
to the United Nations
Crime Prevention and Criminal Justice Programme

Yury Fedotov
Director-General and Executive Director

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In honor and tribute to Dušan Cotič – Last chairman of the glorious United Nations Commitee on crime prevention & control

Eduardo Vetere*

This paper describes the accomplishments of the Commitee on crime prevention & control. Its focus is on the functions discharged by its last Chairman Dušan Cotič before, during and after the Eight Congress held in Havana, and in the following months leading to the formal establishment of the Commission on Crime Prevention and Criminal Justice.

Keywords: *Dušan Cotič, UN Commitee, accomplishments.*

Introduction

The Twenty-First Session of the United Nations Commission on Crime Prevention and Criminal Justice, which was successfully concluded just a few weeks ago, should be remembered for a number of reasons[1]: First, the intrinsic importance of its discussions and debates, as well as the decisions taken, on a variety of topical issues, with a record number of draft resolutions recommended for adoption by the General Assembly; second, the consideration that it managed to agree upon on a text of a new Standard on "United Nations Principles and Guidelines to Legal Aid in Criminal Justice Systems" and, accordingly, it should be congratulated because – in addition of having been the 'engine' originating the Palermo Convention with its three Protocols and the Merida Convention – in just two decades it was also able

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1 See doc. E/2012/30

to recommend for adoption by the General Assembly and the Economic and Social Council more Standards and Norms than all those approved by the International Community in the previous four and past decades; third, the significance that the Commission was so competently, effectively and outstandingly chaired not only by a Woman (for the third time in twenty years!), but also by the youngest Person in its history who, in addition, is a Member of a Royal Family, i.e., H.R.H. Princess Bajrakitiyabha Mahidol of Thailand; and, last but not least, the parallel holding of extremely interesting, stimulating and well attended side-events organized in close cooperation with interested Governments, other United Nations bodies and specialized agencies, as well as relevant NGO's and IGO's.

Among them, one of such side-events should be particularly mentioned, jointly organized by HEUNI and ACUNS in cooperation with the Governments of Finland, Canada and Qatar, devoted to the presentation of two very important books, both published by HEUNI and both authored by two dear and unforgettable former UNODC colleagues: the first written by Christopher Ram and entitled "Meeting the challenge of crime in the global village. An Assessment of the Role and Future of the United Nations Commission on Crime Prevention and Criminal Justice" and the second written by Slawomir Marek Redo and entitled "Blue criminology. The Power of United Nations Ideas to Counter Crime Globally. A Monographic Study."

Was it just a strange coincidence or was it Scandinavian timely planning the fact that these two very comprehensive substantive publications were presented exactly during the XXth anniversary of the establishment and of the first session of the Commission? In Italian we say "ai posteri l'ardua sentenza!!!!," which may be roughly translated as "let's future generations take a decision on this"…

Both books can rightly be considered as appropriate companions of the two classic scientific masterpieces on the history of the United Nations Crime Prevention and Criminal Justice Programme, written already some years ago, by Don Manuel Lopez-Rey (1985) and Professor Roger Clark (1994). While in both books there are ample references to the relevance of the work accomplished by the United Nations Committee on Crime Prevention and Control as the "parent" expert body to the functional United Nations Commission on Crime Prevention and Criminal Justice[2], there are still some important aspects and characteristic

[2] C. Ram, op. cit., p.p. 41-43; and S. Redo, op. cit., p.p. 111-116.

features related to the accomplishments of the Committee which have not yet been fully explored or elaborated in depth.

I am referring, in particular, to the role of the Committee as the preparatory body of the quinquiennial United Nations Congresses on the Prevention of Crime and the Treatment of Offenders, as well as to the critical, indeed crucial, functions discharged by its last Chairman before, during and after the Eight Congress held in Havana, and in the following months leading to the formal establishment of the Commission.

Drawing on official United Nations documents, rather than on my memory that can be extremely labile or selective, I will try to do so in this paper, not only to formally and publicly express my personal gratitude and deep appreciation to Dušan for his long-standing friendship, but also to render justice to a Person who, continually and consistently throughout the years, has been one of the greatest wise and gentle, but also firm and always generous supporters of the United Nations in the field of crime prevention and criminal justice.

It should be recalled, in this connection, that before his election as Chairman of the Eleventh Session of the Committee in February 1990, Dušan had already served uninterruptedly for ten years – just like his colleague Ron Gainer – as one of its most distinguished Experts, thus having gained the full thrust and having conquered the incommensurate confidence of all its fellow members. Let me also note, in this connection, that only Madame Simone Rozes, Premiere President de la Court de Cassation in France, had served in the Committee for twelve years, having also chaired it at a very critical juncture during which there was the danger that, as result of a recurrent restructuring exercise of ECOSOC, the Committee might have been exterminated… and her personal intervention in New York saved it!

It should also be recalled that Dušan had held a position of great responsibility at the Seventh Congress in Milan, where he had been elected as Vice-Chairman of Committee, and where his diplomatic and political skills resulted instrumental to the approval of a number of instruments such as the United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power and the United Nations Basic Principles for the Independence of the Judiciary[3].

[3] See United Nation Publication Sales No. E. 86. IV. 1

In other words, Dušan had continued to keep very high the torch inherited by other leading Thinkers, Scholars and Reformers who had preceded or worked with him in the Committee, like Thorsten Sellin, Marc Ancel, Norval Morris, Niels Christie, Inkeri Anttila, Sergio Garcia Ramirez, Giuseppe di Gennaro, Ahmed Khalifa, Chief Adayemi, Manuel Lopez-Rey, Minoru Shikita, etc. to mention just a few, because the list would be too long (a total of 138 experts since the early establishment of the International Group of Experts in 1949!).

Dušan's Role Before the Congress

Arriving in Riyadh:
U. Zvekic, E. Vetere, S. Das and D. Cotič

Just before being elected as its Chairman in 1990, Dušan had played his part as a Member of a Subcommittee charged with the task to provide an overview of the problem of crime, assess the most efficient means of stimulating practical action in support of Member States and make recommendations to the Committee concerning the most effective mechanisms for implementation. The report of the Subcommittee – discussed and crafted in Riyadh on January 1989 in a Meeting hosted by an other Expert of the Committee, Dr. Farouk Mourad, Founder and First President of the Arab Security Studies and Training Center – had as its main promoters and co-drafters/rapporteurs his colleagues Ron Gainer, Vasily Ignatov and Matti Joutsen. It was formally considered and approved by the Committee[4] chaired by Dušan, together with an accompanying draft resolution[5], for transmission to and consideration by the Eight Congress to be held in Havana a few months later, on August-September 1990.

[4] See "The Need for the Creation of an Effective International Crime and Justice Programme," E/1990/31/Add.1.

[5] See "Review of the functions and programme of work of the United Nations in crime prevention and criminal justice, Decision 11/122, E/1990/31.

To realize the value and relevance of this report, let's not forget that – in the words of Professor Clark – "the bulk of the ideas contained in this document were in due course incorporated in General Assembly resolution 46/152 setting out the parameters of the new program"[6], in particular the dissolution of the Committee of Experts and the establishment of the intergovernmental Commission. But, it is also equally important to be reminded – again in accordance with what Professor Clark pointedly noted – that, "as drafted by the Co-Rapporteurs and adopted by the Committee, the Addendum on "the Need… "was accompanied by a document entitled "Worldwide Crime and the Responsibility of the International Community: A Declaration of the End of Complacency." Signed by most of the Committee members and the heads of the heads of the various institutes, the declaration was apparently framed in tones too lively for the Organization and did not achieve the final imprimatur of appearing as a United Nations document. It is a "cri de coeur" of the Committee's frustrations."[7]

Plotting and Planning – The Sub-Committee at work under the tent: M. Abdulaziz, S Redo, Judge Shiddo, D. Cotič, E. Vetere, J. Montero Castro, General Ignatov and M. Shikita

In fact, the declaration was considered as an implicit criticism to the then leadership of the United Nations Secretariat which – notwithstanding several periodic ECOSOC and General Assembly resolutions recommending the strengthening of the Programme on the basis of the outcomes of a number of review exercises mandated by both the Sixth and the Seventh Congresses, in particular the Milan Plan of Action – had been both incapable and unable to translate into action such plethora of recurrent calls for additional resources, required to conduct technical assistance activities. For these reasons, Miss Margaret Anstee, Director General of the United Nations Office at Vienna, decided to "censor" the text of the declaration, as some of key words like "neglect" or "complacency" were deemed to be too harsh and not fully

6 R. Clark, op. cit., pp. 28.

7 Id.

reflecting the reality. Using as justification the fact that two Committee's Experts (under the influence of whatever pressure…) had not signed the text, the entire Declaration was sacrificed and suddenly disappeared from the report!

Committee on Crime Prevention and Control - Opening of the Eleventh Session: P. David, Y. Sokalski, M. Anstee, D. Cotič, J. Acapko-Satchivi and E. Vetere

In the final analysis, if any one had to be blamed, some Member States had to be considered the culprits of such inaction, and not the Secretariat, for imposing their stringent zero growth budgetary policies that were paralyzing the system!

I am not going to reveal the names of those two experts, also because both of them died and I have full respect of their souls but, instead, I am going to attach the text of the Declaration as an annex to this paper, because it was considered as a part and a parcel of the report by its co-drafters and the Committee itself and also because I am convinced that important documents, such as the Declaration, should be known and thus be preserved from oblivion.

Despite these and other similar problems faced and solved, under the experienced stewardship of Dušan, the Committee managed not only to unanimously approve such a "revolutionary" report, but also to complete the review of all draft standards and norms to be considered by the Congress with the related draft resolutions, as proposed by the regional and interregional preparatory meetings. The report of the Committee with its Addendum, submitted to ECOSOC before being forwarded for the consideration of the Eight Congress, attests to the forward-looking strategy conceived and pursued by the Committee, as well as to the seriousness and completeness of the wok done[8].

[8] See "Report of the Committee on Crime prevention and Control at its Eleventh Session," E/1990/31.

Dušan's Role During the Congress

Even without the accompanying Declaration, the report on "The Need…" was very well received and considered by the Eight Congress. Let's not forget, in this connection, the moral authority exercised by Dušan as Chairman of its preparatory body, as well as the behind the scene role he continued to play as the closest advisor of the First Vice-President of the Havana Congress, the Head of the Yugoslav Delegation Professor Vladimir Kambowski, Minister of Justice at the time.

As noted in the report of the Congress, "great importance was attached to the United Nations role and the creation of an effective international crime and justice programme. It was stressed that the United Nations should have the capacity to serve all Member States as a source of reliable and timely information that would serve as a base for multilateral co-operation. Joint action programmes were also necessary to make tangible inroads into crime. In particular, reference was made to the recommendations of the Committee contained in its report entitled "the need for the creation of an effective crime and justice programme" (E/1990/31/Add.1). In commenting on the thrust of those recommendations and goals to be achieved, several delegations noted that, in view of the existing financial constraints, priority setting was an imperative. Others considered that the existing United Nations resolutions and recommendations already reflected Member States' views on priority actions and that the solution was an increase in financial support."

"Some delegations felt that a convention on international cooperation in crime prevention and criminal justice, as recommended by the Committee, deserved careful consideration. Other delegations, however, stated that while it had its attraction, the negotiation and preparation of such a convention could be a lengthy process, taking up resources of the Secretariat and of Member States which could be more profitably to the tasks. The most promising form for a Convention was one which provided the structural framework for a concerted United Nations programme. The Committee's decision 11/122 on the review of the functioning of the programme of work of the United Nations was widely supported and the need for the creation of a more effective United Nations programme in this field was stressed repeatedly. Everything possible should be done so that the momentum was not lost. The future course of crime prevention and criminal justice in the context of global economic and social realities depended on the political will

of Member States, and only their determination and collective efforts could make the Committee and Congress recommendations a reality"[9].

As a personal annotation, let me stress here that the Eight Congress will remain for me – maybe due to the fact that it was the first one which I had the honor of servicing as its Executive Secretary – an unforgettable special event, not only because it was the last one lasting two entire weeks; or the last one which was preceded by a series of both regional and interregional preparatory meetings; or again the last one reporting directly to the General Assembly; or the first one which was conducted without the formal participation of the United States (apparently, President Bush Father could not resist political pressures of the American/Cubans, particularly the large community living in Florida, where one of his sons was Governor at that time); or because the President of the Host-country, "el Comandante Supremo" Fidel Castro – in addition to addressing the Congress at its official opening or appearing at the Conference Centre after its formal closing to personally extend his thanks and gratitude to the United Nations Secretariat and the Cuban staff of the Organizing Committee for the tremendous work accomplished – did not miss any of the official receptions offered by the various delegations during the entire period of the Congress; but also because it was without any shadow of a doubt the most productive, cost-effective and efficient Congress, in terms of substantive issues covered, policy options produced, far-reaching recommendations made and number of new instruments approved, especially when compared with other major United Conferences costing much more than the Crime Congresses!

Closure of the Eight Congress on Crime Prevention and the Treatment of Offenders: F. Castro

Again, as Roger Clark commented – quite prophetically, I would say! – "the Eight Congress adopted a total of 45 resolutions, 21 on the recommendation of Committee as its preparatory body and 24 introduced by Governments in Havana. This undoubtedly placed some stress on the system and it is unlikely

9 See United Nation Publication, Sales No. E. 91. IV. 2, Chapter IV, paragraph 87.

that such a marathon effort will occur in the future"[10]. And he added that "the outpouring of resolutions in 1990, including standard setting measures[11], represented approximately as many total pages were produced at all previous Congresses combined. This volume led to heightened pleas for restraint and was a factor in the follow up discussion on the restructuring of the program"[12].

However, in my views, such critical remarks tend probably to deny the fact that, in the historical period in which the Eight Congress was held, there were such high expectations on the part of the international community that no limits were imposed to the intellectual curiosity and imagination to search for new approaches, explore alternative policy options and propose viable strategic solutions. And, naturally, all this was done by the Government Representatives participating in the Congress, in accordance with its Rules of Procedure.

Dušan's Role After the Congress

As already noted, the report of the Congress, submitted directly to the General Assembly, was discussed at length by the Third Committee, where– again – Dušan was there, participating actively in its debates both as a Member of the Delegation of Yugoslavia and as Chairman of the Committee.

In his first intervention, "Mr. Cotič (Yugoslavia), speaking also as Chairman of the Committee on Crime Prevention and Control, said that he also felt that the United Nations role in that area was very important and that its work programme in the field of crime prevention and control, in particular in the present circumstances, should receive priority attention. Some of the most serious forms of crime, such as economic crime, terrorism, drug trafficking, fraud, illegal arms trafficking, theft of works of art and cultural heritage, illegal industrial practices and criminal environmental pollution, were increasingly carried on across national boundaries. The monetary, human and social cost of crime had become incalculable.

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10 R. Clark, op. cit., p.p. 78.

11 The Congress recommended for adoption by the General Assembly or adopted a total of 11 new Standards and Norms.

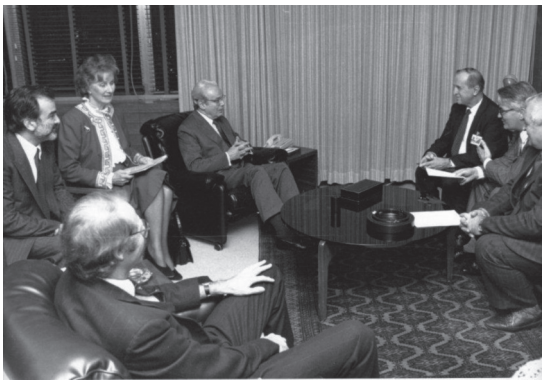
12 R. Clark, op. cit., p.p. 117.

Among the results achieved in the past, Yugoslavia was particularly impressed with the international instruments on crime prevention and criminal justice. The United Nations congresses had contributed greatly to the process of standard-setting and the Eighth Congress was no exception.

On the way to Smolenice: D. Cotič, Col. Bauer, E. Vetere, S. Redo, B. Svenson, R. Gainer and Gen. Ignatov

While new initiatives should be welcomed and universal principles and standards should continue to be formulated, Yugoslavia would, however, wish to see wider application of the instruments already adopted. Such an approach called for closer co-ordination and cooperation between the United Nations system, national institutes and non-governmental organizations, technical assistance and advisory services. The United Nations should also be provided with adequate staffing and resources to deal with the problems caused by crime.

The Eighth Congress had demonstrated the willingness of Member States to co-operate in a comprehensive crime-prevention and criminal-justice programme. In the past, the Committee on Crime Prevention and Control had been appalled by the lack of a response to its repeated pleas and to the successive resolutions of United Nations policy-making bodies mandating the strengthening and upgrading of the United Nations crime and justice programme. The Congress had undertaken an entire review of the matter and, supporting the Committee's recommendations (E/l990/3l/Add.l), it had also adopted a draft resolution to review the functioning and programme of work of the United Nations in crime prevention and criminal



United Nations Headquarters -Meeting with the Secretary-General of the United Nations: R. Clark, E. Vetere, M. Anstee, X. Perez de Quellar, D. Cotič, Yug. Ambassador and Gen. Ignatov

justice, which he hoped the Third Committee would endorse for final approval by the plenary of the General Assembly[13].

Intervening once more, towards the end of the debate, mainly to "defend" the results of the Eight Congress which were somewhat questioned by the Delegate of the United States, "Mr. COTIČ (Yugoslavia), in his capacity as Chairman of the Committee on Crime Prevention and Control, said he was pleased that a number of delegations had endorsed the work of the Committee and hoped that the consensuses reached by 127 delegations at the Eighth Congress would be repeated at the current session of the General Assembly. He thanked the representative of the United States of America, in particular, for expressing his delegation's appreciation of the enormous amount of useful work accomplished by the United Nations Crime Prevention and Criminal Justice Branch, which he had said was probably at the highest point since its creation.

He assured all the delegations, in particular that of the United States, that the Committee had given its most careful consideration to the preparation of the draft instruments submitted to the Congress, especially those recommended for adoption by the General Assembly. It had embarked on its work in that connection immediately after the Seventh Congress and continued it on the basis of the results of both regional and interregional preparatory meetings, at which Governments had expressed their views. The instruments had then been sent to the Economic and Social Council before their submission to the Congress, where they had again been considered, first in informal consultations and then by all the participating delegations. Thus, the consensuses reached at the Congress had in fact been very well informed.

He thanked the United States for the contribution its experts had made to the drafting of certain instruments, including the model treaty on extradition, and said he hoped its delegation would support the adoption in the General Assembly of all the instruments approved at the Congress"[14].

Leaving now the official records, and entering more into the field of the personal memories, how to forget the feelings and emotions of speaking from the podium of the General Assembly Hall (where usually the Plenary takes place and where for logistical reasons the first meeting of the Third Committee devoted to the Eight Congress was moved in the morning of 30

13 See the Summary Records of the Third Committee contained in document A/C.3/45/SR.24.

14 See A/C.3/45/SR.27.

October 1990, and where I had the honor of introducing this item)? And more, how to forget the Meeting with the Secretary-General Xavier Perez de Quellar, attended not only by Dušan as Chairman of the Committee and the Yugoslav Ambassador, but also by two other Experts, i.e., General Ignatov and Professor Clark, in addition to Miss Anstee and myself? And finally, how to forget the sumptuous and delicious dinner to which we (Dušan, Vassili, Roger and me) were invited by the American Expert Ron Gainer, in his antique and beautiful mansion/country house Upstate New York?

In the end, all draft resolutions recommended by the Eight Congress were unanimously adopted, including General Assembly resolution 45/158 on the restructuring of the programme, on whose mandate first an intergovernmental Working Group was convened in Vienna in August 1991[15] and after a Ministerial Meeting was also convened in Versailles in November of the same year[16].

Acting on its recommendations, finally, the General Assembly adopted resolution 46/152, with its Annex containing the Statement of Principles and Programme of Action and, a few months later, the Economic and Social Council proceeded with the formal establishment of the new Commission and the election of its membership[17].

Handing over ceremony of the Tableau with the list of 130 experts of the Committee on Crime Prevention and Control during the First Session of the Commission on Crime Prevention and Criminal Justice - G. Giacomelli with Professor Inkeri Anttila

And, at the first session of the Commission, Dušan made his last intervention as Chairman of the Committee by "presenting an overview of the role, work and accomplishments of that body and reviewing the developments that had resulted in the establishment of the Commission. He considered the inaugural session of the Commission a turning point in the history of the United Nations crime prevention and criminal justice programme, and expressed the hope that the Commission would breathe new life into it."

15 See document A/CONF.156/2 (1991).

16 See document A/CONF.46/703 (1991).

17 See ECOSOC resolution 1992/1.

"Most representatives expressed appreciation for the pioneering work of the Committee, as well as the valuable service it had provided since its establishment in 1971. The Committee passed on to the new Commission a heritage of significant accomplishments, on the basis of which it could undertake the challenge of setting the future course of global activities in the field of crime prevention. The support provided, and the useful work carried out, by the Committee's Secretariat was also acknowledged. An impressive body of standards for national application and instruments for international cooperation had been developed, especially in recent years, providing a sound foundation for future efforts. In that connection, many members of the Commission paid tribute to the formidable accomplishments of the experts of the Committee and expressed the hope that they would continue to be involved in the development of the programme, thus lending their invaluable experience to this newly established functional body."[18]

Expert Meeting on Organized Crime in the Smolenice Castle: D. Vlassis, D. Cotič and E. Vetere

Let me quote for the last time, at this stage, the words of Roger Clark, who stated that… "in the last years of its life, the Committee was expanding its role as a catalyst, particularly in drafting standards and devising methods for their implementation… Its demise and replacement by an intergovernmental Commission is the most dramatic feature of the new era ushered in by the Assembly 1991 resolution."[19]

To conclude, it may now be perfectly legitimate to ask the following question: would have this 'new era" been ushered in without the active participation and at times passionate involvement of Experts of the caliber of Dušan Cotič, so much visionary and so much committed to the cause to the point of accepting the self-destruction and almost 'collective suicide' of the independent expert body of which they were members, and whose existence

18 See document E/1992/30, Chapter 2, paragraphs 8 and 9.

19 R. Clark, op. cit., p.p. 4.

was 'sacrificed' to the altar of intergovernmental real-politics just because such a body had been so successful in accomplishing its mandated tasks?

Again, as Alessandro Manzoni said, "ai posteri l'ardua sentenza," to be more literally translated, as… "to posterity the arduous judgment…"

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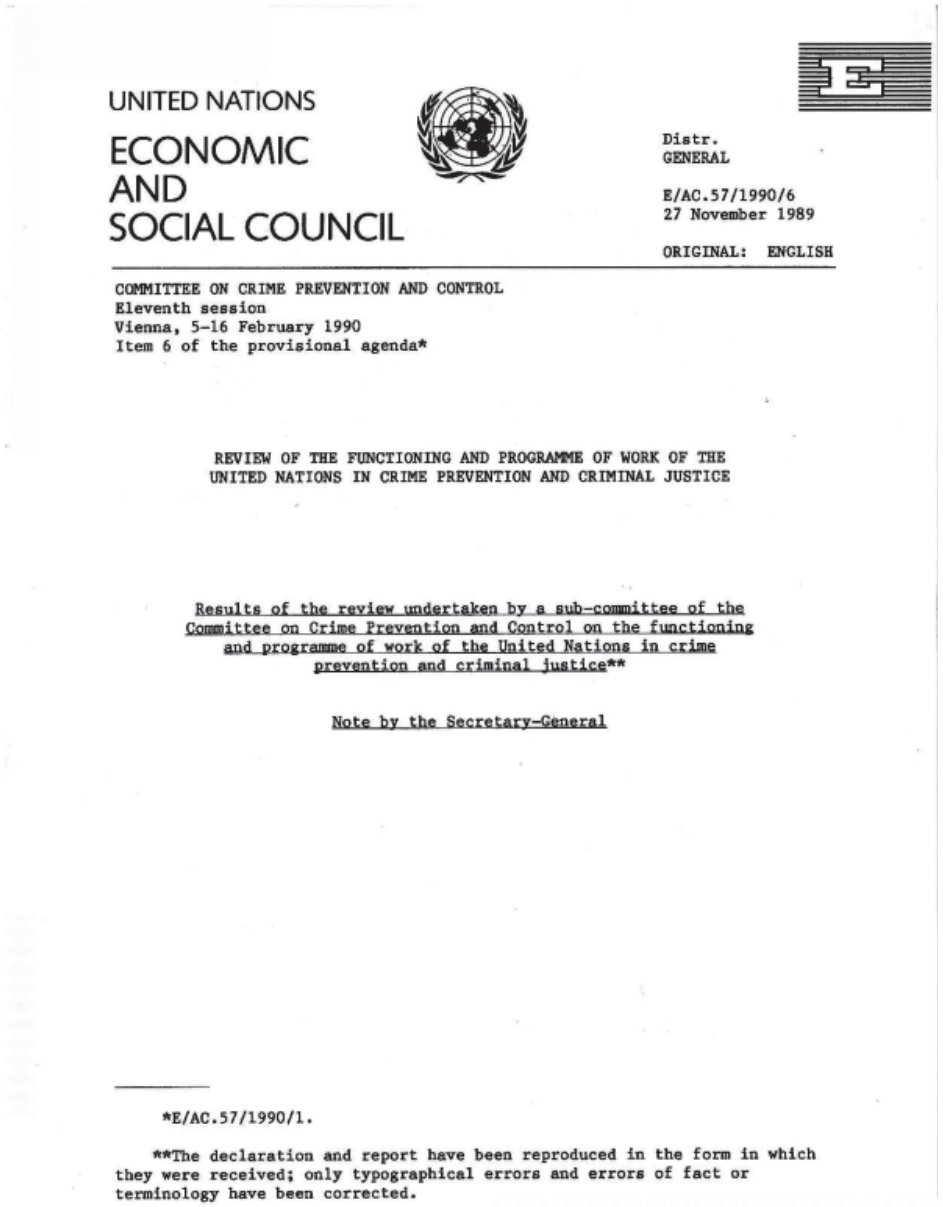
Eduardo Vetere

U čast Dušana Cotiča – poslednjeg predsednika slavnog Komiteta UN za prevenciju i kontrolu kriminala

Ovaj rad opisuje uspehe Komiteta za prevenciju i kontrolu kriminala. Njegov fokus je na postignućima poslednjeg predsednika ovog Komiteta Dušana Cotiča pre, tokom i nakon Osmog kongresa održanog u Havani, kao i u narednim mesecima koji su prethodili zvaničnom uspostavljanju Komisije za prevenciju kriminala i krivično pravo.

Ključne reči: Dušan Cotič, Komitet Ujedinjenih nacija, uspesi.

Annex



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27 November 1989

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COMMITTEE ON CRIME PREVENTION AND CONTROL
Eleventh session
Vienna, 5-16 February 1990
Item 6 of the provisional agenda*

REVIEW OF THE FUNCTIONING AND PROGRAMME OF WORK OF THE UNITED NATIONS IN CRIME PREVENTION AND CRIMINAL JUSTICE

Results of the review undertaken by a sub-committee of the Committee on Crime Prevention and Control on the functioning and programme of work of the United Nations in crime prevention and criminal justice**

Note by the Secretary-General

*E/AC.57/1990/1.

**The declaration and report have been reproduced in the form in which they were received; only typographical errors and errors of fact or terminology have been corrected.

V.89-61695 6188T

Note

The declaration and report annexed hereto were prepared by a sub-committee of the Committee on Crime Prevention and Control. The sub-committee had been appointed by the Chairman of the Committee on Crime Prevention and Control in accordance with its resolution 10/1 of 31 August 1988 as a continuation of the review of the functioning and programme of work of the United Nations in crime prevention and criminal justice that had been initiated by the Secretary-General in pursuance of General Assembly resolution 40/32 of 29 November 1985.

The sub-committee met at Riyadh on 18-19 January 1989 under the auspices of the Arab Security Studies and Training Center. The meeting was attended by members of the bureau of the Committee and other designated experts, as well as by the directors of the regional and interregional institutes for the prevention of crime and the treatment of offenders, the Arab Security Studies and Training Centre and the Australian Institute of Criminology.

The declaration and report of the sub-committee are hereby transmitted to the Committee on Crime Prevention and Control, for its consideration.

WORLD-WIDE CRIME AND THE RESPONSIBILITY OF THE INTERNATIONAL COMMUNITY

A DECLARATION OF THE END OF COMPLACENCY

There comes a time when patience loses virtue. There comes a time when good intentions stand alone as futile. There comes a time when human tragedy is so compounded that honest men and women must seek effective remedies or lose their self-respect.

The tragedy is world-wide crime. The men and women who must speak out include the undersigned. The time is overdue.

Control of crime ranks at the forefront of governmental responsibilities. It is of unique importance. It is a prerequisite to national progress. To the extent that a nation cannot protect the safety and security of its citizens, their possessions and their fundamental institutions, that nation's economic, social, and cultural advancement will be stifled. Yet, in all countries serious crime persists, in most nations it is increasing, and among nations it is burgeoning. Domestic crime has outstripped the control of most individual nations, and transnational crime has accelerated far beyond the current reach of the international community. Most countries need help with problems of national crime, and some need it desperately. All countries manifestly require help with the overwhelming problems of transnational crime.

We, the undersigned, are members of the United Nations Committee on Crime Prevention and Control and heads of the affiliated institutes dealing with problems of crime and justice. We have reviewed the problems of world-wide crime from the standpoint of specialists in the field. We are not alarmists. We have not reached our conclusions in haste. We are professionals and realists who have tried our best to work within existing structures and existing strictures. Over time, though, our tolerance for inadequacy has been eroded by repeated evidence of the tragic plight of victims. Our patience has been ground thin by the creaky wheels of the intergovernmental mechanism in which we find ourselves enmeshed. Our forbearance has been stretched to the snapping point by the witnessing of entire nations falling prey to crime. We have become convinced that effective reduction of world-wide crime requires nothing less than a completely restructured, comprehensive, practical, boldly-active programme several orders of magnitude greater than that yet attempted by the international community. To continue as we have would cost far more - in money, in suffering and in conscience.

With this conviction, we submit the attached report for review by the national representatives attending the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. We commend it to their very careful attention. Upon its consideration, we call for a resolution from the Congress for the drafting of a United Nations Convention on Crime Prevention and Control - a Convention that will detail the structure, functions, and financing of a complete programme for effective assistance against national and transnational crime. We call upon the same national representatives, and their colleagues, for support of such a Convention in the General Assembly.

We call, on behalf of all humanity, for the end of complacency.
(To be individually signed by Committee members and institute heads).

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Dušan Cotič and the European Institute: Bridging the Gap

Matti Joutsen*

The paper describes the context in which the European Institute, on its establishment, identified Professor Dušan Cotič as the ideal candidate to serve on its Advisory Board and an internationally oriented criminal justice practitioner and criminologist, so that the Board could bridge the gap between East and West, and academia and practice. Professor Dušan Cotič served on the Board with distinction.

Keywords: *international cooperation, United Nations crime programme, criminology, criminal justice.*

A comparison between Europe at the end of 1970s and at present brings up striking echoes from the past. The public and politicians alike were concerned about struggling out of a recession, the rise in petrol prices, and threats of terrorism (the Red Brigades, the Baader-Meinhoff Gang and the IRA then, al-Qaeda today). On the horizon was the war in Afghanistan (the Soviet invasion then, the U.S. and more broadly Western disengagement today) and its impact on regional and, more broadly, international stability.

But there were also striking differences. The major political difference was that thirty years ago, Europe was split in two, with Western Europe and the Soviet bloc pursuing very different agendas.

As in many areas, this political divide was reflected in criminal justice. Each common law and Continental law country in Western Europe pursued its own criminal justice policy, although the (then fully Western European) Council of Europe was creating a wider European treaty framework and a growing body of recommendations and resolutions. In Eastern Europe, the socialist legal tradition coloured the criminal policy choices made by national leaders,

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although there were considerable differences between, for example, Leonid Brezhnev's Soviet Union, Erich Honecker's German Democratic Republic, Enver Hoxha's Albania and Nicolae Ceauscescu's Romania.

The criminological research community was similarly split. The Council of Europe provided some framework for international cooperation in the West, but despite the strength of, for example, the tentative international work of the Home Office in the United Kingdom, the Max Planck Institute for Foreign and International Criminal Justice in Germany and the National Council for Crime Prevention in Sweden, criminology was either inner-oriented, or oriented towards trends coming from the other side of the Atlantic. In the Soviet bloc, in turn (with notable exceptions in Hungary, Czechoslovakia and Yugoslavia), criminology was in general hampered by the lack of access to primary sources and by a clearly doctrinaire tendency.

It was against this backdrop of divisions between East and West that the United Nations planned to expand its network of regional institutes for crime prevention and criminal justice into Europe. The first institute, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders had been established in Japan in 1962, and had immediately undertaken impressive work to assist countries in the region in strengthening their response to crime. The global UN research institute, the United Nations Social Defence Research Institute (to be renamed the United Nations Interregional Crime and Justice Institute) opened its doors in 1968 to start work as the research arm of the UN Secretariat. And in 1975, the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders set up operations.

Professor Gerhard Mueller, at the time Chief of the Crime Prevention and Criminal Justice Section of the United Nations Secretariat, started negotiations with Finland on the possibility that a European UN Institute could be set up in Helsinki. Finland had some advantages compared to other countries that were considered as potential hosts. Finland was a neutral country, with a good administrative and communications infrastructure suitable for the operation of an international institute. Professor Anttila, who early on was tapped to be the Director of the new European regional institute, was at the time the Director of the National Research Institute for Legal Policy of Finland. She was also relatively well-known both in criminological circles, and especially after having been appointed to the United Nations Committee on Crime Prevention and Control and serving as the President of the Fifth United Nations Congress

on the Prevention of Crime and the Treatment of Offenders (Geneva, 1975), she was well-known also within the UN crime prevention community.

Professor Mueller, with his experience with the creation of the regional institutes in Japan and Costa Rica, and the interregional institute in Italy, quickly agreed with Professor Anttila on one key question: the new institute needs an advisory board that could serve as its link to the different countries in the region. After all, the staff would be Finnish civil servants, and the Institute not only needed to show its outreach throughout Europe, but also needed to have eminent criminal justice practitioners and criminologists to advise it of wider European concerns.

Some of the pieces of this puzzle were easy to find. The chairman was tapped from neutral Sweden (which was also a major financial donor to the new Institute): Bo Svensson, justice of the Supreme Court. Looking towards the West, Professor Anttila suggested Simone Rozes, the Premier président of the Cour de Cassation of France, and Erich Corves, Ministerialdirigent at the Ministry of Justice in Germany. Turning to the East, the Soviet Union was a self-evident choice, and here, too, Professor Anttila identified an eminent person: Vladimir Koudriavtsev, Academician, professor and Director of the Institute of State and Law of the Academy of Sciences.

It was at this stage that Professor Mueller and Professor Anttila recognized that the last piece of the puzzle had to be the perfect fit. What was needed was perhaps an impossible combination. The person had to come from Eastern Europe, and yet have an international orientation: he or she should understand the value of cooperation with colleagues from different countries. The person had to have a background in either criminal law or criminology (ideally, of course, both) and understand the importance of policy development of independent and unfettered research. The person should ideally have a professional and personal status that provided him or her with an "in" with the authorities not only of his or her own country, but also of other European countries. It would, of course, be helpful if the person had a familiarity with the work of the United Nations in crime prevention and criminal justice; after all, this was the environment in which the new European Institute would be working.

Thirty years ago, computers were not widely accessible, and the internet search function was unheard of. Had those facilities existed, however, they could not have invented a better dream candidate than what was offered by Dušan Cotič. As Professor of Criminal Law at the University of Belgrade,

his academic credentials were impeccable. The criminological research community in Yugoslavia was vibrant, and he was widely known as a criminologist also internationally, thanks to his many years as President of the Yugoslav Association of Criminal Law and Criminology. He closely followed international developments in criminology; after all, he was the Chief Editor of the Review of Criminal Law and Criminology. His professional and personal reputation were considerably burnished (not that it needed burnishing) by his service as Deputy Secretary of Justice of Yugoslavia, followed by his years as Justice of the Supreme Court of Yugoslavia. And not only was he a regular attendee of the quinquennial UN Crime Congresses (since 1960), he had just been elected as a member of the United Nations Committee on the Prevention of Crime and the Treatment of Offenders.

During many years that he served as a genial and active member of the Advisory Board of the European Institute (and a regular participant at the European Seminars arranged by the European Institute), he proved to be all that was promised and more: a widely-read and thoughtful criminologist, a skilled practitioner of criminal law, and an expert eminently suited for international work in crime prevention and criminal justice. It was he who opened many doors to the authorities in several European countries, and helped to establish contacts with both leading academics and practitioners.

The European Institute, its staff and Advisory Board members past and present all join in to congratulate Professor Dušan Cotič on his 90th birthday, thank him for his contribution to European cooperation in crime prevention and control, and wish him continued success in all he undertakes.

Matti Joutsen

Dušan Cotič i Evropski institut: premošćavanje jaza

Predmet članka je odabir profesora Dušana Cotiča kao internacionalno orijentisanog stručnjaka za krivično pravosuđe i kriminologa od strane Evropskog instituta kao idealnog kandidata za člana Savetodavnog odbora sa ciljem da se premosti jaz između istoka i zapada kao i između akademske sfere i prakse. Profesor Dušan Cotič učestvovao je u radu Savetodavnog odbora sa velikim uspehom.

Ključne reči: internacionalna kooperacija, program Ujedinjenih nacija protiv kriminala, kriminologija, krivično pravosuđe.

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Across the borders in search of best practices: International comparative criminology at the UN

Anna Alvazzi del Frate*

This paper analyzes the changes of the focus of the UN Committee on Crime Prevention and Control through time and the formation of the new Commission on Crime Prevention and Criminal Justice. The focus of the paper is the contribution of Dušan Cotič, the last Chairman of the Committee.

Keywords: *Dušan Cotič, UN Committee, transformation.*

It must have been late 1984 or early 1985 the first time I passed the security check at via Giulia 52 in Rome. I was going to visit the library of the United Nations Social Defense Research Institute (UNSDRI), a well-known institution among criminology and sociology of law researchers at the time. In the summer of 1984 I had started research for my post-graduate thesis on organized crime during a visit to the US and Canada. UNSDRI was the only place in Italy where I would find a large collection of international literature to continue my work. The imposing 17th Century brick building, the New Prison[1] had a narrow entrance, which did not allow a view of the interior. It was necessary to go through a dark alley before getting into a larger space leading to a majestic staircase. On the first floor, the library was located on the left and consisted of a series of four large rooms connected to each other to form a wide square space, filled with shelves, desks and tables for consultation. The quiet atmosphere and typical dusty smell of "real" libraries went well together with the extraordinary architecture of the building.

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1 The building hosted Rome's prison for at least one century. It is now the offices of *Direzione Nazionale Antimafia,* the Italian prosecutor against organized crime.

After the first visit, I became a regular visitor of via Giulia, but it took a while before I had the chance to join the staff of UNSDRI, which in the meantime was transforming itself into UNICRI.[2] Changes at UNSDRI/UNICRI were in line with an ongoing process of transformation taking place inside the United Nations with respect to its approach to crime problems.

The Seventh UN Congress on the Prevention of Crime and Treatment of Offenders, which took place in Milan in 1985, reflected well the dynamic atmosphere of the time. Its outcome document, the Milan Plan of Action, represented the beginning of a deep renovation of the entire crime programme, led by the Committee on Crime Prevention and Control, of which Dr. Cotič was the Chairman.[3] Among the initiatives launched at the Milan Congress there was the review of priorities of the crime prevention and criminal justice programme "… to ensure the continuing relevance and responsiveness of the United Nations to emerging needs."[4] In the late '80s, some of the main social changes were in the air, those that were leading to the fall of the Berlin wall in 1989. Since its establishment, the Committee had promoted work and devoted its attention to key human rights issues through the development of a series of instruments setting standards and norms in crime prevention and criminal justice,[5] starting from the 1955 Standard Minimum Rules for the Treatment of Prisoners.[6] The intergovernmental debate and eventual adoption of such instruments was possible through the UN Congresses on the Prevention of Crime and the Treatment of Offenders. As Clark noted (1989: 74-76), the debate at the 1980 Congress in Caracas and the 1985 Congress in Milan shifted towards socio-economic issues and indicated a broader attention to the crime context, especially towards a comprehensive approach to include victims. As a group of privileged observers of the

2 On 24 May 1989, through its Resolution No. 1989/56, the ECOSOC renamed the Institute as United Nations Interregional Crime and Justice Research Institute (UNICRI) and adopted a new Statute. See www.unicri.it

3 The Committee was a group of individual experts nominated by Governments. For a description of the history and functions of the Committee, see Clark, 1989, p.69.

4 A/RES/40/32, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, para. 13.

5 Most of the UN standards and norms are resolutions adopted by the General Assembly or the Economic and Social Council. A Compendium containing all UN Standards and Norms is accessible electronically at: http://www.unodc.org/pdf/criminal_justice/Compendium_UN_Standards_and_Norms_CP_and_CJ_English.pdf

6 Ecosoc Resolution 1979/19, 9 May 1979.

international scene, the Committee progressively shifted their attention from the perpetrator to the victim, and promptly indicated to the international community the need to be equipped with instruments to ensure adequate protection and support to the victims of crime. This was achieved at the Milan Congress through the adoption of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.[7]

At the same time, the concept of location of crimes was becoming blurred, as transnational crime was becoming more frequent and aggressive. Barriers to international travel and communications were progressively being removed by the fast process of globalization. Traditional migration flows were changing and quickly being replaced by others towards new destinations. All this generated new opportunities for legal and illegal business.

The UN crime programme was progressively developing a focus on crime prevention based on the new concept of "security" to indicate protection from domestic and transnational crime threats rather than a foreign common enemy as was the case during the cold war. "Human security" and "safety" were more frequently at the centre of discussion and inspiring the work of the Committee, identifying how crime represented a threat to development and prosperity in a more peaceful world. A shift was also visible in the discussion on law enforcement operations, which were largely inspired by policies that put citizens and the community at the centre, rather than a top down repressive approach. The same applied to the sanctioning and corrections philosophy, which was progressively realizing the implications of relying excessively on imprisonment and developing alternative measures, many community-based, which were likely to facilitate the reintegration of offenders in the society. Indeed, alternatives to imprisonment was the topic of the workshop at the Eighth UN Congress, held in Havana in 1990.

After the Havana Congress, 1991 was entirely devoted to preparations for the transformation of the Committee into a fully-fledged UN Commission, with the meetings held in Vienna in August[8] and in Paris in November[9] representing the most important milestones. At the end of 1991, UNICRI hosted the first meeting of its new Board of Trustees, composed by Tolani Asuni (Nigeria),

7 A/RES/40/34, 29 November 1985.

8 Intergovernmental Working Group on the Creation of an Effective International Crime and Justice Programme, Vienna, 5 to 9 August 1991.

9 Ministerial Meeting on the Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme, Paris, 21 to 23 November 1991.

Pierre-Henri Bolle (Switzerland), Dušan Cotič (Yugoslavia), Régis de Gouttes (France), Moustafa El-Augi (Lebanon), José A. Rios Alves da Cruz (Brazil) and Shusil Swarup Varma (India).[10] Dr. Cotič was appointed President.

The dynamics of changes of the time are extensively documented in several texts,[11] which look retrospectively at how the work of the UN reflected contemporary intellectual and societal innovations. What remains as the main characteristic of that era, however, is the transition from a positivistic approach, mostly focused on the treatment of the offender, to a broader attention to the overall context, including the surrounding environment, the victim(s) and preventing the risk of further victimization.

At the basis of the establishment of the Crime Commission there were considerations still valid today. In the Statement of Principles, included in the 1991 GA Resolution calling for the creation of an effective UN Crime Prevention and Criminal Justice Programme, there is the following statement: "We believe that rising in crime is impairing the process of development and the general well-being of humanity and is causing general disquiet within our societies. If this situation continues, progress and development will be the ultimate victims of crime."[12] The debate on the relationship between crime and development was becoming central, also in light of global changes which brought attention to a new concept of "development," to take into account the category of "countries in transition," which started with the fall of the Berlin wall, to progressively include all post-socialist countries.[13]

In April 1992, the first session of the Commission on Crime Prevention and Criminal Justice took place in Vienna. As it was subsequently noted, "the Committee had sacrificed its own existence to allow the new Commission to be formed, motivated by the hope that it would achieve more tangible results."[14] The main topics of the Commission, those elaborated by the

10 Members of the Board had been selected by the Committee on Crime Prevention and Control at its eleventh session (1990) and endorsed by ECOSOC at its 13th plenary meeting, on 24 May 1990 (Res).

11 See for example Ram, 2012 and Redo, 2012.

12 A/RES/46/152, Creation of an effective United Nations crime prevention and criminal justice programme, 18 December 1991, Annex I.4. http://www.un.org/documents/ga/res/46/a46r152.htm

13 Research on crime and development carried out by UNSDRI/UNICRI included Zvekić (1990) and Zvekić (1992).

14 See UNCJIN, 1993.

outgoing Committee, included emphasis on national and transnational organized crime, including the protection of the environment through criminal law; crime prevention in urban areas, juvenile and violent criminality; and efficiency, fairness and improvement in the management and administration of criminal justice, with emphasis on building / strengthening capacity for data collection and analysis, as well as computerization of criminal justice systems.

This "menu" resisted for several years as the direction for the UN crime prevention and criminal justice programme, representing a valid indication for intergovernmental work and research. The Ninth Congress, held in Cairo in 1995, included a high number of workshops aimed at bringing together researchers, practitioners and diplomats to discuss progress on many related topics. The *Guidelines for the prevention of urban crime,* another important piece of "soft law" was adopted.[15]

Emphasis on research at the time ultimately led to the shift from "certainty" to "doubt." Indeed, parallel to the opening of borders and increased availability of information, also came a growing awareness of how much was still unknown and how difficult it was to universally apply some of the new crime prevention principles. For example, as one of the arguments used to support the need to establish an effective crime programme, in 1990 the Committee stated that "crime was increasing at a global average of 5 per cent per annum, well beyond the rise in population growth" and "developed countries devoted 2-3 per cent of their budgets on crime prevention and criminal justice, whereas the comparable figures for developing countries were 9-14 per cent."[16] Despite the correct approach to the problem, such statements were based on total confidence in the validity and comparability of relevant data, which paradoxically started declining as long as more information on their composition and collection methods became available. Probably nobody would hazard such bold statements today, but much of what has been learned in the past twenty years depended on a consistent shift towards evidence-based policies and impetus given to studies looking

15 Economic and Social Council Resolution 1995/9, 24 July 1995. http://www.un.org/documents/ecosoc/res/1995/eres1995-9.htm

16 "The need for the creation of an effective international crime and justice programme," E/1990/31/Add.1, final report of the review process started by the Committee in 1986, cited in the Report of the First Session of the Commission on Crime Prevention and Criminal Justice, E/1992/30 and E/CN.15/1992/7, p.p. 37.

at successes and failures of different policies, what works and what does not work, towards the long season of "best practices." For example, the *International Crime (Victim) Survey,* which involved approximately 70 countries worldwide and is, by now, recognized as one of the most prominent sources of quantitative information on crime, started in 1989.

This approach was particularly close to the way Cotič worked and is what I learned from him. When I started working for UNSDRI/UNICRI, I was curious to learn what "action-oriented research" meant. Applied research was at the basis of the work of the Committee, with frequent interactions between Committee members and UNSDRI. International comparative research produced recommendations which made the final products ready to use for practitioners and policy makers. The role of the Committee was crucial in transforming theory into practice, making research findings step down from the "Ivory tower" to become helpful tools for those who every day enforce the law, run prisons, or draft legislation. The combined work of UNSDRI and the Committee, especially through the Crime Congresses, made it possible to involve and reach experts and practitioners from all corners of the world under a UN global mandate.

In that period, UNSDRI carried out several international comparative studies involving experts from different contexts and regions. Dr. Cotič was the guiding expert behind many of them, although his name appears as the author only in the case of *Drugs and punishment* (1988). For example, he was the promoter of the debate around the study on *The death penalty: A bibliographical research* (1988), and, together with Duncan Chappell, helped me and Jennifer Norberry in the development of the structure and analysis of *Environmental Crime, Sanctioning Strategies and Sustainable Development* (1995).[17] I recall the brainstorming process we went through with him to construct terms of reference for the preparation of country reports as the most stimulating exercise. Dr. Cotič could easily identify where problems of comparability and uneven quality of reports would arise, and was generous of suggestions on how to overcome the challenge of bringing the final analysis to a sufficient level of depth and coverage. Dr. Cotič has developed over the years a vast experience in handling information from different parts of the world, based on having been a judge and an active networker, feeding his curiosity to expand the horizon and breaking down barriers or impediments

[17] See Cotič, 1988, UNSDRI, 1988 and Alvazzi del Frate and Norberry, 1993.

to learning about different criminal justice systems. Look at what systems have in common, find a sort of minimum common denominator, then develop case studies as examples of issues in which they differ. This very simple advice, which I will never forget, made my first steps into international comparative analysis much easier and more meaningful.

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Anna Alvazzi del Frate

Preko granica u potrazi za najboljim praksama: Međunarodna uporedna kriminologija u UN

U ovom radu analiziraju se promene fokusa Komiteta Ujedinjenih nacija za prevenciju i kontrolu kriminala kroz vreme i formiranje nove Komisije za prevenciju kriminala i krivičnu pravdu. Fokus rada je na doprinosu Dušana Cotiča, poslednjeg predsednika Komiteta.

Ključne reči: Dušan Cotič, Komitet Ujedinjenih Nacija, transformacija.

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Dušan Cotič – Friend, mentor, scholar, and the man of action

Michael Platzer
Brad Popović*

This paper describes the contribution of professor Dušan Cotič to the reconciliation process in Bosnia and Hercegovina. He participated in the project which intended to re-establish inter-ethnic dialogue and to harmonize laws and regulations in this country. The results were quite impressive for those turbulent post-conflict times. Among other things a new manual for correctional officers and law reform proposals were made, seminars were organized and also for the first time since the beginning of the hostilities judges from both entities were brought together.

Keywords: *Dušan Cotič, Bosnia and Herzegovina, contribution.*

Introduction

At the risk of repeating what others may have written about Professor Cotič in this volume, he is the grandfather figure we would all wish to have - kind, wise, with a light guiding hand, always with a gentle smile on his face, curious and tolerant. Another way to describe him is the "last cosmopolitan Yugoslav." He was born in Slovenia but married to a Serbian woman, lives in Belgrade and remains respected in Bosnia, Croatia, Serbia, and Slovenia. His

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great criminological work and law reform hopefully will be set down by other contributors.

I first met him as a Member of the UN Committee on Crime Prevention and Criminal Justice, where he was considered as one of its core members. He was Chair of the Committee but also the Great Compromiser who was able to bridge the differences between the different camps and therefore was regularily involved in working groups to find textual solutions. Many of the important resolutions coming out of the UN Crime Programme bear his mark. Professor Cotič did visionary work on environment crime and sanctioning strategies, drugs and punishment, always with comparative eye, social acceptability, sustainable development and human rights.

Cotič – the man of action

However, we would like to use this opportunity to describe an operational project which attempted to do perhaps the impossible in 1997. to bring together the judicial and correctional institutions in the Republika Srpska and the parallel institutions in the Bosnian and Croatian controlled parts of Bosnia and Herzegovina into dialogue and to harmonize their laws and practices as much as possible. This noble project was managed on the Serbian side by Brad Popović in Banja Luka and by Marc Andre Dorel in Sarajevo. However, the "guiding angel" over the project was Dušan Cotič.

This United Nation Development Programme project had lofty goals – the establishment of the rule of law, re-integation of the court systems and re-functioning of the judiciary, legal professions, and correctional facilities- after a bloody fratricidal war. We were to deliver computers to the courts, establish a case management system, and organize training seminars about international standards and norms and how to deal with new phenomena such as corruption. The main goal however was to establish inter-ethnic dialogue and to harmonize laws and regulations. For this, we relied heavily on the UN Standards, particularly those relating to treatment of prisoners. Under the supervision of Professor Cotič, a manual for correctional officers was developed "Osnovni priručnik za obuku zatvorskog osoblja" (Prodanović i sar., 2005). This comprehensive publication included the national law and international obligations for the administration of prisons and treatment of prisoners, as well as practical guidelines and techniques for correctional

workers. Training courses were carried out by Jack Holland of the Howard League, Christian Kuhn of the Austrian Prison Service, and Gary Hill of the International Penal and Correctional Association.

Various seminars on juvenile justice, with an emphasis on separate accomodations for juveniles from adults, principles of restorative justice rather than punishment were undertaken. In addition to advisory technical missions, law reform proposals were made (and adopted in the Federation).

The project sponsored a meeting of correctional workers of Republika Srpska at Brioni where they worked on addressing pressing issues in the adminstration of prisons, including presentations on issues of law and practice. The two day conference was particularly helpful for the Ministry of Justice (the Minister was present) to tackle the management issues (with a lack of funding) and how to maintain the standards of law without sufficient government support. It was the first forum for the correctional workers to bring to the attention of the Ministry the real problems they face in daily management.

A singular achievement of the project was to bring together judges from across the ethnic divide – for the first time since the beginning of hostilities. In the beginning, these former "enemies" were skeptical but relaxed slowly under the warm guidance of Professor Cotič and the generous hospitality of the UN Interregional Institute on Crime Prevention and Criminal Justice in Rome. Several renewed their old friendships and remained in contact. The conference also restored some of the dignity to those judicial officers who had been trying to carry on a semblance of the rule of law in difficult times by connecting them to international actors.

Professor Cotič also assisted in the organization of the first seminar in Bosnia on anti-corruption strategies. This seminar again provided an opportunity for members of the judicial system from both entities to meet and discuss issues of corruption in Bosnia. They were also able to hear from experts about efforts and progress made in other countries from international experts, this time in Banja Luka.

Other UN agencies such as UNDP and OSCE benefitted from the re-establishment of these professional and social ties. It also led to more Republika Srpska officials to reach across the lines and to collaborate on practical problems. No one can claim sole credit for these small steps toward normalization. It did help, that Mladen Ivanić was elected Prime Minister of

Republika Srpska, who was in a parallel UNDP project of bringing economists together. He later became Foreign Minister of Bosnia and Herzegovina.

However, one cannot underestimate the quieter roles of Professor Cotič and Brad Popović who contributed to the healing. I have seen Dušan several times since during the demonstration against Milošević and more recently at a symposium at the Belgrade Law School on teaching, about climate change. He has remained interested in all things, the whereabouts of former colleagues, developments in the UN crime programme, but always had caring interest in one's personal well being. A great and kind man.

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Michael Platzer
Brad Popović

Dušan Cotič – Prijatelj, mentor, naučnik i čovek od akcije

Ovaj rad opisuje doprinos profesora Dušana Cotiča u procesu pomirenja u Bosni i Hercegovini. On je učestvovao u projektu koji je imao za cilj da ponovo uspostavi međuetnički dijalog i uskladi zakone i propise u ovoj zemlji. Rezultati su bili prilično impresivni za ono turbulentno posleratno vreme. Između ostalog, napravljen je novi priručnik za obuku zatvorskog osoblja, predložene su reforme pravosuđa, organizovani su seminari, a po prvi put od početka sukoba napravljen je i skup gde su učestvovale sudije iz oba entiteta.

Ključne reči: Dušan Cotič, Bosna i Hercegovina, doprinos.

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From the Universal to the Particular through intercultural United Nations crime prevention law and practice

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The article focuses on some legal and criminological counter aspects of the functionalist approach to public international law, by taking as the example United Nations crime prevention law. On this basis, the article's author analyses the theoretical and practical meaning of cross-disciplinary concepts of the Universal and the Particular, known also in law and criminology as the General and the Specific. He emphasizes the coexistence of both concepts and their mutual reinforcement through the intercultural United Nations policy and action.

Keywords: *corruption, crime prevention, peace, trafficking in human beings, United Nations.*

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This article is the refocused and updated version of the author's text on "Sociology of knowledge on academic and bureaucratic knowledge" from his book titled "*Blue Criminology. The Power of United Nations Ideas to Counter Crime Globally*" (Redo, 2012). For some examples of philosophical consideration of the concepts of the Particular and the Universal, see: Sykes,1975: 311-331 and Fletcher, 1987: 335-351. The term United Nations "law" is conceptually understood here as a loose collation of various provisions, but not their code as one consolidated legal text. However, in line with "promoting international co-operation in the political field and encouraging the progressive development of international law and its codification" (art. 13.1(a) of the United Nations Charter), this article seeks to interpret those provisions with a view to advancing the codification of international law. Last but not least, this article focuses only on some legal and criminological counter aspects of the functionalist approach to international law. Among those left out are the domestic translation aspects of the Particular into the Universal (see, e.g.: a traditionalist interpretation by Fletcher (op. cit.), and a modern one by Šarčević (1997); the inductive logic of international law and the inductive and other logic of the United Nations law (Redo, 2012).

Introduction

When working with the United Nations, the most universal and universalistic of all global organizations, I was keenly aware that each and every Member State has something particular in its domestic system that makes it different from others. Practically, any universal law is qualified by their particulars, expressed through legal language incompatible with the Universal.

Against this background academics in favour of a functionalist approach to international law argue that as long as developed legal systems, notwithstanding such particulars, reach the same substantive solution to a common problem, the interim ideas, concepts, or legal arguments through which these particulars are domestically expressed are eventually of little value. It is the final result that counts, and not the interim machinery producing it, for it only weakens the perception of the Universal (Kahn-Freund, 1966).[1]

This article argues the contrary. It claims that ideas, concepts and legal arguments, as a part of a larger intercultural machinery, strengthen the Universal. Thanks to the Intercultural, the Universal and the Particular are not mutually exclusive. They coexist and mutually reinforce one another. I will demonstrate and discuss this using the example of United Nations crime prevention law.

The Universal in law

In the first preambular paragraph of the United Nations Economic and Social Council (ECOSOC) resolution on "Guidelines for the Prevention of Urban Crime" it states that urban crime has "universal character" (UN, 1995).

The Particular in law

At the very start of the statutory part of the resolution, in operative paragraph 1, it emphasizes "a local approach to problems" – a confirmation that urban crime is "glocal" (universal and particular at the same time). These

[1] Some commentators regard this interpretation as "a revised version of Montesquieu's theory" (Ewald, 1995: 495) about which later.

problems can be solved through a multi-agency approach and a coordinated response at the local level, in accordance with an integrated crime prevention action plan, which should incorporate, inter alia, local diagnostic survey of crime phenomena, their characteristics, factors leading to them, the form they take and their extent.

The above approach is reemphasized by another ECOSOC crime prevention resolution (UN, 2002). It recognizes that "Each Member State is unique in its governmental structure, social characteristics and economic capacity and that those factors will influence the scope and implementation of its crime prevention programmes." Notwithstanding the above, the resolution next accepts the universalistic guidelines which it extensively lists in 33 operative paragraphs.

The Intercultural in law

In para. 27 (c) the resolution lists the stipulation for "Designing crime prevention strategies, where appropriate, to protect socially marginalized groups, especially women and children, who are vulnerable to the action of organized criminal groups, including trafficking in persons and smuggling of migrants."

The recognition that both trafficking in persons and smuggling of migrants are the forms of organized crime is the evidence for the influence of the Intercultural. Shortly after signing the United Nations Convention against Transnational Organized Crime (2000), very few Member States had in their criminal codes these (new) forms of crime. Mostly, its official recognition was limited only to some legal elements of it (e.g., prostitution). In 2001, the United Nations Office on Drugs and Crime (UNODC) through its pre-ratification technical assistance programme embarked on increasing the awareness of Member States on those two forms of organized crime. As a United Nations Senior Crime Prevention and Criminal Justice I was involved in Central Asia in this programme. In its course, one of the most important factors found involving the victims' trafficking was their cultural isolation from the outside world that rendered them an easy prey for the traffickers. Women's self-perceived role of house wives and child-bearers limited their understanding of their other development potential. When left on their own, in order to maintain their living such women can only transpose their domestic experience in the outside labour market. From its side, the traffickers can easily recruit them,

claiming a demand for cleaners, maids, sellers, babysitters; and for those who are in worse living condition – commercial sex (Redo, 2004: 68).

Against such a background, raising the legal awareness of signatories to the Convention on the need to criminalize trafficking in human beings and smuggling of migrants is only a minor part of the entire effort to redefine the scope of the Particular to the Universal through the Intercultural. In this process not only intergovernmental organizations and governments but also non-governmental organizations, private sector, faith groups and others should be a part of the machinery that transforms the Particular to the Universal.

Whether or not one wants to do it, that is another thing. "Obviously, the more one stresses the inner character of a culture, the more difficult it is to move on to comparison and generalization" (Kuper, 1983: 194).

For the universalists, this is quite a debilitating argument. It was originally articulated by Montesquieu (1689-1755)[2] and Friedrich Carl von Savigny (1779-1861), founder of the legal historical school. He wanted to purify Germanic law of any elements of Roman law for they did not reflect the German mindset. Everybody knows to what this kind of reasoning led in the 20th century, including war atrocities like genocide, ethnic cleansing and other barbarous acts.

Such a purification argument is often misread, at least as Montesquieu is concerned. In his "De l'Esprit des Lois" he wrote that the laws of different countries "should be so specific to the people for whom they are made, that it is a great coincidence if those of one nation can suit another."[3] Still troubled by the master's credo[4] underlying the relativity/specificity of laws, Montesquieu's followers seem to stretch his view emphasizing that laws should be adapted to the people for whom they are made. In other words, laws are made from the Universal to the Particular, rather than only from what one locally sees (Graziadei, 2003: 119). But probably the most conclusive and synthetic vision

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2 "The Montesquiean approach emerged as a perfect model also for the nationalists and ethnological comparative law… It had all the qualities of a persuasive socio-historical analysis. The claim regarding the autonomy of the nation suited many purposes perfectly" (Kiikeri, 2001: 16).

3 Translated by Robert Launay (2001: 23).

4 This critical passage then continues: "They should be relative to the physical qualities of the country: to is frozen, burning or temperate climate: to the quality, location, and size of the territory; to the mode of livelihood of the people. Farmers, hunters, or pastoralists; they should relate to the degree of liberty which the constitution can admit, to the religion of the inhabitants, their inclinations, to their wealth, to their numbers, to their commerce, to their mores, to their manners..." (Launay, 2001: 23).

of Montesquieu's work is advocated through this statement: "Montesquieu… attempted, through comparison, to penetrate the spirit of laws and thereby establish common principles of good government" (David, Brierley 1978: 2). In sum, Montesquieu's the Particular led his followers to the Universal.

This was later emphasized by the Sixth United Nations Congress on Crime Prevention and the Treatment of Offenders (1980), attended by Dušan Cotič , then the first-term member of the United Nations Committee on Crime, Prevention and Control – the preparatory Congress body which he served as Vice-Chairman-Cum-Rapporteur. The Congress in its Caracas Declaration affirmed the Particular by stating that "crime prevention and criminal justice should be considered in the context of economic development, political, social and cultural systems and social values and changes, as well as in the context of a new international economic order" (UN, 1980, op. para. 3). Recently, but certainly not lastly in the United Nations, the General Assembly that endorsed the Salvador Declaration of the Twelfth Congress on Crime Prevention and Criminal Justice, invited "Governments... to implement the principles contained therein, taking into account the economic, social, legal and cultural specificities of their respective States" (UN, 2010, op. para. 5).

In the above light, so much originally pondered by Montesquieu, Savigny and other lawyers, as paradoxical as the following question may now sound, one still wonders that while Member States are jointly affirming the particularity of crime prevention in each country, why do each of them declare the same thing? Is this not then the evidence of universality of particular problems? If so, is the Particular a legal disclaimer protecting State sovereignty rather than declaring real differences? Second, why did each country affirm that only a locally-driven modernization ("new international economic order") can be beneficial to the effective and humane crime prevention and criminal justice, while – at least some Member States – also advocated a contrary view that of centrally-led new international economic order for the whole world?

There are some plausible explanations. A first explanation suggests that both affirmations (the Universal and the Particular) are not mutually exclusive. They rather are a collective anti-theses of the individual positions. They are a demonstration of legal unity in diversity, for the United Nations law is a universalizing system of „*We the peoples*". It ordains cultural, political, social and economic specificities. It expresses a collective „Volksgeist" or „*Weltgeist*" (Hegel) much in the same way as Montesquieu and Savigny independently of one another meant the former only for a single domestic

legal system. That „world spirit" is essentially alive and active throughout mankind's history. "Hegel identifies the spirit of a people with its historical and cultural accomplishments, namely its religions, its mores, its constitution, and its political laws. They are the work of a people, they are the people" (Rotenstreich, 2003: 491). And they are only in people for the Universal does not exist outside them. Nothing less, nothing more.

However, since the above explanation may still be somehow unsettling (the argument of the Particular still lingers behind religions, morality, constitution and laws), and for the lawyers too phantomatic, a second, less troubling, explanation was advanced by Leszek Kołakowski (1927-2009). This Polish philosopher of morality and historian of ideas argued in his Oxford lectures that it is not the Particular that really matters. What matters is a, still dominant in the world, tribal tradition of treating what is „ours" as „good" and what is „theirs" as „bad" (Kołakowski, 2003: 189). But, across and above this tribal morality of peoples, if not for real than at least nominally, there is an emerging common core of human values. Even if those values are violated by the „barbarians" themselves, he concludes, they, at least half-wittingly, at the bottom of their hearts, know that such violations are indeed barbarous. And they indeed are, as elsewhere the same philosopher convincingly argues, by saying: "historical or anthropological material, these will always be the laws of particular groups, races, classes, nations that on the strength of those laws are free to eliminate or enslave other groups. Humankind is a moral concept, and if we do not accept it, we have neither a good basis to question slavery nor its ideology" (Kołakowski, 1990: 87). Hence, there is no question that "a border is [only] a veil not many people can wear" (Danticat, 1998: 394).

In some instances the argument of the Particular may well be yet another veil, protecting particular group interests rather than those of the State. The example of UN counteraction to corruption is a case in point. Often related to human trafficking, corruption is very difficult to fight internationally, let alone be assessed in terms of other State's technical assistance needs. UNODC experience shows that such external assessments based on the United Nations Convention against Corruption (2003) are objected to when State Parties through their own internal self-assessment know beforehand how corrupt their apparatus indeed is. In such cases arguments are heard that the particular situation would not allow making an objective external assessment. In fact, this says that countries with integrity-deficit resist being scrutinized by others.

Since that attitude is more or less common, it should be added that the argument of the Particular as a smoke screen may be overcome. This may be done by showing that in other countries' legislation and practices difficult corruption cases have been addressed by a new method of their double investigation by two autonomously working teams, hence more resilient to the corrosive influences.

Particular-Intercultural-Universal in practice

Further, where cultural specificity really matters, the UNODC has started developing recommendations on adapting culture-specific good practices to other cultures, as the case is with its the prevention of drug abuse through parental skills training. For that purpose, the UNODC conducted a review of some 130 family skills training programmes and the evidence of their counterdrugs effectiveness worldwide. The review focused on the universalistic programmes that target all parents and families, and selective programmes that target parents and families that belong to groups or communities which, by the virtue of their socio-economic situation, are particularly at risk of substance abuse problems. The review concluded with a list of principles enabling culturally adapting family skills training programmes (UNODC, 2009). In fact, these recommendations are so generic that they may also be helpful in other areas of intercultural crime prevention, including the countering of youth urban crime.

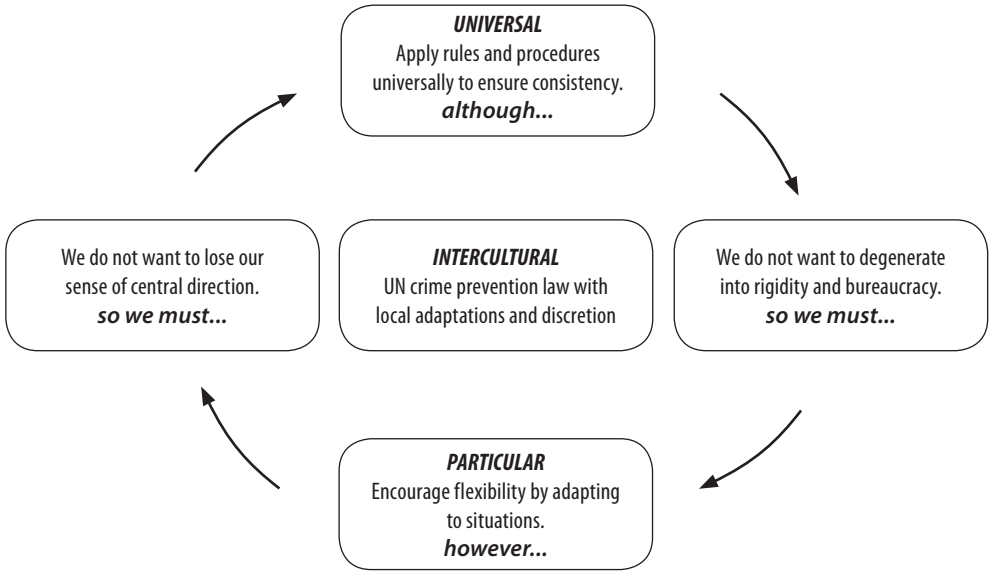
The above shows that the argument of the Particular may be reduced by such universalistic methods and arguments. This broadens a shared understanding ("common language of justice") of problems and has nothing to do with limiting the State sovereignty, otherwise often justified by the above defensive and deflecting argument.

Researchers say: "[I]t is not...to go from the Universal to Particular…[H]uman organizations with the most effective change programs have developed a culture of dialectics. This means that change is best initiated by putting one orientation in the context of the other rather than opposing values. The elegance of this approach is that the existing [legal–added] culture is not threatened but enriched" (Trompenaars, 1997, p. 32).

The following graph (Figure 1) shows this. It explains that when dealing with crime prevention, we may be caught in the dilemma of the universal

truth and the particular or local circumstance. On the one hand, we realize that there are some universal precepts. On the other, the particular needs of the local environment ask for responses that do fit such precepts, because there is no good crime prevention practice for all seasons. A good practitioner reconciles this dilemma by acknowledging that the particular instances need universal rules in order not to slip into local pathology. How can then UN crime prevention law be implemented with such a recommendation?

Figure 1. *The United Nations crime prevention law as intercultural and glocal: how to reconcile the Universal with the Particular? Adapted from: Trompenaars, 1993, p. 32.*



Strategic crime prevention management is not about replacing one orientation with another – to go from the Universal to the Particular. Intuitively, the most effective manager goes through a cycle in which the middle is held by his/her talents. A manager acknowledges that the particular instances need universal rules in order not to slip into a local pathology. Being universal means to be enriched by the other particular human values and letting them flourish for a common good. And just as English has become a global language, no part of the developed and developing world can remain unaffected by the global standards and norms, including among many of them the UN crime prevention law.

These universalistic arguments cut across various „laws of lands". Hence, Figure 1 is merely the visualization of a generic cross cultural mechanism applicable to other global (UN or not) standards and norms in the local context.

In comparison with the arguments of early legal philosophers denouncing the influence of foreign law on domestic law, and, in fact, purifying the latter from the former, these contemporary universalistic arguments are both global and local (or "*glocal*") for those technical assistance practitioners who see universalism and specificity as one concept (as Montesquieu did). In fact, they go into the heart of the United Nations Convention against Transnational Organized Crime with its two protocols against trafficking in humans and smuggling of migrants with no derogation of slavery, and straight into what a successful United Nations crime prevention should be. They also cut across various cultures because of the target populations: exploited, disadvantaged or vulnerable peoples who because of this problematic status are the same everywhere. These arguments lead to an additional common denominator for all of these peoples – that of different levels of statehood of countries in which they live. Depending on it, bringing into its light a United Nations crime prevention and criminal justice message will look differently and will have a different impact.

Conclusion

It is this humanistic and capacity-building context in which one should read what the Particular means when it is invoked by the United Nations. The Organization reminds us that it involves every civilization, every country and every level of statehood. It says that in each civilization tolerance is one of the fundamental values essential to international relations in the twenty-first century. Tolerance should include the active promotion of a culture of peace and dialogue among civilizations, with human beings respecting one another in all their diversity of belief, culture and language. There should be neither fear nor repression of differences within and between societies but cherishing the Particular – a precious intercultural asset of humanity.

Krzysztof Kieślowski (1941-1996), internationally renowned Polish movie maker, has aptly captured this message from the perspective of his home country:

[As Poles], "we have a deeply rooted conviction – which we thoroughly enjoy – that we are the most important in the world and that everybody knows it. I have understood quite a while ago that this is absolutely not true, that people in the world care about Poles…They are not at all interested in the Polish history, Polish suffering and our wrestling in the Polishness, in our heroism and so on. They do not care about this because everybody in the world has own problems… So the only chance for understanding each other is not finding [in my films] what is Polish, but finding in the Poles what concerns everybody in the world, and finding in the people of the world what concerns the Poles" (Zawiślański, 2007: 44).

No wonder that for this vision from his movies he was awarded across Europe and in Latin America – what is here the concluding argument for the coexistence and mutual reinforcement between the Particular and the Universal.

Ever since I have gotten to know Dušan Cotič personally I have realized that his own work that concerns everybody in the world is the most valuable intercultural asset that we should cherish and share with the succeeding generations of the Friends of the United Nations – the most universal and universalistic peace-promoting Organization in the world.

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Slawomir Redo

Od univerzalnog do partikularnog u praksi i zakonskoj regulativi Ujedinjenih nacija za prevenciju kriminala

Članak se bavi nekim pravnim i kriminološkim aspektima međunarodnog javnog prava i za primer uzima zakonsku regulativu Ujedinjenih nacija za prevenciju kriminala. Autor analizira teorijska i praktična značenja multidisciplinarnih koncepata univerzalno i partikularno za koje se u sferi prava i kriminologije koriste i izrazi opšte i posebno. On naglašava da ova dva pojma koegzistiraju i međusobno se podržavaju u okviru regulative Ujedinjenih nacija.

Ključne reči: Korupcija, prevencija kriminala, mir, trgovina ljudima, Ujedinjene nacije.

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The United Nations convention against corruption: a successful example of international action against economic crime

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This article briefly outlines the progress made in recent years in the development of an international legal framework to combat economic crime, with a specific focus on the United Nations Convention against Corruption. The author notes the impressive progress made by the international community in both the creation and implementation of the Convention, particularly through the adoption of the Implementation Review Mechanism.

Keywords: *economic crime, UN, convention.*

Introduction

Great progress has been made in recent years towards the realization of an effective international normative framework for combating economic crime. A series of international agreements and initiatives addressing issues such as organised crime, corruption and human trafficking have produced a blueprint for action and a framework for cooperation amongst States in their collective efforts to combat these corrosive phenomena.

Progress in the development of this international legal framework has reflected increasing awareness amongst all levels of society of the crippling impact of economic crime on the ability of governments to carry out their role

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effectively. Awareness of the effects of corruption, in particular, has increased dramatically in recent times and there has been a rejection both of the cultural arguments previously used to justify it and of the idea of corruption as a harmless or victimless crime. The international nature of economic crime and, more specifically, of corruption has also now been recognised, with their effects being felt across borders and many of those responsible for grand acts of economic crime seeking to escape punishment through the transfer of proceeds across jurisdictions.

A phenomenon with such diverse sources, complex effects and global impact called for an equally comprehensive, detailed and international framework to fight it. Building on the momentum created by the adoption of the United Nations Convention against Transnational Organised Crime (UNTOC), agreement was reached in December 2003 on the United Nations Convention against Corruption (UNCAC). In adopting this instrument, the international community responded to the unique challenges that such a widespread and complex issue brings and took a decisive step forward in the fight against corruption.

The adoption of the UNCAC Implementation Review Mechanism by the Conference of the States Parties to the Convention in 2009 represents a further landmark in the collective efforts of the international community to combat economic crime. While still in its formative stages, the review mechanism has already both enhanced the ability of the international community to assess progress in implementation of the provisions of the Convention and created a framework in which States are able to share best practices and identify thematic areas where further cooperative action may be beneficial.

The agreement of a comprehensive and innovative instrument such as the United Nations Convention against Corruption shows the international community at its most dynamic and relevant. The broad scope of the Convention and the measures adopted to implement it have also demonstrated how, when the will is there, the international community can come together to develop a meaningful and effective international regime aimed at addressing economic crime. Thanks to the tireless efforts of people like dr Dušan Cotič in both raising awareness of these issues and working towards an international solution, significant steps have now been taken towards a future in which corruption and economic crime are a thing of the past.

The United Nations Convention Against Corruption: A comprehensive framework for combating corruption

The UN Convention against Corruption is the world's first global, comprehensive and legally binding anti-corruption instrument. Calls for a truly global anti-corruption instrument followed a wave of regional and international instruments aimed at addressing the issue of corruption including the Inter-American Convention against Corruption, the OECD Convention against Bribery of Foreign Public Officials in International Business Transactions, and the Council of Europe's Criminal and Civil Law Conventions on Corruption. While these instruments provided an excellent basis for action in relation to specific forms of corrupt conduct or in relation to specific regional areas, an appetite had grown in the international community for a global anti-corruption instrument to reflect the global nature of the corruption epidemic.

It was, however, amidst the negotiations for the United Nations Convention Against Transnational Organized Crime that the idea of a specific international instrument addressing corruption began to crystallise. Capitalising on the momentum built following the agreement of UNTOC, the General Assembly established the United Nations Ad Hoc Committee for the Negotiation of a Convention Against Corruption, tasking them with drafting a Convention with an ambitiously broad range of components[1].

Little more than eight years after the official signing of the Convention in Merida, Mexico on 9 December 2003, 159 States are now parties to the Convention and it is hoped that steady progress will continue towards universal ratification.

The geographic range of States that have signed up to the Convention is also matched by its substantive breadth. The Convention takes a holistic view of the actions that are necessary from States in order to combat corruption. Rather than merely focusing on the criminalization of particular forms of conduct, the Convention also contains provisions relating to prevention, international cooperation, asset recovery and the provision of technical assistance. It is this comprehensive approach to combating corruption that has led the Convention to be recognised as the key standard by which State actions against corruption shall be measured.

1 GA Res. 55/61 of 4. December 2000

In the area of prevention, the Convention requires States to develop and implement or maintain effective coordinated anti-corruption policies, with a particular focus on encouraging the proper management of public affairs including the importance of transparency, the independence of the judiciary and the inclusion of the private sector and civil society in efforts to combat corruption. States Parties are also required to institute a comprehensive regulatory framework for financial institutions with the aim of combating all forms of money-laundering.

The Open-ended Working Group on the Prevention of Corruption has been tasked by the Conference of State Parties to the Convention with encouraging the implementation of the these provisions of the Convention. To date, the Working Group has provided a forum for the sharing of best practices in relation to issues such as public procurement, the role of the media in anti-corruption efforts, and the use of awareness raising initiatives[2], public reporting and codes of conduct[3] in combating corruption.

Chapter III of the Convention requires States Parties to criminalise a range of corruption-related offences including bribery of national public officials, foreign public officials and officials of public international organisations. States Parties are also required to consider adopting measures so as to criminalise illicit enrichment, bribery in the private sector and trading in influence.

In line with its holistic approach, the Convention does not stop at merely requiring the criminalisation of specific forms of conduct but also places requirements on States regarding the effective implementation of sanctions where an offence is committed[4], the establishment of jurisdiction over corruption offences[5], and requires States to take measures to ensure cooperation between national authorities, financial institutions and law enforcement bodies in their anti-corruption efforts[6].

Cooperation at the international level is also a key theme and aim of the Convention and a detailed range of provisions in Chapter IV provide an international cooperation framework for State Parties, particularly in relation to extradition and mutual legal assistance. It is in these provisions that the

2 CAC/COSP/WG.4/2011/2

3 CAC/COSP/WG.4/2011/3

4 UNCAC Article 30

5 UNCAC Article 42

6 UNCAC Articles 37 - 39

influence of the UNTOC can most clearly be seen, with the excellent work from that Convention being replicated in the provisions of UNCAC, thereby ensuring a level of coherency between these complementary international instruments[7].

The provisions in Chapter V relating to asset recovery were one of the true innovations of the Convention; no other international instrument had previously addressed this issue. In addition to providing that the return of assets is a fundamental principle of the Convention, UNCAC obliges States Parties to introduce measures requiring financial institutions to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds and assets and to conduct enhanced scrutiny of the accounts of senior public officials. Furthermore, the Convention requires States Parties to take measures to facilitate the direct recovery of property that has been obtained as a result of corruption, particularly through international cooperation with other States Parties and through mutual recognition of confiscation orders.

The work of the Working Group on Asset Recovery, the longest-standing implementation group under the Convention having been established at the first Conference of State Parties in 2006[8], has provided impetus for States Parties in the implementation of the asset recovery provisions of the Convention. In particular, the Group has provided a forum for discussing new legislation introduced by State parties, encouraged deliberations amongst State parties regarding the practical aspects of asset recovery cases and is presently supporting the development of a global network of asset recovery focal points.

As a consequence of the recognition in the Convention of the increasing importance and relevance of asset recovery to the fight against corruption and economic crime more broadly the United Nations and the World Bank in 2007 launched the Stolen Asset Recovery Initiative (StAR) aimed at supporting international efforts to end safe havens for corrupt funds. Since its inception, StAR has played an active role in supporting States in their asset-recovery efforts, providing expert assistance to countries in relation to specific asset-recovery cases and acting as a centre of excellence, producing detailed publications and training materials including the Asset Recovery Handbook for Practitioners[9].

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7 See Articles 16–18 UNTOC and Articles 44–46 UNCAC.

8 COSP Res. 1/4 Establishment of an intergovernmental working group on asset recovery.

9 http://www1.worldbank.org/finance/star_site/documents/arhandbook/ar_handbook_final.pdf

In addition to requiring a comprehensive range of actions from States, the Convention also provides a basis for the provision of technical assistance to those States who require help in meeting their obligations under UNCAC. Specifically, States Parties are called upon to afford each other the widest measure of technical assistance in their respective programmes to combat corruption[10], to assist each other in conducting evaluations and studies as to the causes of corruption[11] and to make concrete efforts to enhance their cooperation with developing countries with a view to enhancing their capacity to combat corruption[12]. These provisions also provide a basis for the provision of technical assistance by the United Nations Office on Drugs and Crime to developing countries. Last year, for example, UNODC provided technical assistance to a range of States through its global Anti-Corruption Mentor Programme. This programme provides specialized expertise through the placement of anti-corruption experts in government institutions. In 2011, regional mentors provided assistance in East Africa, Central America and the Caribbean, East Asia and the Democratic Republic of the Congo.

While UNCAC remains a relatively young instrument in international law terms, real results are already being identified as a result of its implementation. The growing body of knowledge that it is emerging through the Implementation Review Mechanism, and the vigour with which states have participated in that process, also demonstrates the seriousness and energy with which States Parties have sought to implement their obligations under the Convention and evidences the essential role that international cooperation can play in combating economic crime.

The Implementation Review Mechanism: A landmark in the fight against corruption

The role of UNCAC as an innovative and comprehensive framework for action by States in the fight against corruption has been further enhanced by the recently-established Implementation Review Mechanism (IRM) which provides for the peer review of States Parties' efforts in implementing

10 UNCAC Article 60, para. 2

11 UNCAC Article 60, para. 4

12 UNCAC Article 60, para. 7

the Convention. The adoption of the Terms of Reference of the IRM at the third Conference of State Parties in Doha marked a major step forward in the effective implementation of the Convention and in the fight against corruption more broadly.

The IRM consists of two review cycles, each of 5 years. In the first review cycle each State Party will have their implementation of Chapters III (Criminalization and Law Enforcement) and IV (International Cooperation) of the Convention assessed. In the following cycle (beginning in 2015) the focus will be on Chapter II (Preventive measures) and chapter V (Asset recovery). Each State party is reviewed by two other States parties.

The review process began in July 2010, with 26 States subject to review in the first year of the cycle. In July 2011 a further 41 reviews began and it is anticipated that the first round of reviews will be completed in the coming months.

The process followed during a review begins with an initial document-based stage during which the State Party under review must complete a comprehensive self-assessment checklist in relation to their implementation of Chapters III and IV of the Convention. State parties are encouraged to view this as an opportunity to engage in a broad national consultation with relevant stakeholders such as the private sector and civil society and to include the input from such groups in their responses. The use of the self-assessment checklist as a basis for the review process has been a success with all twenty seven States under review in the first year having provided their responses. From the second year, complete responses to the checklist have already been received in well over half of the reviews.

On the basis of the completed self-assessment checklist, the reviewing States then produce a desk review of the implementation of the Convention by the State Party under review. This desk review provides the basis for a stage of interactive dialogue between the State under review and the reviewing States, during which a detailed discussion of the relevant legislation, policies and practices of the State under review takes place, including exploration of specific challenges and successes. Following completion of the desk review and interactive dialogue stages the reviewing States then produce a report, outlining the best practices and potential areas for improvement as regards the implementation of the Convention by the State party under review. An executive summary of each country report is made publicly available. To date, eleven reports from the first year of the review mechanism have been concluded.

While the review mechanism is still in its early stages, States Parties have shown an encouraging commitment to participating actively in the process. This has been evidenced by the number of State Parties who have invited reviewing States to carry out a country visit as part of the review process, with twenty one States choosing this method of interactive dialogue in the first year and at least a further twenty one country visits already anticipated in the second year of the review cycle. This is a further demonstration of the continued momentum and energy which has marked the efforts of the international community throughout the process of first negotiating the Convention, then agreeing its implementation modalities and now participating in the mechanisms that have been established.

Furthermore, in addition to allowing for the identification of best practices and challenges at country-level, the IRM also provides an excellent tool for the identification of general trends amongst State parties. The information gathered from the review process and the key thematic challenges of implementation that emerge will be crucial in assisting States Parties, UNODC and other international organisations in focusing their work and technical assistance programmes in areas that will most effectively help States to combat corruption.

Conclusion

In the last ten years there has been a recognition amongst the international community both of the importance of addressing the issue of corruption and of the need to take a comprehensive, international and cooperative approach in order to combat it effectively. The United Nations Convention against Corruption has rapidly been accepted as the international standard to guide States anti-corruption efforts and the recently established Implementation Review Mechanism provides States with an opportunity to identify common areas in which further international cooperation will yield even better results. This represents an impressive change from only fifteen years ago when the first calls for an international anti-corruption instrument began to be heard, and serves as an example of how States, with support from the United Nations, can rise to meet common challenges. As such, the United Nations Convention against Corruption may act as a model for future developments in the international normative framework as it relates

to economic crime. The rapid agreement and implementation of the UNCAC demonstrates how much can be achieved when a sense of momentum amongst the international community is harnessed and combined with the energy and expertise of those in academia, civil society and international organisations such as the United Nations.

While such developments and the sense of momentum we presently have should be applauded, we must also recognise that there is much left to do. In particular, the information obtained from the Implementation Review Mechanism should now provide a platform for the provision of targeted and effective assistance to States in their efforts to implement the provisions of the Convention. This is an opportunity that must not be lost if we are to continue the excellent progress that has already been made.

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Dimitri Vlassis

Konvencija Ujedinjenih nacija protiv korupcije: uspešna intervencija međunarodne zajednice protiv ekonomskog kriminala

Članak kratko skicira progres u razvijanju međunarodnog zakonskog okvira koji se odnosi na ekonomski kriminal i to sa posebnim naglaskom na Konvenciju Ujedinjenih nacija protiv korupcije. Autor zapaža značajan uspeh međunarodne zajednice kako u pogledu stvaranja, tako i u pogledu implementacije Konvencije, naročito kroz prihvatanje mehanizma za razmatranje implementacije.

Ključne reči: ekonomski kriminal, Ujedinjene Nacije, konvencija.

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Victims' rights are human rights: The importance of recognizing victims as persons

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In this paper the author argues that victims' rights are human rights. Criminal law typically views victims as witnesses to a crime against the state, thus shutting them out of the criminal justice process and only allowing them in when they are needed to testify. This is a major source of dissatisfaction for victims who seek validation in the criminal justice system. Victims are persons with rights and privileges. Crimes constitute violations of their rights as well as acts against society or the state. While human rights instruments, such as the Universal Declaration of Human Rights, do not mention crime victims specifically, a number of rights are identified, which can be viewed from the victim's perspective. As individuals with dignity, victims have the right to recognition as persons before the law. However, such rights are only meaningful if they can be enforced.

Keywords: *victims of crime, human rights, victims' rights, criminal justice.*

Introduction

The last fifty years have witnessed the birth of victimology and the victims' movement. At both the international and national level, various legal instruments have been developed in order to improve the plight of victims in the criminal justice system. The United Nations, the Council of Europe, and the European Union, are just a few examples of organizations that have adopted victims' rights instruments. Even the newly established *International Criminal Court* includes rights for victims. Domestically, countries like Canada and the United States have adopted victims' rights legislation.

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Yet, despite international and national developments, victims continue to feel shut out of the criminal justice system (Brienen, Hoegen, 2000; Young 2005; Wemmers, Cyr, 2006; Davis, Mulford, 2008). Criminal law, and in particular the common-law legal tradition, views victims primarily as witnesses to a crime against the state. As a result, victims are treated as objects and used by legal actors in order to advance their case. The absence of any role for victims in the criminal justice system, other than that of witness, is often seen as the root of victims' frustration with criminal justice and an important source of secondary victimization (Baril, Durand, Cousineau, Gravel, 1985; Shapland, 1985; Wemmers, Cyr, 2004; Cyr, 2008; Van Camp, Wemmers, 2011).

In this paper we will argue that victims' rights are human rights and that crime constitutes a violation of their rights as well as an act against the state and, in turn, that victims require recognition as persons before the law. Firstly, we need to understand what human rights are. Secondly, we will examine the rights contained in human rights instruments such as the *Universal Declaration of Human Rights* and discuss why victims are not explicitly included in them. This is followed by an examination of victims' rights instruments and their application. Throughout this paper, the Canadian situation is used as an example, to illustrate the arguments put forth by the author.

Rights and Human Rights

The word "right" has several different meanings. It has a moral and a political meaning: rectitude and entitlement (Donnelly, 2003). In the context of the present paper, we are especially concerned with rights in the sense of entitlement or something that one may do. We typically speak of someone having a right. For example, a person has the right to freedom of speech. But more than just the ability to act, rights are enforceable. They bring with them an *obligation* to respect a person's right. For example, we are obliged to respect someone's freedom of speech even if we do not agree with what they are saying. We can, however, impose limitations on rights. Rights are not endless. Generally it is accepted that one person's rights stop where another person's rights begin (Baril, 1985). To continue with the same example, a person has the right to freedom of speech but they cannot abuse that right in order to transmit messages that are racist or sexist.

Human rights are basic rights, which it is generally considered all people should have and without which we would be unable to live as humans and develop to our full potential. Human rights have four major characteristics: universal; inherent; indivisible; and inalienable (Donnelly, 2003). Universal means that they apply to human beings everywhere. Inherent are intrinsic to being human and do not rely on codification or some other external validation to exist. Indivisible means that these rights are interdependent and interrelated and therefore one cannot prioritize one right without affecting other rights. Inalienable means that no one can ever take away these rights.

Past abuses of power have led to the development of human rights instruments in order to protect the rights of individuals and groups. An important development was the creation of the *Universal Declaration of Human Rights* (UDHR) in 1948. Following the horrors of the Nazi Regime (1939-1945) the international community pulled together to create the United Nations (UN). As one of its first tasks, the UN created the *Commission on Human Rights,* which wrote the UDHR. As Ignatieff (2001) writes, the UDHR is not about Western moral superiority, but a warning by Europeans not to reproduce their mistakes and abandon individualism to collectivism. The core of the Declaration is moral individualism and respect for human dignity. It attempts to protect individual agency against the totalitarian state.

The UDHR contains some thirty rights in all. Although neither the word victim nor offender appears in it, several articles do refer to "everyone charged with a penal offence." The rights of the accused include the right to be presumed innocent, right to a fair trial, freedom from torture and the right to not be arrested or detained arbitrarily. As a declaration, the UDHR is a non-binding document. It was conceived of as a statement of objectives to be pursued by governments.

In addition to international law, many national governments have their own charter of rights, which is legally binding. For example, in Canada, the *Charter of Rights and Freedoms* (1982) outlines the rights of Canadians. The Charter is divided into sections and includes a section titled "legal rights." Like the UDHR, victims' rights are not included in the Charter but the rights of the accused are. The legal rights of Canadians ensure that they are protected against unreasonable search or seizure, they have the right to not be arbitrarily detained or imprisoned and the right to not be subject to cruel and unusual punishment. Upon detention they have the right to information, counsel and to have the validity of their detention tested. In criminal proceedings,

the accused has a number of rights including the right to information, to be presumed innocent and the right to a fair and timely trial. These rights reflect the spirit of the UDHR and place respect for the dignity of the individual before the interest of the state. Furthermore, individuals who feel that their Charter rights were not respected can seek recourse before the courts (Art. 24).

Why not victims?

It may seem odd that human rights instruments would include extensive rights for those accused of having committed crimes but not mention victims of crime. After all, victims are human too. In order to understand this apparent imbalance, it is important to recall the history of criminal law. Civil law predates criminal law. Early legal systems dealt with conflicts between citizens. The victimologist, Stephen Schafer (1968), refers to this period as the "golden age" for victims. It was not until the Middle Ages that, in Anglo-Saxon England, offences came to be viewed as acts against 'the King's peace' or the state. Gradually, over time, criminal law evolved and the state replaced the victim in the legal process (Viau, 1996; Wemmers, 2003; Young, 2005: Doak, 2008). The result of this transformation is that today the criminal justice process in common-law systems is founded on the state laying charges against the accused. Victims are witnesses to crimes against the state.

Once the state ousted victims from the criminal justice process, there was an imbalance of power between the omnipotent state and the individual accused of a crime (Kirchengast, 2006; Doak, 2008). Abuses of power by tyrant kings led to calls from scholars such as Montesquieu and Beccaria (1765) for the introduction of limitations on the power of the state and the creation of rights for the accused. Today the rights of the accused are well entrenched in law. In this context, victims did not need rights because their freedom was not at stake.

Modern criminal proceedings focus on the accusations brought by the state against the accused. There are three major actors involved: the judge, the prosecutor (who represents the state) and the accused or their legal representative. Of course, many different criminal justice systems exist. While a complete discussion of the various legal traditions goes beyond the scope of this paper, it is important to note that across legal traditions, the focus of the trial is on proving the guilt of the accused. In common-law

countries, which have an adversarial system, there are only two parties: the state and the accused. It is the state's job to prove that the accused is guilty and the defence's job to show reasonable doubt. For example, in Canada, victims' involvement in the criminal justice process is completely up to the prosecution and the defence. If either thinks that it is important that the victim testify, the victim will be subpoenaed (i.e. ordered) to do so. However, if the case does not go to court, for example because it is plea-bargained, or if the victim is simply not required to testify, then the victim will essentially be shut out of the criminal justice process.

This brings us to the core issue: victims are witnesses to a crime against the state. If crimes truly were directed at the state and were not committed against individuals, then this dual-party configuration would make sense. However, in reality, crimes are committed against individuals. And these individuals – the victims of crime – seek recognition of the crimes committed against them. Victims, who once had a place in laying charges against the accused, have been completely pushed out and replaced by the state (Schafer, 1968; Kirchengast, 2006). They have been rendered powerless against an omnipotent state that has the power to force them to testify as well as the power to shut them out.

Victims' Rights

Rights empower the powerless. In order to improve the plight of victims of crime, in 1985, the UN General Assembly adopted the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,* which includes a number of rights for victims. In the preamble to the Declaration, the General Assembly acknowledges that the rights of victims have not been adequately recognized. According to the Declaration, its aim is "to assist Governments and the international community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power."

The Declaration provides victims with the right to be treated with respect and recognition. It recognizes that victims sometimes need support in order to deal with the impact of crime and it gives them the right to be referred to adequate support services. They will often not be familiar with the criminal justice system and how it works and, therefore, the Declaration gives victims the right to receive information about the criminal justice

system and their role in it. Victims view the crime as "their" victimization (Shapland, Wilmore, Duff, 1985) and the Declaration recognizes victims' right to receive notification about the progress of the case. It also provides victims with the right express their views and concerns at appropriate stages in the criminal justice process. The Declaration recognizes victims' right to protection of their physical safety and of their privacy. Finally, the Declaration acknowledges victims right to reparation from the offender as well as compensation from the state.

However, the Declaration is non-binding. It is what is referred to as 'soft law.' It is an attempt to guide governments. There are no consequences for a government that chooses not to follow some or all of the rights included in the Declaration. In addition, the Declaration is not very specific. In order to accommodate the differences across legal systems, it is written in very abstract and general terms. This gives states a lot of latitude when interpreting it.

The application of the Declaration in Member States has proven to be problematic. In 1995, ten years after the adoption of the Declaration, the UN conducted a survey among its members to assess the implementation of the Declaration. The results showed that very few countries had modified their criminal justice system in accordance with the Declaration (Groenhuijsen, 1999). Similar findings are reported by Brienen and Hoegen (2000) in their survey of victims' rights in 22 European countries.

In Canada, which played a lead role in the creation of the Declaration and its adoption there were some changes after 1985. To begin with, in 1988, the Canadian Criminal Code was modified in order to permit victims to make Victim Impact Statements. With this change the word 'victim' was introduced into the Criminal Code for the first time. The Victim Impact Statement allows victims to make a written statement about the impact that the crime had on them and submit it to the court at the sentencing hearing after the accused has been found guilty. Since 2000, victims can read their statement aloud in court. Also in 1988, the Federal-Provincial-Territorial Working Group published its *Statement of Basic Principles of Justice for Victims of Crime*. As its title suggests, the contents of this Statement strongly reflect that of the UN Declaration. Many articles are identical to that found in the UN Declaration and, like the Declaration, the Canadian Statement is non-binding.

The administration of justice in Canada is under provincial jurisdiction. Hence, following the UN Declaration several provinces introduced their own Bill of Rights for victims. In the province of Quebec a victims' Bill of Rights

was adopted in 1988. Once again, this law was strongly inspired by the UN Declaration and uses much the same wording. For example, victims have the right to "express their views and concerns at appropriate stages of the criminal justice procedure, when their personal interests are concerned" (art. 3). This raises the question, what are appropriate stages for victim intervention? As was mentioned earlier, the UN Declaration is purposely abstract and general in order to accommodate the many different criminal justice systems found among the Member States. There is no need to remain abstract when adapting the Declaration to domestic law. There is only one criminal justice system in the province and in fact, only one criminal code for the whole of Canada. On the contrary, one needs to be concrete and specify who is responsible for what (Brienen & Hoegen, 2000). By copying the wording used in the UN Declaration, victims' rights in Quebec are needlessly vague. Furthermore, like the Declaration, the rights contained in the Quebec legislation are non-enforceable. That is, nowhere does the law specify enforcement measures and victims' recourse when their rights are not respected.

This problem is well illustrated in the case of Vanscoy and Even, two victims of violent crime in the Canadian province of Ontario, who hired a lawyer to represent them as they pursued the State for its failure to respect their rights as outlined in the province's Victims' Bill of Rights (Vanscoy and Even v. Her Majesty the Queen in Right of Ontario, [1999] O.J. No.1661 (OntSupCtJus). The victims argued that their rights had been violated because they were not notified of pending court dates and not consulted with respect to plea resolution agreements. The judge stated:

> *I conclude that the legislature did not intend for s. 2(1) of the Victims' Bill of Rights to provide rights to the victims of crime… The Act articulates a number of principles, whose strength is limited not only by precatory language, but also by a myriad of other factors falling within the broad rubrics of availability of resources, reasonableness in the circumstances, consistency with the law and public interest, and the need to ensure a speedy resolution of the proceedings. Finally, even if there was an indefensible breach of these principles, the legislation expressly precludes any remedy for the alleged wrong. While the Applicants may be disappointed by the legislature's efforts, they have no claim before the courts because of it. (Vanscoy and Even v. Her Majesty the Queen in Right of Ontario, [1999] O.J. No. 1661 (OntSupCtJus))*

The only province in Canada to provide victims with something more than vague rights is Manitoba. In 2011, the province introduced comprehensive victims legislation, which replaced the prior legislation concerning victims' rights and compensation. The new legislation describes in detail the responsibilities of law enforcement authorities as well as the prosecution and the court administration towards victims. In addition, the law includes a complaints procedure for victims. Victims in Manitoba who feel that their rights have not been respected can make a complaint to the province's director of Victims' services. While this is clearly an improvement compared to other provinces, it still does not provide legal remedy to victims. By providing victims with a complaints procedure the Manitoba government recognizes that victims' rights should be respected. However, it fails to view victims as persons before the law with enforceable rights and privileges and give them legal recourse.

Crime as a Violation of Victims' Rights

While victims are sensitive to the public interest in crime, in their view crime is an offence against society as well as offence against the individual victim (Wemmers, Cyr, 2004). They do not understand why the state does not recognize them in any role other than as witnesses. The fundamental difference between a tort and a crime is not that crimes do not affect individual victims but rather that a tort is private and does *not* include the state while a crime affects society as well. As Doak points out, "What constitutes a 'crime' as opposed to a 'tort' is purely dependent upon how crime is defined within any given society" (2008: 27). It is a subjective judgement by the victim who defines the act as a crime and reports it to the police. Hence, when the criminal justice system views the victim as a witness to a crime against the state this is fundamentally opposed to victims' perspective and, inevitably, they will be disappointed.

The notion of looking at victims through the lens of human rights is not entirely new. As early as 1985, Robert Elias argued for a "victimology of human rights." Elias warned that victimologists risked becoming pawns of abusive governments if they limit their object of study to victims of crime. Instead, he argued, victimologists should study all man-made victimizations, which includes crimes as well as gross violations of human rights such as genocide,

torture and slavery. Hence, while Elias proposed that human rights violations should be included in the field of victimology, he did not see crime as a violation of the victims' rights.

Previous work linking victims' rights to human rights can be found in the work of legal scholars such as Sam Garkawe and Jonathan Doak. Sam Garkawe, argues that the poor treatment of victims should be viewed as a matter of human rights protection. To this end, he proposes the creation of a UN Convention on Victims' Rights (2005). Following the structure of international lawmaking and human rights, a Convention would include some kind of monitoring mechanism. The idea of developing a Convention was supported by the *World Society of Victimology* and the University of Tilburg, which organized a series of expert-meetings and developed a Draft Convention[1] (Van Genugten, Van Gestel, Groenhuijsen, Letschert, 2007). In his book, *Victims' Rights, Human Rights and Criminal Justice,* Doak (2008), claims that the *European Convention of Human Rights* has encouraged domestic policy-makers and the courts to view victims' rights as a form of human rights. Concretely, the introduction of the *Human Rights Act* in the UK, which offers victims of Convention violations recourse in domestic (UK) courts, has meant that 'public bodies' such as the police, the prosecution and other criminal justice organisations are under duty to act in accordance with the Convention and respect the human rights of crime victims.

Recently, there has been significant progress in the recognition of crimes as violations of victims' rights in the European Union. In a proposed Directive of the European Parliament and of the Council of the European Union (2011) introducing minimum standards for victims of crime, crimes are explicitly considered "an offence against society *as well as a violation of the individual rights of victims*" (Art. 5, emphasis added). This is a huge step forward. In the 2001 *Council Framework Decision on the standing of victims in criminal proceedings,* which the minimum standards will replace, crime was not explicitly defined as a violation of the victims' rights. Instead, states were merely encouraged to recognize victims' "legitimate interest" in proceedings. The proposed Directive aims to ensure that the specific needs of victims are taken into account during criminal proceedings, regardless of the nature of the offence or where it took place within the European Union (EU).

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[1] For more about the Draft Convention see: http://www.tilburguniversity.edu/research/institutes-and-research-groups/intervict/undeclaration/

Using the human rights framework, we can identify specific substantive rights that apply to victims as well as procedural rights. Regarding substantive rights, crime can be viewed as a violation of the victims' right to life, liberty and security of person (UDHR, Art. 3) or their right to property (UDHR, Art 17). To treat victims with dignity and respect (UN Declaration, Art. 1) an individual must first be recognized as a moral and legal person. In turn, this requires certain basic personal rights such as the right to recognition before the law (Donnelly, 2003). Article 6 of the UDHR states: "Everyone has the right to recognition everywhere as a person before the law." This gives rise to the notion of victim participation and procedural rights for victims. It suggests that victims must not be treated as mere evidence, but they must be regarded as subjects with personal, individual and independent standing at the criminal trial (Walther, 2011).

Victims' rights, like human rights, are only meaningful if they confer entitlements as well as obligations on people. Otherwise, they are not rights and they will ultimately fail to empower victims. Legal protection of rights is necessary in order to defend victims' rights (Kilpatrick, Beatty, Smith Howley, 1998). It is the ability to exercise our rights, using our free will and rational choice, which gives meaning to the notion of 'human dignity.' Without this ability, victims will remain voiceless objects of the criminal justice system who are forced to forfeit their individual human rights in the interest of the society.

Conclusion

The monopoly of power of the state in the criminal justice process has silenced victims, rendering them mere witnesses to a crime against the state. This approach fails to recognize the reality of victims: They directly experienced the crime and, as such, it constitutes a violation of their human rights. The victims' movement has introduced victims' rights in an effort to improve the plight of victims. However, up until now it has stopped short of viewing them as human rights. It is time to move victims' rights to the next level. We need to acknowledge the victim as a person before the law with rights and privileges.

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Jo-Anne Wemmers

Prava žrtava su ljudska prava: značaj prepoznavanja žrtava kao ličnosti

Autorka u ovom članku tvrdi da su prava žrtava ljudska prava. Krivični zakon obično vidi žrtve kao svedoke zločina protv države i tako ih isključuje iz procesa krivičnog pravosuđa osim u slučajevima kada su potrebni kao svedoci. Ovo je glavni uzrok nezadovoljstva žrtava koje traže potvrdu u sistemu krivičnog pravosuđa. Žrtve su ličnosti sa pravima i privilegijama. Krivična dela čine povredu njihovih prava kao i čin usmeren protiv društva ili države. Dok instrumenti ljudskih prava kao što su Univerzalna deklaracija o ljudskim pravima posebno ne pominju žrtve zločina, oni identifikuju jedan broj ljudskih prava koja su vidljiva iz perspektive žrtve. Kao individue koje imaju dostojanstvo, žrtve imaju pravo da pred zakonom budu prepoznate kao ličnosti. Ipak, ova prava imaju smisla jedino ako se mogu sprovesti u praksi.

Ključne reči: žrtve, ljudska prava, prava žrtava, krivično pravosuđe.

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Victimisation surveys – what are they good for?

Kauko Aromaa*

The author analyzes the usefulness of victimization surveys. The paper is focused of surveys in which nationally representative population samples are surveyed for their personal victimisation experiences, and their attitudes and opinions of issues related to crime and crime control. The author points out the benefits of using victimization surveys, but also explains why most countries have failed to make systematic use of this instrument.

Keywords: *victimization surveys, interests of knowledge, criminal policy.*

Introduction

Over the last 45 years or so, after the first US work of the mid-1960s (Biderman et al. 1967; Ennis 1967)[1], victimisation surveys have gradually become accepted as a major innovation in the assessment of certain crime-related issues. Much has been written on the shortcomings of the victimisation survey approach, and in criticism of a mechanical application of the victimisation surveys as a substitute for other measures of „crime". Nevertheless, a tendency is observable that victimisation surveys begin to form part of the basic crime information systems widely applied in some countries, with other countries likely to follow suit in the near future. It is true that the approach is ridden with many inherent flaws, just like any other method of measurement. In this paper, I do not intend to dwell on these

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1 It should be noted, however, that Gallup Finland carried out a national victimisation survey already in 1945 (see e.g. Aromaa, Leppä 1973). At that time, however, this survey remained a curiosity and failed to start a new research tradition.

shortcomings. Instead, I approach the matter in a constructive fashion, trying to point out what the approach is good for, and what its currently under-utilised potentials could be.

Given that more unbiased information about crime is valuable for a better policy concerning crime, then better ways to measure crime and crime-related issues should be promoted and welcome in order to improve the understanding of crime-related issues among the general public and among policy-makers. With better information, policy-making is able to become more knowledge-based, and the general public is likely to accept knowledge-based policies if it is well-informed. At least this is the reasoning supported by those in favour of informed policy-making; there are also different opinions, for instance those advocating the idea that it is more important to do „justice" to victims (by harsh punishments) than to try to promote a comprehensive approach to crime issues, including the control of crime. The overt politicisation of crime issues observed in many societies would, indeed, increase the importance of the availability of accurate and unbiased information about crime - its scope, trends, and damages. In the absence of such information, policy decisions risk to be taken on the basis of beliefs only.

Thus, let us assume, for the time being, that criminal policy based on knowledge about the scope, trends and social costs of crime and crime control is desirable. In that case, good information about crime-related issues is also desirable. In this framework, victimisation surveys are a valuable instrument for a number of purposes.

There are many variants of victimisation surveys. For the sake of brevity, I am only going to discuss the variant where nationally representative population samples are surveyed for their personal victimisation experiences, and their attitudes and opinions of issues related to crime and crime control (a further important dimension of the discussion would deal with the potentials of applying the victimisation survey approach for assessing victimisation problems of other groups than the „general" population, such as disadvantaged, vulnerable minorities, or – on the other hand – businesses[2]). The UN Manual on victimisation surveys that was published recently deals only with the general population variant of victimisation surveys (United Nations

[2] Business victimisation is an obvious special interest since recorded property-related crime is in many developed countries dominated by crimes against businesses and other legal entities.

Office on Drugs and Crime, 2010). This Manual wishes to encourage adoption of the victimisation survey for routine crime data production globally.

A general restriction that needs to be acknowledged is that the usual victimisation surveys do not measure „crime". Surveys often prefer to avoid the term „crime", rather using colloquial language as they describe the relevant victimisation incidents and situations, asking if such things have happened to the respondent over a given period of time, for instance, the last 12 months[3]. Sometimes, respondents are indeed also asked whether they thought that the victimisation incidents which they have mentioned in the interview actually were „crimes". The answers to this differ widely, despite the fact that the event descriptions used in the surveys would to a criminal law expert mostly quite closely resemble crimes. „Crime" is such an abstraction and such a technical term that it is not well suited to be addressed in a population survey. Population surveys are better for assessing concrete everyday experiences of simple events. Consequently, victimisation surveys deal with issues related to crime – rather than „crime" itself –, as they address popular experiences of incidents, the descriptions of which by and large correspond to the definitions of specific offences in criminal codes or other legislation.

Policy decisions are in practice also made within a rather similar discourse as the one applied in population surveys: crime-related policy rhetoric will tend to apply such terms as youth violence, street violence, organised crime, public security, „serious crime", public order problems and disturbances – and will often use the general term „crime" about any of these and other such concerns. Thus, the population survey, if it is applying concrete event descriptions, does not correspond very well to the political discourse that is more likely to make inaccurate generalisations. This defect is, to a degree, shared by interpretations given widely to more traditional crime information sources such as administrative crime statistics or prisoner statistics. Administrative data do, however, seem to be more easily applicable to sweeping statements on „violence", „crime" and the like, probably because they use legal and political abstractions rather than real-life event descriptions.

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3 The reference period of "last year" or "last 12 months" is, interestingly, a remnant from the early days of victimisation surveys: as they were commonly thought to reflect "crime" as administrative statistics (such as statistics on police-recorded crime), it seemed obvious that the reference period of one year should be used for the sake of comparability. Thinking about the phenomenon of victimisation, this reference period is not necessarily the "best" option.

Interests of knowledge

When we speak of knowledge-based criminal policy, reference is not made to just any kind of arbitrary „knowledge". Instead, this discourse makes reference to the overall social costs of crime and crime control, and to the fair distribution of such costs. The first problem is to assess the situation in an unbiased manner. The second problem, then, is to see what can be done about it.[4]

A further issue is what is today often addressed in terms of the „what works" paradigm, i.e. issues that refer to crime prevention and crime reduction, and the prevention or reduction of re-offending – in brief: what are the most justifiable and effective ways of spending resources on reducing the social harms caused by crime and crime control?

Within this frame of reference, the interests of knowledge served by victimisation surveys include objectives such as:

1) to learn about unrecorded crime (victimisation surveys unveil large amounts of unrecorded events that may be crimes). In practical terms, this means estimates of the overall prevalence and incidence of „surveyable" victimisation experiences, and estimates of unrecorded crime.
2) to measure psychological harm and other consequences, and material damage and other costs caused by victimisation. Also broader cost issues may be approached.
3) to measure repeat, serial, and multiple victimisation, victim careers, accumulation of victimisation risks, vulnerable population groups.
4) to compare survey findings with police data. Victimisation surveys allow for insights into how recorded crimes are selected from all possible events that share certain characteristics, including the reporting behaviour of the population. Here, questions on reporting/not reporting crimes to the police and experiences related to reporting are asked.
5) to measure satisfaction with police performance both generally and in each concrete case.

[4] Crime policy is, according to a now classic formulation by Patrik Törnudd (1971) defined by its objectives: "The aims of criminal policy i.e. the totality of decisions which primarily are related to crime – are twofold: 1) to keep the sum total of costs and suffering caused by crime and by society's efforts to control crime as low as possible, and 2) to distribute these costs as justly as possible" (p. 29).

6) to assess popular confidence in the criminal justice system, including police, and punishment attitudes and expectations as to authority performance.
7) to give voice to the victims of crimes and their needs for support. This approach demonstrates that there is a large volume of events or experiences that may be crimes and opens the possibility of reassessing the relative importance of given types of crime-related events, in particular those that are typically not recorded in other standard sources.
8) to find information that is relevant in terms of the rights of crime victims and for constructing indicators related to such rights and needs to enforce them.
9) to learn about public opinion related to crime and crime control: knowledge-based and informed criminal policy should be aware of public opinion about these matters regardless of whether there is agreement or disagreement on what the central crime problems are or on how to deal with crime. The survey is also helpful for finding out what people understand by „crime".
10) to learn about public fear or concern about crime (knowledge-based criminal policy must be aware of and address popular concerns related to crime and crime control). This is addressed by questions on fear and concern, and the deterioration of quality of life caused by crime.
11) to learn what people have done about victimisation (such as preventive measures adopted by the general public or corporate bodies subject to crime risks). Survey questions on precautionary and avoidance behaviour, and the use of protection measures serve this end.
12) to make international comparisons of rates and trends (national or local crime issues are often mistaken as unique and in need of extreme measures, while international comparisons may reveal that the situation is not unusual; also, if the victimisation survey would provide evidence supporting a contrary conclusion, this would be equally important). lnternational comparisons will bring crime assessment into comparative perspective.
13) to measure trends nationally (shortcomings in the standard administrative crime recording systems, such as their inability to account for variations in reporting behaviour, may cause erroneous conclusions concerning trends of certain types of events that are reflected in victimisation surveys).

14) to make regional comparisons within one country (variations in standard administrative crime recording systems and of reporting behaviour may even hamper comparisons across areas within the same jurisdiction).
15) to assess the outcome of crime prevention programmes (more recently, this aspect has gained much support, as local crime prevention projects have become more popular).

The victimisation survey has also some unique features that are distinct from criminal justice-related administrative data:

16) the victimisation survey is flexible, it can use standard and changing modules at need.
17) the victimisation survey is able to combine events that are recorded and attended to by different agencies (health care, social services, police, non-government organisations).
18) the victimisation survey is able to combine events other than crime with the victimisation experiences (such as the physical safety approach that combines crime victimisation with accidents), and personal characteristics (lifestyle, intoxication, risk-taking behaviour).

This list is not likely to be comprehensive. Many more relevant interests of knowledge could probably be served by victimisation surveys. This list does, however, already demonstrate that the victimisation survey approach could provide better (albeit, of course, probably not the full) answers to a wide scope of relevant questions than what can be drawn from standard administrative crime data that are traditionally relied upon, such as police-recorded crimes, arrest statistics, or statistics on sentenced persons or prisoners. In particular, the focus is shifted from the offender to the victim and the consequences of crimes.

Victimisation surveys have still not become standard information sources

Even after a large volume of demonstrations of the multiplicity of uses that the victimisation surveys have in theory and in practice, most countries have failed to make systematic use of the new instrument. Even in those countries that have done so, their uses for knowledge-based criminal

policy have remained limited. This is a curious observation, deserving some attention.

Why such a useful instrument has been hard to gain recognition as one of the central and necessary criminal policy information sources has a multiplicity of reasons. One simple reason is material: it requires an extra budget and a new specialised production body as such data are not available on a routine basis similar to how administrative crime statistics are created as a side product of everyday authority activity.

If victimisation surveys are to be implemented more broadly and systematically, and on a routine basis, this may also require the emergence of a new category of skilled analysts in government bodies, whether statistics authorities or others responsible for crime data production. It takes special training to make the best of victimisation surveys, and such training is often not readily available.

However, the material reasons are not likely to be the only ones. Another reason could be that, in many countries, criminal policy issues have not (yet) become high priority issues, and therefore it is not very important to improve the relevant knowledge basis rapidly. In short, awareness of the value of the victimisation survey approach continues to be low among the strategic decision-makers who should be providing the required resources. This may have a link to the development of democratic institutions since crime policy issues gain in importance in democratic debate.

Eventually, this is an issue of political will. Governments have failed to recognise and accept their responsibility regarding crime control, crime damage reduction, and crime victims. It therefore seems that they have too often failed to develop their crime data sources, and continue to rely on the kind of data that represents 18th-19th century thinking (certainly very enlightened in those times).

A further reason could be that the current state of affairs is acceptable and even useful for some powerful segments of society, including law enforcement, the media, and many politicians. Survey results have often been met with disbelief, or even outright rejection. This may be in part because those accustomed to relying on administrative crime data are unfamiliar and distrustful about surveys that may be felt to be "just idle talk"; there has also been controversy about the "ownership" of crime and crime-related data which have traditionally been the monopoly of law enforcement and criminal justice authorities. Among such critics, survey-based data are being met with

suspicion since they are not speaking the same language as criminal law and law enforcement experts.

This may in part be due to a failure in marketing the results, researchers having been unable to provide plausible and convincing interpretations. Overall, the dialogue between researchers and strategic decision-makers (including the media) has often not been very good. A parallel problem in this respect may be that the news provided by victimisation surveys have not been attractive because they have often been of a character that rather de-dramatises crime issues, or does not support demands for additional resources for law enforcement that refer to arguments related to „the deteriorating crime situation" or „threats to public security", contrary to what is often depicted in media representations.

The UN Manual on victimisation surveys represents significant progress in terms of improving the possibilities for responsible decision-makers to promote the application of this powerful instrument in their countries. In this sense, it represents a major improvement. Once it becomes more widely known that the Manual is available to anyone, the expectations increase that victimisation surveys are finally adopted as a standard data collection instrument where crime-related statistics are concerned, and that they are being used to their full potential.

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Kauko Aromaa

Ankete o viktimizaciji – za šta su one korisne?

Autor analizira korisnost anketa o viktimizaciji. Rad je fokusiran na ona istraživanja u kojima se reprezentativni nacionalni uzorak ispituje o ličnom iskustvu viktimizacije, kao i o stavovima i mišljenjima vezanim za kriminal i kontrolu kriminaliteta. Autor ukazuje na prednosti korišćenja ovih anketa i objašnjava zašto većina država nije uspela sistematski da iskoristi ovaj instrument na pravi način.

Ključne reči: ankete o viktimizaciji, interes saznanja, politika kontrole kriminala.

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Čovekova sloboda i/ili bezbednost

Ljubo Bavcon*

Ovaj rad se bavi dilemom da li je opravdano smanjiti čovekove slobode i prava radi postizanja većeg nivoa njegove lične i/ili kolektivne bezbednosti. Autor ukazuje na sve veću političku i kaznenu represivnost i na sve manje garancije za poštovanje sloboda i prava čoveka, a sve u cilju povećavanja efikasnosti i bezbednosti u borbi protiv kriminala. Takođe, u radu se ukazuje i na posledice ovakvih tendencija.

Ključne reči: *sloboda, ljudska prava, bezbednost, represija.*

Uvod

Moje je poznanstvo, saradnja i prijateljstvo sa prof. dr Dušanom Cotičem počelo u maju 1961. godine u Beogradu prilikom 6. kongresa Međunarodnog društva za društvenu odbranu. Ovu okolnost valja posebno spomenuti zato što obeležava jednu značajnu prekretnicu u oblasti represije i kriminalne politike tadašnje Jugoslavije. Ta prekretnica otpočela je već ranije, tačnije rečeno od poznatog plenuma CK KPJ o zakonitosti iz 1951. godine i od novog krivičnog zakonika iz te iste godine. Tada je otpočeo proces, koji obeležavaju: najpre postupno otpuštanje velikog broja, posle rata, osuđenih ljudi, smanjenje političke kaznene represije, ukidanje Golog otoka i drugih sličnih logora, premeštanje prekršajnog prava iz oblasti unutrašnjih poslova u oblast pravosuđa, što sve vodi do poznate značajne novele Krivičnog zakonika iz 1959/60 godine. Ovaj, vrlo kratko i nepotpuno trasirani, put razvitka nekadašnje Jugoslavije od staljinističkog terora ka postepenom uspostavljanju pravne države, značajno i simbolički obeležava organizovanje spomenutog međunarodnog kongresa u Beogradu i u Opatiji, kojom prilikom je priređena, za sve učesnike, stručna ekskurzija na Goli otok.

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Razume se da su spomenuti događaji imali uticaja i na razvoj naučno istraživačke i pedagoške delatnosti na našim univerzitetima. Tako je u jesen 1954. godine na Pravnom fakultetu u Ljubljani osnovan Institut za kriminologiju pod rukovodstvom prof. dr Katje Vodopivec, a samo nekoliko godina kasnije profesor Milan Milutinović osnovao je samostalni istraživački Institut za kriminološka i kriminalistička istraživanja u Beogradu.

Sve je ovo trebalo reći kako bi bilo jasnije kako, zašto i na kakvim teoretskim osnovama je otpočela naša saradnja i potrajala sve do kraja nekadašnje Jugoslavije. Međutim, na individualnom nivou, prijateljstvo i saradnja potrajali su i mnogo dalje, jer je prof. Cotič redovno posećivao Institut za kriminologiju i Pravni fakultet u Ljubljani. Na taj način produžilo se naše druženje i to ne samo sa njim, već posredno i sa kolegama iz Beograda i Srbije.

S obzirom na činjenicu da smo se kolega dr. Cotič i ja najčešće našli na zajedničkim pozicijama u pogledu preventivne, stvarne, odmerene, stručno osnovane i razumne kriminalne politike, odlučio sam da, u čast njegovog životnog jubileja, priložim članak koji tretira upravo ta pitanja.

Državna kaznena represija ostaje središnje pitanje političkog uređenja zapadnog sveta i to uprkos pobedi ideje o demokratskoj pravnoj državi nad konceptom autoritarne policijske države u godinama od 1989 do 91. U to vreme čitava Evropa je doživljavala jedno euforičko doba sa sveopštim uverenjem da su sada za uvek pobedile vrednosti demokratske pravne države sa pluralizmom, tolerancijom i, pre svega, poštovanjem ljudskog dostojanstva svakog čoveka i posebno čovekovih sloboda i prava. Međutim, ova idilična situacija nije baš dugo potrajala. Najkasnije septembra 2001. srušila se utopijska predstava i realni kapitalizam vratio se sa svim svojim obeležjima. Ovaj zaokret u unutrašnjoj politici država članica Evropske unije i SAD posledica je više faktora, a, barem meni se čini, najvažnija je sve dublja kriza kapitalizma. Znaci tog zaokreta su se počeli pokazivati već u sedamdesetim godinama prošloga stoleća, za vreme vladavine M. Thatscher i R. Reagana, u obliku neoliberalne varijante kapitalizma. Već je tada postajalo sve jasnije da državna kaznena represija gubi svoj smisao, kao faktor nezavisnog i nepristranog uspostavljanja minimalnog društvenog morala, pravičnosti, čovekove slobode i pravne bezbednosti, već postaje instrument vladanja, rešavanja socijalnih problema i konflikata. Počele su se pojavljivati parole o efikasnosti suzbijanja sad ovog sad onog oblika kriminaliteta, sve se više podvlači važnost bezbednosti, dok su druge vrednosti, među njima čovekova sloboda i njegova prava, polako nestajale.

Zbog svega toga je pitanje iz naslova o čovekovoj slobodi i/ili bezbednosti, ma koliko je na prvi pogled retorično i odgovor na njega razumljiv sam po sebi, u istini nadasve teško i kontroverzno.

Kada je godine 1990. pao berlinski zid, u svim nekadašnjim socijalističkim zemljama osvanula su očekivanja o novom, pravednom, demokratskom, na vladavini prava osnovanom, društvenom uređenju, što će povrh svega toga doneti ljudima i blagostanje, što su ga godinama gledali iz daleka i priželjkivali. Ali, umesto toga, rasplamsali su se žestoki sukobi za moć i vlast. Ovi su se sukobi odvijali uz obilnu upotrebu lustracijskih i sličnih metoda političke represije i uz neverovatno iskorišćavanje takozvanog kriminalnog argumenta. Možda su nekim čitaocima u uspomeni ostale tadašnje šokantne novosti o povećanju kriminaliteta na primer u Čehoslovačkoj i Poljskoj[1]. To je izazvalo alarm u Strazburu i Odbor ministara Saveta Evrope je godine 1996. doneo posebnu preporuku o kriminalnoj politici za države u tranziciji[2]. Preporuka zahteva da sve mere za borbu protiv kriminaliteta moraju biti podređene vladavini prava i primarnom pravilu svih demokratskih društava, to jest poštovanju čovekovih prava i sloboda. Preporuka u nastavku proglašava kao neprihvatljive, mere koje su u suprotnosti sa gore spomenutim zahtevima, čak i u slučaju, kada je položaj države u pogledu kriminaliteta vrlo težak. Nijedna država nije bezbedna od kriminaliteta, konstatuje Odbor, te upozorava na opasnost fundamentalizma i kaže da glavni cilj kriminalne politike ne može biti iskorenjivanje kriminaliteta, već samo ovladavanje njim u snošljivim granicama.

Ova preporuka već tada, to jest pre više od petnaest godina, dovoljno jasno ukazuje na tendencije zaoštravanja kaznene represije i na ograničavanje čovekovih prava. Već su tada vodeći evropski kriminolozi i penalisti konstatovali da jačanje represivnih koncepcija ima samo marginalnu ulogu na stvarna kretanja kriminaliteta. Nivo represivnosti u nekom društvu ne zavisi od kvantitativnih i kvalitativnih kretanja kriminaliteta, već zavisi od očekivanja od represije. Ta očekivanja, međutim, određuju socijalni i politički konflikti, što su posledica kasnokapitalističkog modela „rizičnog društva", pa razume se i terorističkih reakcija u nerazvijenim delovima sveta, povodom procesa globalizacije i sve veće provalije između bogatih i siromašnih delova sveta. Zbog toga kriminalitet jeste idealna projekcijska tema, metafora u kojoj se sakrivaju

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1 Uporedi: Joutsen, 1995, str. 11-32

2 Politique criminelle et droit penal dans une Europe en transformation. Recomandation No R/96/8 (1999).

i isprepliću egzistencijalna nesigurnost i strah ljudi u pogledu svog društvenog položaja i zaposlenja, u pogledu mogućeg gubitka socijalnog statusa, zdravstvenog i penzijskog osiguranja, sveopšte besperspektivnosti i, na kraju, možda i strah ljudi za svoju bezbednost od fizičkih napada drugih ljudi, krađa, pljački, provala i sličnih krivičnih dela[3].

Ovde se hrani takozvano očekivanje od represije, a to omogućava pojave kriminalizacije socijalnih i političkih konflikata, ili, sa druge strane, politizaciju običnih kriminalnih pojava, ili, rečeno drugačije, njihovu zloupotrebu za političke ciljeve. Takva postupanja, međutim, mogu biti efikasna u borbi za vlast, a baš ništa ne pridonose efikasnom sprečavanju i suzbijanju kriminaliteta. Predizborna obećanja o efikasnom sprečavanju i suzbijanju kriminaliteta su bez osnova, jer niko ne raspolaže čudesnim receptom za brzo, efikasno i konačno uništenje kriminaliteta, osim ako je pretendent za vlast spreman da primeni, iz prošlosti poznate, autoritarne i totalitarne modele vladanja. Ipak, zbog kriminaliteta u istoriji čovečanstva nije se raspala još nijedna država, ali pre dvadeset godina preko noći raspao se na izgled neodoljiv sistem takozvanog socijalističkog društvenog uređenja. Raspao se, između ostalog, upravo zato što je gazio slobodu ljudi i njihova prava.

Zbog toga se mogu složiti sa stanovištem, da kriminalitet nije glavna opasnost za demokratiju i pravnu državu, već su za ove vrednosti realna i vrlo ozbiljna opasnost političke zloupotrebe kriminalnog argumenta i preterivanja u zakonodavnom i praktičnom reagovanju protiv kriminaliteta. Interesantno je što se Savet Evrope kasnije nije više oglasio, iako su pojave jednake sadržine, pa i oštrije, počele prodirati u oba evropska udruženja. Spomenuću samo neke, izričito na represiju, orijentisane akte Saveta Evrope o pranju novca i korupciji[4], kao i okvirne zaključke Evropske unije o nalogu za hapšenje i predaju[5], kao i o borbi protiv terorizma[6]. Svi nabrojani akti primenjuju krivičnopravne instrumente, poznate iz nekadašnjih autoritarnih država, koje smo, još za vreme pređašnjeg režima, osuđivali i s ogorčenjem označavali kao nelegitimne, na primer: bezgranična inkriminacija pripremnih radnji, ili elementi oblika zvanog „joint criminal enterprise“ (udruženi zločinački poduhvat) (Bacvon, 1987).

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3 Uporedi: Baratta, 1998; 1999, Frehsee, 1999, Jung , 1998, Sullivan, 2001 i Prefontaine, 1998.

4 Council Framework Decision on combating corruption in private sector (2001).

5 Council Framework Decision on the European arrest warrant (2003).

6 Council Framework Decision on combating terrorism (2002).

Brojni poznati evropski penalisti i kriminolozi konstatuju, da krivična represija postaje, umesto u demokratskoj pravnoj državi samo „ultima ratio", u stvarnosti sve više „prima" ako čak ne i „sola ratio" unutrašnje politike USA i evropskih država (npr. Jung, 1998). Primarno pravo Evropske unije do godine 1999. organima Unije nije priznavalo nadležnost za krivično pravo. Amsterdamskim ugovorom iz 1996. godine, međutim, po pravno spornom obilaznom putu, preneli su nadležnost za krivičnopravno područje sa trećeg međunarodnog nivoa, na naddržavni nivo, uvođenjem novog pravnog akta nazvanog okvirna odluka Saveta (Council Framework Decision). Argument za tu bitnu promenu, koja poseže duboko u ustavnopravnu narav Evropske unije, je bio da se radi o izuzetno opasnim pojavama prekograničnog kriminaliteta, pri čemu taj pojam, u suprotnosti sa načelom zakonitosti, ostaje nedefinisan. U državama članicama EU sve su češće izmene krivičnopravnog zakonodavstva, kojim uvode nove i nove inkriminacije, povećavaju policijska ovlašćenja, kao i ovlašćenja nekih drugih upravnih organa, te formiraju sve nove i nove državne represivne agencije (Frehsee, 1999). Mnoštvo rezolucija i deklaracija, koje izdaju vodeći organi EU i Saveta Evrope, kojima pozivaju države članice »u rat« čas protiv ovog, čas protiv onog oblika kriminaliteta, podseća, kako kaže A. Baratta, na egzorcizam i to sa pravom, jer su formule, kao i učinci tih ratnih napora, veoma slični molitvenim formulama za izganjanje đavola, a posebno su slični njihovi štetni učinci (Baratta, 1999).

Zanimljivo pa i opasno je što se sve više javljaju apologeti i teoretski utemeljitelji efikasnosne (bezbednosne) paradigme. Pre nekoliko godina u Nemačkoj buknula je javna rasprava o tome može li policija primeniti i torturu nad osumnjičenim, ako bi time mogla dobiti izjavu-podatak kojim bi spasila kidnapovanom detetu život. Lako je zamisliti kako se opredelila široka javnost na čelu sa medijima, bez obzira što je Evropski sud za ljudska prava već više puta potvrdio apsolutnu zabranu torture. Pre neko vreme iz SAD stigla je novost da za legalizaciju torture osumnjičenih za terorizam plediraju barem trojica američkih profesora, među njima poznati Dershowitz. Slično se događa u pogledu obrnutog dokaznog tereta kad se radi o pranju novca ili korupciji. Poznati engleski penalista Ashworth u udžbeniku Principles of Criminal Law iz godine 2006. već pledira za takozvanu rekonceptualizaciju kriminalne politike i krivičnog prava (Ashworth, 2006). Oba ova područja, kaže autor, treba da rukovodi ideja o odbrani društva, što je, navodno, tako uzvišen cilj da opravdava ukinuće načela zakonitosti u svim njegovim implikacijama (lex scripta, lex praevia, lex certa i lex stricta) Na taj način omogućili bi organima krivične

represije fleksibilnost (čitaj: samovolju i arbitrarnost). Načelo o prezumpciji nevinosti i načelo in dubio pro reo, po autorovom mišljenju, paralizuju rad u pravosuđu i sprečavaju njegovu efikasnost.

Veoma slična stanovišta čitao sam i čuo u javnim nastupima nekih slovenačkih političara i u medijima. Zbog toga želim ovaj, pomalo pesimistički pregled, da zaključim optimističkom odlukom nemačkog ustavnog suda. Poništio je, naime, normu nekog zakona, kojom je bilo dozvoljeno srušiti kidnapovan civilni avion i time izazvati smrt svih putnika, ako postoji sumnja, da će se inače srušiti na neki važan javni objekat. To znači da je nemački ustavni sud proglasio apsolutnu zabranu žrtvovanja ljudskih života za postizanje bilo kakvih, na izgled plemenitih ili uzvišenih ciljeva.

U okviru ovog kratkog napisa ne mogu ni nabrojati još brojne manifestacije prodiranja političko-instrumentalnog shvatanja represije u savremenom zapadnom svetu, što se privrednom i socijalnom krizom čak zaoštrava. Da zato samo spomenem neke, za autoritarne režime prošloga veka, tipične zloupotrebe krivičnog prava za represivni progon političkih protivnika, koje se danas ponovno pojavljuju u kriminalnoj politici i u krivičnom zakonodavstvu SAD i Evropske unije. To su: represivna posezanja u najranije, samo apstraktno potencijalne faze nekog krivičnog dela; u taj red spada i takvo inkriminisanje organizovanja i članstva u zločinačkim udruženjima, koje omogućava krivično gonjenje društava, sindikata, radničkih štrajkova itd., jer propisi ne daju nikakva merila (kriterijume) za razlikovanje benignih od malignih udruživanja ljudi. U tom redu treba spomenuti i prihvatanje konstrukcija iz angloameričkog krivičnog prava kao što je „conspiracy" (zavera). Sa izuzetkom nirnberških procesa, evropsko krivično pravo, sve do sada, nikada nije prihvatalo takve konstrukcije i to u ime načela zakonitosti. Ali istina je da takva konstrukcija olakšava zadatak tužioca, jer im pri optuživanjima za najteža krivična dela, primenom ove konstrukcije, ne treba dokazivati ni uzročnu vezu, niti ulogu i značaj udela pojedinca u zajedničkom kriminalnom poduhvatu, niti individualnu krivicu, jer je ta, navodno, već dokazana pripadnošću osumnjičenog nekom „zločinačkom" narodu, rasi, boji ili veroispovesti ili bilo kojoj drugačijoj sumnjivoj različitosti (Krapac, 2007).

Godine 2003. poznati filozof Slavoj Žižek zapisao je sledeće misli: „Rasprave o tome koliko je zloban Sadam i koliko će da košta rat protiv njega su irelevantne rasprave. Koncentrirati bi se morali na to šta se to zaista događa u našim društvima, koje vrste društava ovde nastaju kao rezultat proglašenog rata protiv terorizma. Usmeriti bi se morali na to šta se događa ovde i sada, na

promene u našem političkom sistemu, što će biti konačni rezultat rata protiv terorizma."[7]

Danas sve svedoči o tome da je bio Žižek pre skoro deset godina u pravu. Primetno se menja zapadni svet, koji bi trebalo da bude nosilac i promoter vizija o pluralnoj parlamentarnoj demokratiji, toleranciji, podeli vlasti, vladavini prava, otvorenosti duha i poštovanja čovekove slobode i njegovih prava. U poslednjih petnaest godina nastala je nova, drugačija slika zapadnog dela sveta, uključivši i Sloveniju, i to pozivanjem na bezbednost i efikasnost. Najznačajnije i najvidnije promene su po mojim saznanjima sledeće:

- pluralističku demokratiju sve više zamenjuje autoritarno jednoumlje sa tendencijom: svim ovladavati i sve kontrolisati,
- slogan o toleranciji jedva još sakriva erupcije netolerancije svih vrsta: od nacionalističkih, rasnih, religijskih, polnih, do ideoloških i političkih,
- jačanjem moći izvršnih organa vlasti sve se više osipa mehanizam poznat pod nazivom „checks and balances" i tako parlamenti postaju glasačka mašina vladajuće većine;
- vladajuća politička opcija pokušava sebi podrediti sve organe državne represije- obaveštajne službe, policiju i tužilaštvo, a u nekim istočnoevropskim zemljama pokušava podrediti i sudove, uključujući ustavne sudove i to tipičnom taktikom političkih diskvalifikacija;
- pojam vladavine prava pretvara se u pravo vladajućih, kao njihov instrument vladanja, pri čemu služi načelo zakonitosti samo kao naličje iza koga se sakriva autoritarna samovolja nosilaca društvene moći i vlasti,
- povećava se politička i kaznena represivnost, te postaje glavni instrument vladanja i regulacije društvenih problema, protivrečja i konflikata;
- osipaju se garancije za poštovanje sloboda i prava čoveka i za njihovu efikasnu zaštitu, kako na zakonodavnom, tako i na nivou pravne prakse;

Za ocenu položaja u Sloveniji biće dovoljni podaci da je krivični zakonik iz godine 1995. najpre doživeo dve novele, a godine 2008. počeo je da važi nov krivični zakonik[8], koji je do sada već doživeo jednu novelu. Sve ove izmene osim poslednje, bile su politički motivisane, izričito represivne i na veoma niskom stručnom nivou. Zakon o krivičnom postupku do sada je doživeo već šest novela, koje, sa retkim izuzecima, obeležava instrumentalno shvatanje

7 Citirano prema zapisu iz dnevnih novina iz ličnog arhiva.

8 Kazenski zakonik (KZ-1). Uradni list R. Slovenije, 2008.

krivičnog prava. Ako neka garantna norma u ZKP »smeta« efikasnosti, treba je odmah ukinuti. Ustavni sud Slovenije jedva stigne da poništi sve što slovenački represivni mentalitet proizvede ili prepisuje od drugih.

Instrumentalno shvatanje krivičnog prava i organa krivičnog pravosuđa ide očito preko ideoloških i političkih razlika, pa se čini kao da je opšta karakteristika i tendencija svakoga ko dođe ili bi voleo doći na vlast. Dugo godina smo pratili borbu za to koja će politička opcija ovladavati policijom i državnim tužilaštvom. Dugo trajanje sudskih postupaka i njihova tobožnja neefikasnost i afere, koje su se na sudovima završile suprotno očekivanjima nekih političara ili novinara, povod su za političke i medijske diskvalifikacije svih organa i pojedinaca iz oblasti državno represivnih organa. Najglasniji političari, neki novinari „revolucionarno revolveraškog" tipa i slični publicisti na žalost ne razumeju ni to da, u ime demokratije pomažu rušenje nezavisnosti sudija i sudova, dakle društvenu instituciju koja je za pravnu bezbednost ljudi, za vladavinu prava i za čovekova prava, od presudnog značaja. Sa nekoliko populističkih i demagoških slogana stvorili su u javnosti utisak kao da imamo, ne samo nesposobne, već i korumpirane ili nekom imaginarnom centru starih (komunističkih) snaga, odane policajce, tužioce i sudije. Takve konstrukcije za neke političare su dobrodošao argument za zahteve o političkoj kontroli, za zastrašivanje svake moguće vrste (npr. lustracijom) i pokušaj disciplinovanja sudija pretnjama o ukidanju trajnog mandata. Jedini pravi smisao i cilj takvih ponašanja jeste, podrediti sebi i svojoj političkoj opciji sve organe državne represije, pretvoriti ih u instrument svojih parcijalnih političkih, ekonomskih i svih drugih mogućih interesa.

Takve konstatacije, priznajem, ulivaju u čoveka strah i pesimizam. Sam se pokušavam braniti od pesimizma utehom da se, možda, radi samo o jednoj od digresija u razvojnom kontinuumu zapadne civilizacije, kakvih je taj deo sveta doživljavao od 18. veka pa nadalje bezbroj, a najteže u prvoj polovini dvadesetog veka boljševizmom, fašizmom i nacizmom... Voleo bih verovati da je to zaista tako. Ali ako je to tako, onda valja razmisliti o tome možemo li mi danas i ovde nešto učiniti da ova privremena digresija ne postane relativno trajan autoritaran i represivan sistem, repriza autoritarnih sistema prošlog veka. Možda bi tom razmišljanju nešto pridonela i izreka Jeffersona, koji je jednom prilikom upozorilo da će izgubiti, kako slobodu tako i bezbednost, oni koji se neće pravovremeno odupreti ograničavanju slobode u ime bezbednosti.

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Ljubo Bavcon

Human freedom and / or safety

This paper deals with the dilemma of whether it is justified to reduce human freedom and rights in order to achieve a greater level of his personal and / or collective security. The author points to the growing political and criminal repressiveness and fewer guarantees for the respect of human rights and freedoms, all in order to increase efficiency and safety in the war against crime. Also, the paper points out the consequences of such tendencies.

Keywords: freedom, human rights, security, repression.

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Procesno-pravni položaj oštećenog prema novom Zakoniku o krivičnom postupku Srbije

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U ovom radu autor kritički razmatra pojedina rešenja novog Zakonika o krivičnom postupku Srbije od 2011. godine koja se odnose na oštećenog i njegova prava u krivičnom postupku. On konstatuje da taj Zakonik, za razliku od ranijih, nije unapredio procesno-pravni položaj oštećenog, već da ga je u određenoj meri čak i pogoršao. Autor posebno ukazuje da u Srbiji ni ovom prilikom zakonodavac nije ustanovio pravo oštećenog da za slučaj pojedinih teških krivičnih dela bude efikasno obeštećen, po posebnom osnovu, iz posebnog fonda na teret budžetskih sredstava, neposredno posle izvršenog krivičnog dela i pre završetka krivičnog postupka. U odredbi Zakonika da oštećeni može preuzeti krivično gonjenje i postati tužilac umesto javnog tužioca (supsidijarni tužilac) tek ako javni tužilac odustane od gonjenja posle potvrđivanja podignute optužnice, a ne i u slučajevima odbacivanja krivične prijave ili odustanka od gonjenja u prethodnom postupku, autor vidi ne samo sužavanje dosadašnjih prava oštećenog, već i opasnost po opšti interes, budući da je javni tužilac, oslobođen pretnje da može nastupiti supsidijarna tužba oštećenog, stekao apsolutni i nekontrolisani monopol nad pokretanjem krivičnog postupka. Od nekih prava koja novi Zakonik dodeljuje oštećenom, taj procesni subjekt, prema mišljenju autora, neće imati nikakve stvarne koristi (npr. od prava na žalbu protiv odluke o dosuđenom imovinskopravnom zahtevu). U zaključku autor ističe da je, i pored izloženih i drugih primedaba koje se mogu uputiti odredbama novog ZKP, pravni položaj oštećenog u krivičnom zakonodavstvu Srbije, globalno posmatrano, znatno povoljniji u odnosu na stanje u krivičnim zakonodavstvima mnogih drugih zemalja.

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Ovaj prilog je napisan u čast dr Dušana Cotiča koji je svojim radom dao značajan doprinos našoj krivično-pravnoj nauci i pravosudnoj praksi, a svojom nesebičnom spremnošću da pomogne svakome kome je pomoć potrebna i drugim plemenitim ljudskim osobinama, zadužio i mnoge svoje prijatelje i saradnike.

Ključne reči: *Zakonik o krivičnom postupku, sporedni procesni subjekti, oštećeni, žrtva krivičnog dela, naknada štete.*

1. Intenzivne reforme krivičnog procesnog zakonodavstva koje su u Srbiji na dnevnom redu već punih deset godina nisu značajnije unapredile pravni položaj oštećenog u krivičnom postupku. Ni jedan od tri zakonika o krivičnom postupku doneta u tom vremenu (2001, 2006. i 2011) nije uveo ni jedno stvarno novo pravo oštećenog i žrtve krivičnog dela. Prioritet u tim reformama bio je dat usklađivanju krivičnog postupka sa drugim međunarodnim pravnim standardima, reorganizaciji prethodnog postupka, širenju optužnog načela, merama za ubrzanje i uprošćavanje suđenja, uvođenju posebnih pravila za otkrivanje i dokazivanje krivičnih dela organizovanog kriminala, zaštiti svedoka i uvođenju kontroverznih ustanova koje bi trebalo da dovedu do rasterećenja sudova. Prava oštećenog, mada i dalje na visokom nivou, ostala su u drugom planu i skoro nepromenjena, osim što je predviđena mogućnost da bude posebno zaštićen kad se saslušava kao svedok. Najnoviji Zakonik, donet 26. septembra 2011. godine,[1] osim što nije unapredio prava oštećenog, čak je u nekim pitanjima i pogoršao njegov procesno-pravni položaj. Ukazivanje na ta pitanja predmet je ovog rada.

2. Novi ZKP Srbije nije uveo u krivični postupak žrtvu krivičnog dela koja se u mnogim savremenim zakonima o krivičnom postupku javlja kao posebni sporedni procesni subjekat pored oštećenog sa kojim se ne poklapa u potpunosti.[2] Pored prava koja ima kao oštećeni, žrtvi krivičnog dela pripadaju i druga prava, usmerena u prvom redu na zaštitu od sekundarne viktimizacije do koje može da dođe i zbog učestvovanja u krivičnom postupku. Problematikom zaštite žrtve krivičnog dela od daljih patnji, šteta i ugrožavanja

[1] Zakonik je objavljen u „Sl. glasniku RS", br. 72. od 28. septembra 2011. godine. Prema članu 608. Zakonik je *stupio na snagu* osmog dana od dana objavljivanja, a *primenjivaće se* od 15. januara 2013. godine, osim u postupcima za krivična dela organizovanog kriminala i ratne zločine u kojima se primenjuje od 15. januara 2012. godine. O problematici zakona koji stupe na snagu pa se posle toga ne primenjuju, vidi u našem radu *„Jedno pogrešno shvatanje ustavnih odredaba o stupanju na snagu zakona"*, „Glasnik AK Vojvodine", 5/2009, str. 159-174. Osim toga, odredbe člana 608. Zakonika problematične su i zbog toga što nalažu da se za vreme od godinu dana u državi vode dva različita krivična postupka u kojima procesne stranke imaju različita prava i dužnosti, čime se građani stavljaju u najednak pravni položaj pred sudom i zakonom, što nije u skladu sa odredbom člana 21. Ustava.

[2] Interesantno je da Krivični zakonik Srbije, za razliku od ZKP, osim o oštećenom (čl. 10, 45, 59, 61, 79, 80, 89a 93, 122. i dr.), govori i o žrtvi krivičnog dela (u članu 54. stav 1, članu 72. stav 1, članu 73. tačka 10, članu 77. stav 4. i u članu 388. stav 8), ali ne sadrži definiciju toga pojma.

drugih prava, kao i sprečavanjem da trpi štetu zbog pogrešnog postupanja državnih organa bavi se *viktimologija,* koja je u poslednje vreme stekla tretman posebne kriminološke nauke. Ta nauka preporučuje da se posebnim pravnim propisima uredi pravni položaj žrtve krivičnog dela, ne samo u toku krivičnog postupka, već i u pretkrivičnom postupku, da se žrtvi koja se ispituje kao tzv. ugroženi svedok garantuje poseban način ispitivanja i učestvovanja u postupku, i da joj se obezbedi naknada štete iz posebnih državnih fondova.

Pojam žrtve je širi od pojma oštećenog jer obuhvata svako lice koje zbog učinjenog krivičnog dela trpi fizičke ili duševne posledice, imovinsku štetu ili povredu nekog drugog osnovnog prava ili slobode.[3] Žrtva je kako lice koje učestvuje u krivičnom postupku u svojstvu oštećenog kao sporednog procesnog subjekta na strani javnog tužioca ili u svojstvu glavnog procesnog subjekta (oštećenog kao tužioca ili privatnog tužioca), bez obzira na to da li ima pravo na imovinskopravni zahtev i da li je taj zahtev postavilo, ako na njega ima pravo, tako i lice koje nije stupilo u krivični postupak i steklo status oštećenog. Dakle, žrtva može, ali ne mora da učestvuje u krivičnom postupku. S druge strane, i oštećeni se mogu podeliti u dve grupe: oštećeni koji su istovremeno i žrtve krivičnog dela i oni koji nisu žrtve krivičnog dela (na primer, bliski srodnici preminule žrtve krivičnog dela). Oštećeni može biti neposredna ili posredna žrtva krivičnog dela.

Žrtve krivičnih dela zakoni grupišu u više kategorija, od kojih neke uživaju dodatna prava. Sve žrtve treba da imaju: a) pravo na delotvornu psihološku i drugu stručnu pomoć procesnih i drugih organa, organizacija i ustanova i b) pravo da učestvuju u krivičnom postupku u svojstvu oštećenog. Žrtve težih krivičnih dela, obično onih za koja je propisana kazna zatvora od pet ili više godina imaju dodatno pravo na savetnika i pravo na naknadu materijalne i nematerijalne štete na teret budžetskih sredstava (tako i prema članu 43. stav 2. ZKP Hrvatske). Posebnu zaštitu uživaju deca i maloletnici koji imaju pravo na punomoćnika na teret budžetskih sredstava, tajnost ličnih podataka i isključenje javnosti krivičnog postupka. Najviše prava uživaju žrtve krivičnih dela protiv polne slobode koje, osim već pomenutih, imaju još i a) pravo da pre ispitivanja razgovaraju sa savetnikom postavljenim na teret budžetskih sredstava, b) pravo da ih u tužilaštvu i policiji ispituju lica istog pola, v) pravo da uskrate odgovor na pitanja koja se odnosi na lični život, g) da zahtevaju

[3] Slično je žrtva krivičnog dela definisana u članu 202. stav 2. tačka 10. ZKP Hrvatske iz 2008. godine. Ostale odredbe o žrtvi krivičnog dela su u čl. 43. do 46. tog zakona.

ispitivanje putem audio-video uređaja, d) pravo na tajnost podataka o ličnosti i đ) da zahtevaju isključenje javnosti sa glavnog pretresa (prema članu 45. ZKP Hrvatske)[4].

3. Najvažnije pravo žrtve jeste naknada štete pretrpljene učinjenim krivičnim delom na račun budžetskih sredstava nezavisno od ishoda krivičnog postupka i pre njegovog kraja. Tu naknadu naš novi ZKP ne predviđa, već i dalje priznaje samo pravo oštećenog na naknadu po osnovu podnetog imovinskopravnog zahteva o kome se u našoj sudskoj praksi, po pravilu, ne odlučuje u krivičnom postupku, već tek posle izricanja krivične presude u parničnom postupku. U postojećem sistemu oštećeni je, po pravilu, prinuđen da čeka da se završe dva dugotrajna krivična postupka (krivični i građanski na koji redovno biva upućen da ostvari svoje imovinsko-pravno potraživanje) i za sve to vreme, koje može da se protegne i na nekoliko decenija, ostaje neobeštećen, s tim što u slučaju insolventnog okrivljenog neće biti obeštećen ni kad mu imovinskopravno potraživanje bude konačno dosuđeno. Sigurnije i ranije priznavanje naknade oštećenom kao žrtvi krivičnog dela bilo bi korisno i za krivično pravosuđe, jer bi obeštećenje iz posebnog fonda odmah posle izvršenog krivičnog dela smanjilo pritisak oštećenog na krivični postupak.

Propisi našeg krivičnog prava oduvek su nastojali da olakšaju oštećenom da po osnovu podnetog imovinskopravnog zahteva prema okrivljenom dođe do naknade štete koju je pretrpeo krivičnim delom. U KZ postoje brojne odredbe kojima se podstiče učinilac krivičnog dela da oštećenom dobrovoljno naknadi štetu tako što mu se za uzvrat stavljaju u izgled određene pogodnosti. Tako na primer, odnos prema žrtvi krivičnog dela KZ uzima kao olakšavajuću ili otežavajuću okolnost (član 54), kao okolnost od koje zavisi primena sudske opomene (član 77), kao uslov za određivanje zaštitnog nadzora (član 72) i td. I procesno pravo uvažava interes oštećenog da mu učinilac naknadi štetu prouzrokovanu krivičnim delom. Tako, prema ZKP/2001 za primenu nekih procesnih ustanova zahteva se prethodna saglasnost oštećenog (na primer, kod uslovnog odlaganja krivičnog gonjenja po članu 236. stav 4), a Zakon o međunarodnoj pravnoj pomoći u krivičnim stvarima ustupanje gonjenja drugoj državi uslovljava obezbeđenjem imovinskopravnog zahteva oštećenog (član 51) i dr. Ali i pored svega toga, realizacija prava oštećenog na naknadu pretrpljene štete u krivičnom postupku, kao što je napred već rečeno, nije lako ostvarljiva, a u nekim slučajevima uopšte nije ostvarljiva. Jedan od načina koji

[4] O pojmu žrtve videti: Lindgren, Nikolić-Ristanović, 2011; Tomašević, Pajčić, 2008.

bi olakšao ostvarivanje toga prava sastoji se u uvođenju sistema u kome bi se naknada žrtvama krivičnih dela (svih ili samo nekih) isplaćivala iz posebnih državnih fondova. Ta je ideja odavno poznata i u nekim državama pravno uređena (Lindgren, Nikolić-Ristanović, 2011; Tomašević, Pajčić, 2008),[5] ali se kod nas na njenu realizaciju još i ne pomišlja. Međutim, i mimo propisa, naknada po tom osnovu je u Srbiji ipak povremeno priznavana, na primer, američkom državljaninu Brajanu Štajnhaueru (*Bryan Steinhauer)* u predmetu protiv Miladina Kovačevića, i zahtevana od strane posrednih žrtava krivičnih dela, na primer, zahtev porodice pok. Brisa Tatona (*Brice Taton*). Naknadu u takvim slučajevima priznavala je Vlada svojim posebnim odlukama, što otvara pitanje diskriminacije, jer na taj način pravo na naknadu ostvaruju samo neke žrtve krivičnih dela, po pravilu iz političkih razloga, ne i ostale koje se nalaze u istoj pravnoj situaciji.

Brojni su argumenti u prilog ustanovljavanja posebnog fonda za obeštećenje žrtava krivičnih dela. Na taj način se žrtvi olakšava snošenje troškova nastalih krivičnim delom bez čekanja da se završi krivični, odnosno građanski postupak i odluči o imovinskopravnom zahtevu. Kao što je država dužna da omogući odbranu okrivljenog u krivičnom postupku, tako ima i obavezu da olakša položaj žrtve krivičnog dela. Na kraju, postoji i jedan broj slučajeva u kojima oštećeni u sudskim postupcima ne može dobiti nikakvu satisfakciju i ostvariti naknadu od lica koje mu je štetu nanelo (krivična dela napoznatih ili insolventnih učinilaca), tako da je obeštećenje na teret državnog budžeta jedini mogući način pružanja pomoći žrtvi krivičnog dela. Brojni su i međunarodni dokumenti koji ukazuju na potrebu osnivanja i jačanja posebnih državnih fondova za naknadu štete žrtvama krivičnih dela: Deklaracija UN o osnovnim pravima žrtava krivičnih dela i zloupotrebe moći, Evropska konvencija o naknadi štete žrtvama krivičnih dela nasilja i dr. Osnivanje Fonda za pomoć žrtvama krivičnih dela predviđeno je i u Statutu Međunarodnog krivičnog suda (član 79).

4. Za razliku od ZKP/2001 prava oštećenog u novom Zakoniku navedena su na jednom mestu (član 50). U katalogu prava oštećenog koji je dat u tom članu nije navedeno jedno od njegovih osnovnih i najvažnijih prava: da preuzme krivično gonjenje od javnog tužioca ako gonjenje on iz nekog razloga neće da

[5] Pre nekoliko godina je i u Hrvatskoj donet Zakon o novčanoj naknadi žrtvama kaznenih dela („Narodne novine", 80/2008), ali će on stupiti na snagu na dan prijema Hrvatske u EU. Zakon uređuje pravo na novčanu naknadu žrtvama krivičnih dela nasilja učinjenih sa umišljajem, pretpostavke i postupak za ostvarivanje toga prava. Naknadu daje država po osnovu načela solidarnosti i pravednosti.

vrši, već je u tački 7. stava 1. člana 50. samo navedeno da oštećeni ima pravo „da bude poučen o mogućnosti da preuzme krivično gonjenje i zastupa optužbu".[6] Sadržina toga prava određena je posebno u čl. 51. i 52. Prema obimu to je pravo u novom ZKP mnogo uže nego što je bilo u prethodnom Zakoniku. Prema novom Zakoniku oštećeni ima pravo da nastupi kao supsidijarni tužilac samo *kad javni tužilac odustane od podignute optužnice posle njenog potvrđivanja* od strane suda (član 52), a u skraćenom postupku ako javni tužilac odustane od gonjenja posle zakazivanja glavnog pretresa ili ročišta za izricanje krivične sankcije (člana 497). Ako javni tužilac uopšte ne preduzme gonjenje, tj. odbaci krivičnu prijavu ili odustane od gonjenja u toku istrage ili od podignute optužnice pre nego što ona bude potvrđena, odnosno od optužnog predloga pre zakazivanja glavnog pretresa ili ročišta za izricanje krivične sankcije u skraćenom postupku, oštećeni se ne može javiti sa zahtevom da preuzme gonjenje i da postne supsidijarni tužilac umesto javnog tužioca, već može samo da podnese prigovor neposredno višem javnom tužiocu (član 51). Ako viši javni tužilac usvoji prigovor oštećenog izdaće uputstvo nadležnom javnom tužiocu da preduzme, odnosno nastavi krivično gonjenje. Prema ZKP/2001 supsidijarna tužba je mogla da nastupi u svakom stadijumu krivičnog postupka, pa i pre početka istrage, ako javni tužilac odbaci krivičnu prijavu.[7]

Supsidijarna tužba nije ustanovljena samo u interesu oštećenog, već prvenstveno u opštem interesu. Ona predstavlja vid kontrole nad radom javnog tužioca i garanciju da gonjenje učinilaca krivičnih dela neće neosnovano izostajati, usled samovolje ili pogrešnog rada javnog tužioca. To što se ta tužba u sudskoj praksi retko primenjuje ne bi smelo da dovede do pogrešnog zaključka da je ona nepotrebna, jer mali broj tih tužbi može da bude rezultat dobrog rada javnog tužioca i njegove pravilne procene zakonskih uslova za pokretanje i vođenje krivičnog postupka. Moglo bi se sa sigurnošću tvrditi da bi se u slučaju ukidanja ove vrste nadzora broj pogrešnih procena, pa i mogućnih zloupotreba u preduzimanju krivičnog gonjenja od strane javnog tužioca znatno povećao. U tom smislu, pravo oštećenog da se umesto sa zahtevom sudu za preuzimanje krivičnog gonjenja obrati višem javnom tužiocu sa prigovorom kad nadležni javni tužilac odbaci krivičnu prijavu ili odustane

6 Iz toga izlazi da on ne može podići novu optužnicu, već da mora preuzeti optužnicu javnog tužioca. Tek kasnije on može tu optužnicu da menja i proširuje (čl. 409. i 410) i da tako optužnicu javnog tužioca zameniti svojom.

7 I prema novom Zakoniku postoji mogućnost da se supsidijarni tužilac javi u slučaju ako javni tužilac odustane od gonjenja na pretresu pred sudom drugog stepena (član 450. stav 5).

od krivičnog gonjenja do potvrđivanja optužnice (član 51) ne znači mnogo, ni za oštećenog, ni za zaštitu opšteg interesa, jer od višeg javnog tužioca u tom slučaju ne treba očekivati stvarnu i delotvornu kontrolu. Zbog principa organizacije javnog tužilaštva, naročito hijerarhijskog ustrojstva tog organa, desiće se u mnogim slučajevima da je odluka o nepreduzimanju krivičnog gonjenja ili o odustanku od gonjenja rezultat saradnje nadležnog i višeg javnog tužioca, pa čak i da je doneta po nalogu višeg javnog tužioca (koji ima pravo da nižem javnom tužiocu izdaje obavezna uputstva), tako da je već zbog toga taj tužilac diskvalifikovan kao kontrolor koji treba da spreči izostanak krivičnog gonjenja. Stvarna opasnost je u tome što slučajevi nepreduzimanja krivičnog gonjenja od strane javnog tužioca u novom sistemu ostaju bez ikakve stvarne kontrole. Javni tužilac je tako stekao apsolutni i nekontrolisani monopol nad pokretanjem krivičnog postupka. Njegova odluka da krivično gonjenje u određenom slučaju izostane je definitivna odluka koja se protiv njegove volje ne može popraviti ni ako je očigledno pogrešna.

5. Novi ZKP ipak predviđa i pojedina nova prava oštećenog, koja on do sada u krivičnom postupku nije imao. Međutim, ta su prava takva da u realnom životu neka od njih neće imati velikog praktičnog značaja. Jedno od takvih prava oštećenog, predviđeno u odredbi člana 50. stav 1. tačka 10. jeste „da podnese žalbu protiv odluke o troškovima krivičnog postupka i dosuđenom imovinskopravnom zahtevu". Ta je odredba ponovljena u članu 433. stav 4. koji se odnosi na lica ovlašćena na izjavljivanje žalbe. Žalba oštećenog kao sporednog procesnog subjekta protiv odluke o troškovima krivičnog postupka bila je moguća i prema ZKP/2001, ali žalba protiv odluke „o dosuđenom imovinskopravnom zahtevu" nije bila predviđena, smatram sa razlogom. Protiv te odluke žalbu je mogao da izjavi samo optuženi. To rešenje je bilo logično, jer krivični sud ne može da odbije podneti imovinskopravni zahtev oštećenog, već u krivičnom postupku može samo da ga usvoji, u celini ili delimično, ili da podnosioca uputi na parnični postupak, za ceo ili neusvojeni deo zahteva. Tako je bilo prema ranijem Zakoniku, a tako je ostalo i prema novom. Dakle, oštećeni nema nikakvog opravdanog razloga da se žali na odluku krivičnog suda „o dosuđenom imovinskopravnom zahtevu", posebno ako mu je zahtev dosuđen u celini, a ni ako mu je dosuđen delimično, a sa ostatkom je upućen u parnični postupak. Ni u prvom, ni u drugom slučaju oštećeni nema konkretnog pravnog interesa za izjavljivanje žalbe i njegova žalba će zbog toga uvek morati da bude odbačena. Oštećeni bi možda imao interesa da se žali protiv odluke krivičnog suda o upućivanju na parnični postupak (jer se

time izlaže troškovima, a obeštećenje odlaže), dakle, ne protiv odluke o dosuđenom, već o nedosuđenom zahtevu, ali i ta žalba bi bila problematična, jer u tom slučaju nema nikakve meritorne odluke o zahtevu i nikakve povrede prava oštećenog, već je reč samo o premeštanju njegovog imovinskopravnog zahteva iz jedne u drugu sudsku jurisdikciju u kojoj će biti meritorno odlučeno o njegovom pravu. Osim toga, nedostatak je odredaba novog Zakonika o ovom pitanju i u tome što je pravo žalbe protiv odluke o dosuđenom imovinskopravnom zahtevu priznato samo oštećenom, a ne svakom podnosiocu imovinskopravnog zahteva. Zakonodavac je ispustio iz vida da oštećeni nije jedini subjekt ovlašćen na podnošenje imovinskopravnog zahteva, i da imovinskopravno potraživanje može preći na druga lica za života oštećenog i za slučaj njegove smrti. Zakonik govori o licu ovlašćenom na podnošenje imovinskopravnog zahteva, a ne o oštećenom.

Naš zakonodavac se ovde verovatno poveo za rešenjem hrvatskog ZKP koji u članu 464. stav 4. predviđa da oštećeni „može pobijati presudu zbog odluke suda o njegovim troškovima kaznenog postupka i odluke o imovinskopravnom zahtevu…".

6. Prema ZKP/2001 oštećeni ima pravo da prisustvuje pojedinim istražnim radnjama (uviđaju, ispitivanju veštaka i ispitivanju svedoka), a istražni sudija dužnost da ga, isto kao i procesne stranke, na pogodan način obavesti o vremenu i mestu preduzimanja tih istražnih radnji, osim ako postoji opasnost od odlaganja (član 251. st. 2, 4. i 5). Oštećeni koji prisustvuje preduzimanju istražnih radnji može da predloži istražnom sudiji da postavi određena pitanja svedoku ili veštaku, a po dozvoli istražnog sudije može ta pitanja da im postavlja i neposredno (član 251. stav 7).

Tim odredbama ZKP/2001 odgovaraju odredbe člana 300. novog Zakonika. Prema njima oštećeni ima pravo da prisustvuje ispitivanju svedoka i veštaka, a javni tužilac dužnost da ga o preduzimanju tih dokaznih radnji obavesti (osumnjičenom i njegovom braniocu upućuje *poziv,* a ne obaveštenje). Oštećeni ima pravo da prisustvuje i uviđaju, ali u Zakoniku nije predviđena dužnost javnog tužioca da ga o preduzimanju uviđaja obavesti (član 300. stav 3). U odredbi stava 3. rečeno je samo da osumnjičeni, branilac i oštećeni mogu da prisustvuju uviđaju, ali ne i da je javni tužilac dužan da ih o preduzimanju te dokazne radnje obavesti i kako ih obaveštava (odredba stava 1. o pozivanju i obaveštavanju odnosi se samo na saslušanje osumnjičenog i ispitivanje svedoka i veštaka).

U odredbi stava 6. tog člana predviđeno je da javni tužilac, po prethodnom odobrenju sudije za prethodni postupak, može da ispita svedoka ili

veštaka iako osumnjičenog i njegovog branioca nije pozvao da prisustvuju preduzimanju tih dokaznih radnji, bez obzira na razlog nepozivanja i bez obzira na to da li se istraga vodi protiv određenog lica ili nepoznatog učinioca. Oštećeni se tu i ne pominje, tako da je preduzimanje tih dokaznih radnji bez obaveštavanja oštećenog ostalo bez ikakve procesne sankcije. Neobaveštavanje oštećenog nema nikakvog uticaja na mogućnost obavljanja dokazne radnje: ona se preduzima i bez odobrenja sudije za prethodni postupak. Iz ovoga izlazi, da se ispitivanje svedoka i veštaka u istrazi uvek može obaviti bez obaveštavanja oštećenog i to će u praksi postati pravilo. Tako je pravo oštećenog da prisustvuje preduzimanju dokaznih radnji i da tom prilikom preduzme dokaznu aktivnost u tužilačkoj istrazi postalo zakonska proklamacija koja ničim nije garantovana. Odredbe člana 300. su primer relativizacije prava učesnika postupka kojom se ona pretvaraju u fiktivna procesna prava.

Neobaveštavanje oštećenog nema nikakvog uticaja na mogućnost obavljanja dokazne radnje: ona se preduzima i bez odobrenja sudije za prethodni postupak. Osim toga, u stavu 2. člana 300. je predviđeno da se u postupcima za krivična dela organizovanog kriminala i ratne zločine ispitivanje svedoka može obaviti i bez pozivanja osumnjičenog i njegovog branioca (tim pre i bez obaveštavanja oštećenog, koji se u toj odredbi i ne spominje). Te odredbe skoro u potpunosti potiru pravo oštećenog da kao sporedni procesni subjekt učestvuje u preduzimanju dokaznih radnji u istrazi. To je pravo oštećenog skoro potpuno degradirano u odnosu na stanje pre novog Zakonika.

7. Na ovom mestu biće naveden samo još jedan primer tih „iluzornih prava" kojima novi Zakonik snabdeva oštećenog.[8]

Prema odredbi člana 252. izlazi da se imovinskopravni zahtev u krivičnom postupku može postaviti, ne samo kad je nastao iz krivičnog dela, nego i kad potiče iz „protivpravnog dela koje je u zakonu određeno kao krivično delo", a prema odredbi člana 258. stav 4. sud može dosuditi imovinskopravni zahtev, ne samo u presudi kojom optuženog oglašava krivim, već i u rešenju o izricanju mere bezbednosti obaveznog psihijatrijskog lečenja[9]. Dakle, iz tih odredaba izlazi da bi se u postupku za izricanje mere bezbednosti mogao postaviti imovinskopravni zahtev prema licu koje je u vreme izvršenja krivičnog dela bilo

8 Tim pravima odgovara upravo taj naziv, jer nema izgleda da ikada budu ostvarena. Ta prava su obmanjivačka, varljiva, prazna i neostvariva.

9 Tu meru u Krivičnom zakoniku zakonodavac naziva „obavezno psihijatrijsko lečenje i čuvanje u zdravstvenoj ustanovi" (član 81. KZ).

neuračunljivo i koje zbog toga nije krivo, i da bi sud to lice moga da obaveže na ispunjenje imovinskopravnog zahteva ako mu izrekne meru bezbednosti.

To se, međutim, ne slaže sa odredbama Zakona o obligacionim odnosima. Prema članu 164. toga zakona za štetu koju prouzrokuje lice koje usled duševne bolesti ili zaostalog duševnog razvoja ili kojih drugih razloga nije sposobno za rasuđivanje odgovara onaj koji je na osnovu zakona, ili odluke nadležnog organa, ili ugovora bio dužan da vodi nadzor nad njim, a u ZKP nema odredaba koje bi omogućile uključivanje tih lica u krivični postupak, odnosno u postupak za izricanje mere bezbednosti. Iz svega toga izlazi da imovinskopravni zahtev postavljen u postupku za primenu mere bezbednosti obaveznog psihijatrijskog lečenja i čuvanja u zdravstvenoj ustanovu sud nikad neće moći da dosudi, ni prema okrivljenom ni prema licu odgovornom za njegove postupke, i pored odredbe člana 526. stav 6. u kojoj stoji da će u rešenju kojim izriče meru bezbednosti sud odlučiti i o imovinskopravnom zahtevu. Umesto toga, sud će uvek morati da oštećenog ili drugog podnosioca imovinskopravnog zahteva uputi na parnični postupak.

8. Novi Zakonik je proširio broj procesnih ustanova koje se zasnivaju na načelu oportuniteta krivičnog gonjenja koje javnom tužiocu omogućuje izbegavanje krivičnog postupka ili olakšava dokazivanje u toku krivičnog postupka. Reč je o raznim vrstama nagodbi, preuzetim uglavnom iz angloameričkog krivičnog postupka, koje u tom cilju postiže javni tužilac sa okrivljenim. Po prirodi stvari trebalo bi očekivati da u zaključivanje tih sporazuma u nekoj meri bude uključen i oštećeni, koji je inače sporedni procesni subjekt na strani javnog tužioca. Međutim, učešće oštećenog u ovim tužilačkim delatnostima je u potpunosti eliminisano, tako da ga nema ni onoliko koliko ga je bilo prema ZKP/2001. Tako na primer, prema odredbi člana 236. toga Zakonika javni tužilac može da odloži krivično gonjenje ako okrivljeni prihvati da izvrši određenu obavezu, odnosno da odbaci krivičnu prijavu ako prihvaćenu obavezu okrivljeni izvrši u određenom roku. Neke od obaveza kojim uslovljava nepokretanje krivičnog postupka javni tužilac može da odredi samo uz saglasnost oštećenog (stav 4. toga člana). Prema novom Zakoniku oštećeni se u tom sporazumevanju ni o čemu ne pita (vidi član 283. i član 284. stav 2). Isključeno je i njegovo pravo da se sa prigovorom na odluku javnog tužioca obrati neposredno višem javnom tužiocu.

Isto tako, u odredbama novog Zakonika koje se odnose na druge sporazume što ih javni tužilac može sklapati sa okrivljenim (sporazum o priznanju krivičnog dela – član 313, sporazum o svedočenju okrivljenog – član 320.

i sporazum o svedočenju osuđenog – član 327) oštećeni se ne spominje ni na jednom mestu, iako bi kao žrtva krivičnog dela imao nesumnjiv interes da u sklapanju tih sporazuma na određeni način učestvuje. Prema ZKP/2001 oštećeni ima pravo da prisustvuje ročištu na kome sud odlučuje o prihvatanju sporazuma i o tom ročištu sud je dužan da obavesti oštećenog i njegovog punomoćnika (član 282v stav 5); rešenje suda o sporazumu dostavlja se i oštećenom i njegovom punomoćniku (član 282v stav 11); oštećeni i njegov punomoćnik se mogu žaliti protiv rešenja suda o usvajanju sporazuma (član 282g stav 2); presuda se dostavlja oštećenom ne samo kad ima pravo na žalbu već i ako nije uredno pozvan ili je iz opravdanih razloga bio sprečen da dođe na glavni pretres da bi mogao da traži povraćaj u pređašnje stanje (član 282d stav 3). Umesto da ove odredbe usavrši i da ojača ulogu oštećenog u sklapanju ovakvih nagodbi, zakonodavac je javnog tužioca i ovde oslobodio svakog uticaja i saradnje oštećenog. Stiče se utisak da se „zakonodavac" uplašio da će prisustvo oštećenog otežati realizaciju ideje o konsenzualnom rešavanju krivičnih predmeta za koju veruje, dobrim delom preterano i neopravdano, da će rešiti neke od osnovnih problema savremenog krivičnog postupka.

9. Oštećeni u krivičnom postupku ne mora, a u nekim slučajevima faktički i ne može da učestvuje lično. Zato mu je omogućeno da procesne radnje preduzima preko punomoćnika, osim ako je pozvan radi svedočenja. Novi Zakonik je odredio da punomoćnik oštećenog može biti samo advokat (član 50. stav 1. tačka 3).[10] Prema ZKP/2001 izbor punomoćnika je bio slobodan tako da je oštećeni mogao za punomoćnika da odredi bilo koje procesno sposobno lice, bez obzira na stručnu spremu i druga lična svojstva. Iako zastupanje oštećenog preko advokata garantuje najveću moguću profesionalnost i stručnost, novim odredbama Zakonika mogu se staviti ozbiljni prigovori. Promena nije u skladu sa pravom na pravično suđenje jer otežava pristup sudu. Pravo oštećenog na pristup sudu ne sme biti uslovljeno ili otežano obavezom angažovanja punomoćnika određenih ličnih svojstava ili statusa. Pravnu pomoć ove vrste, pored advokata, oštećenim su do sada pružali i stručnjaci koji sarađuju

[10] Isto tako i punomoćnik oštećenog kao tužioca ili privatnog tužioca može biti angažovan samo iz reda advokata (član 58. stav 1. tačka 3. i član 64. stav 1. tačka 3). Ideja o punomoćniku koji mora biti advokat dosledno je sprovedena i u novom Zakonu o parničnom postupku. Vesna Rakić–Vodinelić kaže da se time Srbija svrstala među države čiji pravosudni poredak obeležava advokatski monopol i da je to rešenje kruto i skupo (Rakić-Vodinelić, 2012). ZKP ne dozvoljava ni jedan izuzetak od pravila da punomoćnik može biti samo advokat, za razliku od ZPP koji predviđa da pravno lice može izuzetno zastupati diplomirani pravnik sa položenim pravosudnim ispitom zaposlen u tom pravnom licu.

u udruženjima za zaštitu ljudskih prava, humanitarne organizacije, sindikati i dr. Oštećenima je na taj način, bez nagrade ili naknade, pružana besplatna, efikasna i kvalifikovana pravna pomoć.

10. Pojedine odredbe novog Zakonika koje se odnose na oštećenog su nedovoljno jasne i kontradiktorne tako da će izazvati teškoće u praktičnoj primeni, a neke od njih se možda pokazati i kao potpuno neprimenljive. Tako na primer, prema odredbi člana 226. stav 2. ako oštećeni iz opravdanog razloga nije bio na pripremnom ročištu ili na glavnom pretresu, pored ostalog i zbog toga što nije bio uredno pozvan (utoliko pre ako nije bio nikako pozvan), a optužba na tom ročištu bude odbijena zbog odustanka javnog tužioca, oštećeni ima pravo na povraćaj u pređašnje stanje. Uslov za povraćaj u pređašnje stanje je neurednost poziva za glavni pretres ili neki drugi opravdani razlog zbog koga uredno pozvani oštećeni nije mogao da dođe na glavni pretres. Problem je, međutim, u tome što se po novom Zakoniku presuda dostavlja oštećenom samo ako ima pravo na žalbu (član 427. stav 6), a ne i kad nema pravo na žalbu, da bi tražio povraćaj u pređašnje stanje (kao što je bilo predviđeno u članu 360. stav 5. ZKP/2001). Dostavljanje se po ZKP/2001 vršilo da bi se oštećenom omogućilo traženje povraćaja u pređašnje stanje, a ne radi žalbe na presudu, jer oštećeni, s obzirom na to da nije stranka, nema prava žalbe. Oštećenom se u tom smislu po istoj odredbi ZKP/2001 davala i pouka o pravu da traži povraćaj u pređašnje stanje.[11]

11. U slučaju kad javni tužilac odustane od optužnice na glavnom pretresu postupak prema oštećenom je različit i zavisi od toga da li je ili nije prisutan na glavnom pretresu. Ako je oštećeni na glavnom pretresu prisutan, sud će pitati oštećenog da li hoće da preuzme krivično gonjenje i zastupa optužbu (član 52. stav 1). Predsednik veća je dužan da mu ukaže da se mora odmah izjasniti o preuzimanju postupka, kao i na koji način može preuzeti postupak. To proizlazi i iz odredaba člana 8. koji ustanovljava dužnost procesnih organa da svakog učesnika postupka pouči o pravima koja mu po zakonu pripadaju. Prema ZKP/2001 oštećeni koji je prisutan glavnom pretresu mogao je da zahteva da se o preuzimanju gonjenja ne izjasni odmah nego u rok od osam dana, ali te odredbe u Zakoniku više nema.

[11] Odredbe o pravu oštećenog na povraćaj u pređašnje stanje zbog neskrivljenog nedolaska na ročište za glavni pretres, proširene na nedolazak na pripremno ročište i nedolazak na ročište iz člana 505. stav 1. (ročište radi upoznavanja privatnog tužioca i okrivljenog „sa mogućnošću upućivanja na postupak medijacije" u skraćenom postupku), premeštene su u glavu IX novog Zakonika koja se odnosi na rokove, iako sa rokovima te odredbe nemaju nikakve veze (reč je o propuštenom ročištu, a ne o propuštenom roku). Prema ZKP/2001 te odredbe su bile u glavi V (Oštećeni i privatni tužilac), i tu je trebalo da ostanu.

Ako oštećeni nije prisutan (ne kaže se da li ročištu ili činu odustanka javnog tužioca izvan ročišta, ili i jednom i drugom) sud će ga obavestiti o odustanku javnog tužioca i poučiti o mogućnosti preuzimanja postupka (član 52. stav 1. rečenica 2). Ta bi odredba imala smisla samo ako se odustanak desio izvan glavnog pretresa, a nema nikakvog smisla ako se odnosi (a očigledno da se odnosi) i na glavni pretres kome oštećeni ne prisustvuje a na koji je uredno pozvan. U pozivu za glavni pretres oštećeni je upozoren da će se njegov nedolazak tumačiti kao da ne želi da produži krivično gonjenje u slučaju da javni tužilac odustane od gonjenja (član 355. stav 5). Posle takvog upozorenja nelogično je oštećenom slati obaveštenje da je javni tužilac odustao od gonjenja na pretresu na kome on nije bio prisutan i zbog toga odlagati glavni pretres. Oštećeni koji iz opravdanog razloga nije prisustvovao glavnom pretresu na kome je javni tužilac odustao od gonjenja izjavu o nastavljanju postupka mogao je dati samo u molbi za povraćaj u pređašnje stanje u rokovima za podnošenje te molbe (član 226). Takvo je rešenje imao ZKP/2001.

12. Na kraju, treba istaći da je i pored navedenih kritičkih primedaba, koje se odnose na poslednji poduhvat našeg zakonodavca u oblasti krivičnog procesnog prava, pravni položaj oštećenog u krivičnom postupku, globalno posmatrano, u Srbiji znatno povoljniji u odnosu na položaj oštećenog u krivičnim postupcima mnogih drugih država. Položaj oštećenog je kod nas konstantno unapređivan, od donošenja jugoslovenskog Zakonika o krivičnom postupku iz 1953. godine do danas, posebno posle izmena Zakonika iz 1967. godine (Kraus, 1982). Malo je koja reforma procesnih propisa prošla bez uvođenja novih prava oštećenog ili proširivanja i jačanja postojećih. Za razliku od mnogih drugih inostranih krivičnih postupaka, u kojima oštećeni ima samo ulogu svedoka, u našem krivičnom postupku on je postao stvarni i aktivni procesni subjekt koji u postupku razvija sopstvenu dokaznu aktivnost i na taj način pomaže javnom tužiocu u vršenju njegove osnovne funkcije krivičnog gonjenja, štiteći u isto vreme i svoje individualne interese. Šteta je što savremeni zakonodavac prilikom donošenja najnovijeg Zakonika nije sledio taj kurs. Ostaje nada da će uočeni nedostaci biti ubrzo i na pravi način ispravljeni i da će trend jačanja procesnog položaja oštećenog u krivičnom postupku Srbije biti nastavljen. Najvažniji akt na tom putu bio bi formiranje državnog fonda za naknadu štete žrtvama krivičnih dela i donošenje posebnog zakonodavstva kojim bi bili uređeni uslovi i postupak za ostvarivanje toga prava.

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Momčilo Grubač

Procedural and legal status of the injured party according to the new Criminal Procedure Code of the Republic of Serbia

In this article the author is critically analyzing certain solutions of the new Criminal Procedure Code of the Republic of Serbia from 2011 which consider the injured party and their rights in the criminal proceeding. He states that unlike the previous ones, this Code does not improve the status of the injured party but makes it even worse. The author particularly claims that the legislator yet again failed to establish the right of the injured party to be efficiently compensated in the event of a serious offense from a special fund and immediately after the crime has been committed, but prior to the end of the criminal proceeding. In the provision of the Code which states that the injured party may take over the prosecution and become a prosecutor replacing the Public Prosecutor (subsidiary prosecutor) only if the Public Prosecutor withdraws after having confirmed the indictment, however not in the cases of rejection of criminal charges or withdrawal from the prosecution in the previous proceeding, the author sees not only the limitation of the rights of the injured party, but also jeopardy of the public interest. This is due to the fact that, freed from a threat of the subsidiary accusation by the injured party, the Public Prosecutor has gained an absolute and uncontrolled monopoly over the initiation of criminal proceeding. According to the author, the subject of the proceedings will not have any substantial use from some rights which the new Code assigns to the injured party (for example the right to appeal against the judgment on the adjudicated property claim). In conclusion, the author stresses out that in spite of his objections against certain provisions in the Code, the legal status of the injured party is more favorable in the criminal law of Serbia then in many other countries.

Keywords: Criminal Procedure Code, secondary subjects of the proceedings, injured party, victims of crime, compensation.

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Victimological research in Slovenia

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The article gives an overview of victimological research in Slovenia. The overview has different orientations: it started with analysis of the victim's role in commission of the offence and ended with research on help and support to the victim; it started with research into particular offences and their victims and proceeded to analyses of structural violence. Victim surveys as having been implemented in Slovenia are being presented. The article follows the victimological research studies from first empirical projects to those studies that have later allowed for theoretical generalizations. The contribution gives an account of activities of victimology as an advocacy as well as of victim support schemes developed in Slovenia during the last ten to twenty years. Finally, it presents the development of the concept of restorative justice, especially mediation and the ways it has entered into the Slovene criminal justice system.

Keywords: *victimology, victim's role, victim support, victim survey, mediation, Slovenia.*

Introduction

When in 1967 the first information on victimology and research in this field was published in Slovenia it stated that the discussion about this branch of criminology did not open a new field of research but expanded one that had been known earlier too (Šelih, 1967: 37).

Yet, after a certain period of time it actually turned out that the interest for victims of crime (and later also for other categories of victims) and its research

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evolved into one of the most fruitful novelties in the field of criminological research.

Criminological research in Slovenia did not lag behind this development and a number of studies conducted in the past decades dealt with various issues of victims of crime. The objective of this paper is to present and evaluate what has been done in Slovenia and to compare the results of these research studies with the trends of victimological thought in the world. In spite of the best intentions of the author, such an overview cannot be entirely objective, because it is susceptible to convey the author's personal views, values and perceptions.

Victimological resarch studies carried out in Slovenia

The present overview could be written from different perspectives and adopt different criteria: in this paper, victimological research will be presented in the frame of issues that represent in the author's opinion, basic orientations (or maybe dilemmas) of victimological research.

From the study of victims to the victim assistance

Victimology was in the beginning (e.g. von Hentig, 1948) concerned almost exclusively with victims of crime on the one hand, and on the other, with their characteristics and their contribution to the commission of crime. The first victimological studies carried out in Slovenia (Šelih,1963; Uderman, 1974). followed this trend, although with a certain time lag. Violent crimes have never represented a problem of great concern in Slovenia. Assaults and batteries as the most frequent and most typical form of these offences were however unequally distributed in Slovenia and most concentrated in the region of Štajerska. For this reason it was not surprising that the focus on this problem was in the area of Štajerska. It was one among the first criminological research projects that began to make their way in Slovenia in the 1960s and which were, in accordance with the prevailing trends in the world, empirical. The first research of this kind did not disregard the problem of victims of crimes; on the contrary, it analysed individual characteristics of victims and paid particular attention to those elements which could point at the contribution of a victim to the commission of the offence. It was established in the study

that victims were from similar social and professional environment and had similar personality characteristics as offenders, therefore it could be expected that they would also react in a similar way as the offenders. Since it was found out that a certain subculture of violence as well as relatively high tolerance toward alcohol consumption were typical of the analyzed environment, it was concluded that these two phenomena could have an impact on victims who actually often contributed to their own victimisation (Šelih, 1963: 159; Šelih, 1967: 38). A similar orientation, arising basically from the predominant tendency of this time, to focus criminological (and respectively victimological) research on the perpetrator of crime, can be observed also in research findings of the study on homicides in Slovenia (Uderman, 1974: 303). This was one of the first studies in which a white-black perspective of the relationship between offender and victim of criminal offence turned into a grey-grey perspective. The innocence of the victim has been shattered by the results of this study…

A change in the original orientation of victimology could be perceived in the world from the 1970s and was followed also by some research projects carried out in Slovenia. It found the most distinctive expression in the study on the restitution to victims of crimes (Vodopivec, 1977, 1978). This issue was at the time also in the focus of attention at international forums (for example at the congress of the International Criminal Law Society in Budapest in 1973). A decision to deal with this topic as well as the way of dealing with it reflected a shift in victimology, going from the examination of victims' characteristics and their contribution to the commission of crime to the establishment of damage caused by a criminal offence. This research orientation later led to the consideration of different forms of assistance to compensate this damage. Research study on the restitution to victims produced two interesting results: it showed that one third of the victims of analysed crimes received some kind of restitution before the beginning of the main trial; to the rest of the victims, the court satisfied their restitution claims in two thirds of the cases. Both results were better than those expected by researchers in their working hypothesis and indicated a relatively high degree of victim restitution. Besides a discussion about different categories of victims – natural or legal persons, primary, secondary or tertiary victims – this research also showed that victims were frequently legal persons (in four tenths of property crimes) and that this status was recognized to them without any problems (Vodopivec, 1977: 251).

In nearly the same vein and in the same time a research project on shop-lifting in self-service stores was carried out (Pečar, 1978; Pečar, Maver, Zobec,

1981). The research project started from the assumption that a self-service store was considered as a victimological entity. Although the study dealt with problems of perpetrators and their criminal offences, its basic interest lay nevertheless in particular victimological components of this kind of stores, due to which they were more likely to be victimised than other types of shops. Although one of the important conclusions of this research was that shops should first do whatever possible for their own protection, it is nevertheless possible to recognize in this study also a tendency to direct victimological research toward assistance provided to victims or injured parties. This was manifested in the study by a series of proposals, going from the general crime prevention measures within shops to different forms of surveillance and security measures (Pečar, 1978; Pečar, Maver, Zobec, 1981: 182-239).

Victims and assistance provided to them found at the time its best expression in the research project on child maltreatment – a problem that the society in Slovenia of that time was hardly aware of, or if it was, it tried to keep it silent (Šelih et al., 1985). The central theme of this research was child as a victim. In the first part of the research project, elementary data on child abuse were presented and main forms of aid and support to the "battered" child analysed. The study dealt with different forms of protection of children against maltreatment and formulated proposals for the prevention of child abuse. In the second part, results of an empirical analysis of how different services dealing with child care medical, preschool and social welfare were observed and particular cases of child abuse were presented.

In the following years, two additional research projects were carried out dealing with particular kind of victims, one dealing with children and one dealing with violence against people with different forms of impairment. The first one pursued two aims: 1) to explore the scope and structure of child maltreatment as perceived by public services and 2) to contribute to the establishment of mechanisms ensuring better cooperation among services dealing with them. The results of a survey carried out in day care services, schools, centres for social work and medical services showed that all services in Slovenia annually dealt with 3.500 cases of child abuse (per appr. 550.000 persons aged 0 to 19 years of age) (Pavlović, Korošec, 1997).

The second study on "invisible violence" against handicapped children and adults found out that this group of persons became at least twice as often victim of sexual abuse and other violent acts as non-disabled persons. Among

them, the most abused were females with a diagnosis of mental disorders (Zaviršek, 2002).

Later on, some research projects dealing with the role of police in regard with crime victims as well as a study on reducing fear of crime (of potential victims) have been carried out (Dvoršek et al., 2006; Meško et al., 2007). As we can see, the victimological research in Slovenia started with projects analysing the victim's role in the commission of offence and it ended up by emphasizing the need and the importance of securing support and help for victims.

From the victimisation of individual groups to the structural victimisation

It is probably quite understandable that the first victimological research studies were concerned with individual groups of criminal offences; among them in particular with those in which a personal relationship between the offender and his/her victim was one of the basic criminogenic (and victimogenic) factors. Research studies fitting in this framework were especially the study on assaults and batteries and the study on homicides, which were among the first victim-oriented studies in Slovenia. It must be added that a spectrum of victims, interesting from the victimological point of view, was extended above all to children and women (Pavlović, 1990). In this context, it is worth mentioning, that an analysis was devoted to the role of women victims in Slovene literature (Milenković, 1992).

Later, the focus of research extended from these groups of victims to the victims of property crimes and traffic offences (eg. Bavcon, 1979).

In the frame of victimology as a discipline dealing with victims of crime a research project that went beyond this frame, namely a research project on victimological aspects of disciplinary offences, was implemented (Brinc, 1987). Pursuing the idea that these violations represent within different deviant phenomena the totality of criminal and petty offences, the study investigated disciplinary offences and their perpetrators. Its findings indicated that those workers who were perpetrators of disciplinary offences and got a disciplinary measure of termination of labour relation were at the same time victims themselves – sometimes may be even victims chosen in advance. According to these findings, this study belongs to the domain of structural victimisation or victimisation due to a special form of abuse of power. Much later, an analysis of mobbing in Slovenia pointed to the same result (Dolinar, 2010).

In connection with the victimisation of individual groups of victims, it is worth mentioning one of the most original results of these research studies: the finding that in many cases the victimisation is not merely a result of the interaction of criminal couple as it was thought by the prevailing doctrine, but that it is necessary to extend this relationship to the involved bystanders (Pečar, 1971, 1972) at least in personal crimes such as homicides. While researchers abroad had already drawn attention to the "innocent" bystanders, Pečar was the first to build a thesis on the involvement of the third persons in a victimogenic complex and later conceived on this basis a theory of inductology (Shaskolsky, 1970; Pečar, 1984).

The first traces of structural victimisation could be perceived in those research projects dealing with child maltreatment in which considerations went beyond the limits of individual cases of domestic child abuse; they highlighted the problem of institutional abuse in such institutions as kindergartens, schools, hospitals and various institutions for children and adolescents (Šelih et al., 1985; Kos, 1988).

Structural victimisation as a form of abuse of power was in a very specific way also the object of the study investigating one of the staged political processes conducted in the first years after World War II. Findings of the research report on Dachau Processes[1] (Ivanič, Ziherl, 1990) revealed the use of a Stalinist model of political penal repression and showed how these processes were a logical result of political violence between the years 1945 and 1951. This was also one of the basic messages of this research which had an impressive moral and political impact at the time when its research report became public (in April 1989).

Victimology and crime prevention

Victimological research in Slovenia has emphasized from the very beginning the significance of research results for the prevention of crime. The first studies provided rather general findings and recommendations, the impact of which cannot be measured, nor their application to practice evaluated. It is nevertheless possible to claim that the results of two studies at least had an impact on preventive activity.

[1] Dachauski procesi; the research study began in 1985, its results were published in 1990.

This holds true for the findings obtained by both studies on thefts in self-service stores, which made their way to practice and were applied by planners and organizers of this type of stores. Researchers of the Institute disseminated their research results by publishing them in professional periodicals and in daily press as well as transmitted them to the interested public on numerous seminars. In this way they contributed to the extension of knowledge about this sort of retail, its particularities and also about measures for the prevention of theft in this environment.

While it can be claimed that the dissemination of results took place within two professional areas, namely the commercial and the law enforcement, this was not the case with the study on maltreatment of children. In this study, researchers were confronted with the problem of victimology as a research discipline and victimology as a victim advocacy. As it is in general difficult to fix this boundary in victimology, this line was even more fluid when it concerned such a vulnerable category of victims as children. Yet, it is precisely because of this category that ethical and deontological problems, connected with the delimitation of these two areas are, in my opinion, smaller. In order to open such a taboo theme as violence against children in family and in other social environments, it was necessary firstly to raise awareness of professionals and later on of the general public for these issues. This was made possible only by the dissemination of research results and findings on various seminars and workshops and also by attracting the attention of all kinds of mass media.

Crime and victimisation surveys

The first research project on hidden crime – a fore runner on victimisation studies – was carried out in Slovenia in 1981. The study on hidden crime investigated the unrecorded conventional property crime on the area of the municipality of Ljubljana (Pečar, 1982). It was established that the degree of hidden crime was relatively high (allegedly from 4.8 to 6.9 unrecorded thefts per one recorded theft). The author of this research wondered whether it was wanted at all to know the approximate picture of reality and what consequences stricter reporting would entail (Pečar, 1982:125, 127). The victimisation survey as a part of the international study was carried out eleven years after the first survey in 1992 , but in a similar way (basically by questionnaires and written answers). It gave more positive results and revealed a smaller degree of hidden crime than the first research. It must be

nevertheless remarked that the first survey included the victimisation data for one year before conducting the survey, while in the second survey the data were collected for the past five years. This is a relatively long period of time which is likely to reduce the possibility of accurate answers (Pavlović, 1992). This study had applied a very similar methodology as the international victimisation survey (ICVS) applied worldwide. In 1997, the 1992 project was replicated as part of this international scheme. It was conducted on a sample of 2.053 households from Slovenia. The comparison of the results of 1992 and 1997 studies showed that property crime was relatively stable in Slovenia, while violent crime had been on a slight increase. The most exposed categories of victims were younger, more educated and more dynamic groups (Pavlović, 1998). After 1997 the ICVS was included into the regular statistical program.

Theoretical studies and generalizations

It seems that it was necessary to realize quite a number of studies on particular victimological problems to be able – after these had been accomplished – to touch upon theoretical studies. The first among those was a research project on "Victims, victimisation and victimological perspectives" (Kanduč, 2002). The purpose of this study was to highlight different aspects of victimisation in contemporary society. Special attention was devoted to personal victimisation affecting life and physical safety, "victimless" victimisation, sexual victimisation, the criminal justice system as a source of victimisation, the TV representation of sexual victimisation, victimisation in the family, and women as victimisers. The findings indicated that victimisation should be examined in relation to its particular forms, however, these have to be placed in the broadest economic, political, ideological and cultural context. According to the author, the most widespread and the most dangerous forms of structural victimisation have been overlooked by researchers, e.g. forms interwoven in the routine patterns of everyday life, in the working place and at home. According to the author, this shortcoming indicates a high degree of integration of established victimology in the ideological complex of contemporary capitalist society.

A similarly critical attitude has also been shown by the next research study on victimology – dealing with the "cult of the victim" (Petrovec, 2004). The purpose of the research project was to study psychological and sociological mechanisms when persons or institutions become victimised. The findings

confirmed that most victims adopt particular behaviour patterns, especially seeking revenge. The object of revenge is not necessarily the one who caused the pain. In addition, persons who have never been victimised often pretend to have been in order to justify violent behaviour as a legitimate goal. Institutions can also be actual or imaginary victims – the study deals with military institutions, the Catholic church and even Slovenia as a state as victims. The author is very critical towards those entities that, in his view, take over the role of a victim although they cannot be viewed as victims from an objective point of view.

The last research project to be placed within this group dealt with "Women, violence, victimisation and the (criminal) law system in the context of crisis of post-modern transformation" (Kanduč et al., 2009). The study is concerned with the problem of the female crime from criminological and criminal law perspective and addresses the fundamental dilemmas of the "women's issue" in the post-modern society. It deals primarily with female crime; it does, however, refer to the fact that the woman in the contact with law tends to be reduced to the role of a victim, who is not capable of her own subjectivity.

Restorative Justice

While some elements that make part of restorative justice have been dealt with and analyzed earlier too, the first study on this topic in modern context was carried out in the late nineties (Bošnjak, 2000). The author gives a very comprehensive presentation of this concept. He gives a good account of the main characteristic of this concept; analyses its history; clarifies its fundamental elements as well as developmental stages; gives an account of possibilities this concept offers to the judicial system; deals with its efficiency etc. The aim of the study was to present the concept as fully as possible to all those to whom it may be interesting – legislators, judicial system and professionals.

A year or two prior to this study, the first attempt in introducing mediation (in juvenile cases) was made (Dekleva, 1995); it was rather aimed at defining conditions for its introduction. Almost ten years later an assessment study on mediation in adult cases was implemented (Filipčič et al., 2008). In addition to the theoretical analysis of this institute, particular attention was devoted to an empirical approach: an analysis of questionnaires coming from state prosecutors, mediators and court files was carried out. On the basis of this empirical analysis the research team provided a number of proposals that

could contribute to greater and more efficient use of mediation in the first stages of the criminal proceedings.

Victimology as research discipline and as advocacy

From its first studies, victimology was not a "neutral" research discipline: at the beginning its results contributed to view the negative side in the victim's role in commission of the crime. After it had been reoriented towards helping the victim, it became a kind of a hostage of this position: from time to time it gave shelter to advocates of different forms of non-research activities who had advocated very repressive ways for dealing with criminal offenders. Victimological research in Slovenia has been able to avoid these dangers. During the last twenty years, however, several nongovernmental organisations have sprung up and took up this role. We should be aware, however, of the possibility that researchers can contribute a lot to the way how crime policy is conceived in a society and we should take care that victimological research will be able also in the future to find a good balance between the necessity to redress the damage or suffering of the victim on the one side, and the need for a fair trial for the offender on the other.

Victims' support services and their development

Victimological research has always shown an interest in contributing also to better help and support of the victims. There is no doubt that the whole concept of the restorative justice has enabled the introduction of several less repressive ways of dealing with crime, mediation being the major innovation in this context. Besides, it contributed also to development of different very varied forms of victims' support.

In the last twenty years, diversified services for victims which were before more or less unknown: have been developed in Slovenia a network of centres for help to victims' of crime has been established, as well as several SOS telephone lines; secure houses for children and women, victims of family violence have been organized, as well as other specialized services. This does not mean that help and support to victims of crime is best organized – there are always possibilities to improve it; it does show that the society has not

been unresponsive to victims' suffering and has tried to meet their needs – at least partially.

Concluding remarks

In the presentation of the research carried out in victimological field it was possible to see how did this research develop and what problems it identified as worth analyzing. In the 60s, it started by analysing particular kinds of victims and their contribution to the commission of the offence, but later it developed not only into a much broader discipline, but also into one that changed the direction: it became predominantly oriented towards looking for the ways of help and support for victims and, at the same time, it started also to view forms of structural victimisation which finally led it to theoretical generalizations in some areas. It was also able to provide practitioners with information appropriate to be employed in solving practical problems of dealing especially with minor crime – different forms of procedures diverting less important offences (and offenders) from criminal justice system were introduced on the basis of some victimological research projects. And it certainly contributed to developing new forms of help and support to different categories of victims, especially to those particularly vulnerable: children and women.

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Alenka Šelih

Viktimološka istraživanja u Sloveniji

Članak predstavlja pregled viktimoloških istraživanja u Sloveniji. Pregled ima različite orijentacije: on počinje sa analizama uloge žrtve u izvršenju prekršaja, a završava istraživanjem o pomoći i podršci žrtvama; takođe počinje i sa istraživanjem o pojedinačnim povredama i žrtvama, a zatim nastavlja ka analizama strukturalnog nasilja. Istraživanja žrtava predstavljena su onako kako su ona implementirana u Sloveniji. Članak prati viktimološke istraživačke radove od prvih empirijskih projekata do onih studija koje su kasnije dovele do teorijskih generalizacija. Doprinos se sastoji u isticanju značaja aktivnosti viktimologije u vidu zastupanja i zaštite žrtava, ali i u vidu programa podrške žrtvama koji su razvijani u Sloveniji tokom poslednjih deset do dvadeset godina. Konačno, predstavljen je razvoj koncepta restorativne pravde, naročito u pogledu medijacije i načina na koji je ovaj termin ušao u sistem krivičnog pravosuđa u Sloveniji.

Ključne reči: viktimologija, uloga žrtve, podrška žrtvama, istraživanje žrtava, medijacija, Slovenija.

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Razvoj viktimologije u Makedoniji

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Rad ima za cilj da prikaže razvoj viktimologije u Makedoniji, što se čini prikazivanjem istraživačkih aktivnosti u viktimološkoj oblasti, razvoja viktimologije kao nastavne i naučne discipline na odgovarajućim visokoobrazovnim institucijama, korišćenja viktimoloških saznanja u reformi kaznenog, maloletničkog i porodičnog zakonodavstva i prikazivanjem stanja na planu razvijanja službi za pomoć žrtvama i pokreta za prava žrtava.

Ključne reči: *viktimologija, viktimološka istraživanja, nauka, Makedonija.*

Uvod

Odgovoriti na pitanje razvoja viktimologije u Makedoniji nije jednostavan zadatak. Pre svega to je posledica nedostatka sistematizovanog i kontinuiranog praćenja ovog razvoja, kao i mali broj naučnih i stručnih radnika koji se bave viktimološkom problematikom. Ali, za mene koji se već dvadeset godina bavim viktimologijom, odgovor na ovo pitanje, sa mogućim rizikom da se nešto propusti, predstavljao je izazov na koji sam pokušao da odgovorim na zadovoljavajući način. Pri tome, posebno me je motivisala činjenica da je rad namenjen za objavljivanje u specijalnom broju „Temide", tematski posvećenom dostignućima na planu viktimologije kao nauke, prakse i pokreta za prava žrtava u zemljama u regionu, a pre svega u onima koje su bile u sastavu nekadašnje Jugoslavije. Odatle logično proizlaze predmet i cilj ovoga rada. Predmet rada je analiza razvoja viktimologije u Makedoniji. Cilj rada proizlazi iz predmeta rada i odnosi se na prikaz istraživanja sa viktimološkim sadržinama, razvoj viktimologije kao nastavne i naučne discipline, korišćenje viktimoloških saznanja u reformi kaznenog, maloletničkog i porodičnog zakono-

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davstva, ocenu postignutog i perspektive u razvoju viktimologije kao teorijske i empirijske nauke u Makedoniji.

Počeci razvoja viktimologije u Makedoniji

Kada je u pitanju razvoj viktimologije još na samom početku moramo da ukažemo na jedan, uslovno rečeno, kuriozitet. Naime, prvi autor koji je na prostorima nekadašnje Jugoslavije (čiji je sastavni deo bila i Makedonija) proučavao viktimološku problematiku i nagovestio razvoj jedne nove i dotada malo poznate discipline (u to vreme još uvek tretirane kao novo naučno saznanje i učenje i deo kriminoloških saznanja) bio je Panta Marina, profesor Pravnog fakulteta u Skoplju. Više viktimologa sa prostora nekadašnje Jugoslavije pozivaju se na njegov rad „Neki novi aspekti kriminoloških istraživanja," objavljen davne 1960. godine u časopisu „Pravna misla" (Šeparović, 1985, Nikolić-Ristanović, 1984, Bačanović, 2007, Ramljak i Halilović, 2004). Interesantno je da se prof. Marina još jednom (1980. god.) vraća na ovo pitanje, ali sada u okviru tematskog područja: Oštećeni kao subjekt krivičnog postupka, pri čemu se, između ostalog, zadržava i na pitanja u vezi sa oštećenim kao kriminogenim faktorom. Ipak, možemo da konstatujemo da ovaj tekst u suštini ne odstupa od prvoobjavljenog (Bačanović, 2007). Ono čime se ovaj autor bavi u navedenim radovima može da se svede na njegova razmišljanja u vezi sa žrtvom, pojmom viktimologije, njenim zadacima i ciljevima, doprinosećim ponašanjem žrtve, doprinosom viktimologije u suzbijanju kriminaliteta, kao i nekim drugim viktimološkim pitanjima (Bačanović, 2007).

Vreme je pokazalo da, nažalost, ovo nije bio dovoljan impuls da se krene u ozbiljnije proučavanje ove nedovoljno istražene problematike u Republici Makedoniji. Rad prof. Arnaudovskog (1987), posvećenog pojmu i predmetu viktimologije, bio je još jedan pokušaj da se pažnja, pre svega naučne javnosti, ali i stručne javnosti u Makedoniji okrene ka ovom pitanju i da se na neki način krene sa „mrtve tačke."

Ipak, prekretnica na planu proučavanja viktimologije u Makedoniji dogodila se promenom i donošenjem novog nastavnog plana na Fakultetu bezbednosti u Skoplju, izvršenim na osnovu prethodno izrađenog Elaborata (1992. god.) od strane prof. Vladimira Vodinelića, saglasno kojem se uvodi viktimologija kao nova nastavna disciplina i dvosemestralni predmet. Nastavni program za ovaj predmet izradio je mr Oliver Bačanović, kome je školske

1993/94. godine od strane Nastavno-naučnog veća Fakulteta za bezbednost ovaj predmet i poveren (preko izvođenja predavanja i vežbi). Bilo je to prvi put na prostorima nekadašnje Jugolavije[1], a sada i samostalne Republike Makedonije, da se Viktimologija izučava kao obavezan predmet i posebna nastavna disciplina.

Ovome dodajemo i okrugli sto organizovan nešto ranije (tačnije 1992. god.) od strane Fakulteta bezbednosti, doduše u okviru šire formulisanog tematskog područja (Bezbednost u uslovima parlamentarne demokratije) na kojem je prezentirana i jedna viktimološka tema pod naslovom: „Viktimologijata, prevencijata i policijata" (Bačanović, 1992) kojom je ukazano na značaj primene viktimoloških saznanja u funkciji prevencije uopšte i preventivnog delovanja policije posebno.

Doktorske disertacije i magistarski radovi

Po prvi put u Republici Makedoniji, tačnije na Fakultetu za bezbednost u Skoplju, prijavljena je, izrađena i u 1996 godine odbranjena doktorska disertacija sa dominantno viktimološkom temom pod naslovom: „Policijata i viktimizacijata," koja je godinu dana kasnije objavljena kao monografija pod naslovom "Policijata i žrtvite" (Bačanović, 1997).

Posle više od jedne decenije na Pravnom fakultetu u Skoplju odbranjene su još tri doktorske disertacije sa dominantno viktimološkom tematikom (Besa Arifi "Položbata na žrtvata vo kaznenoto pravo," 2010, Vesna Stefanovska „Medijacijata vo kaznenata oblast", 2010, Stojanka Mirčeva „Funkcijata na policijata vo suzbivanjeto na semejnoto nasilstvo vrz ženi", 2010).

U ovom kontekstu imamo u vidu i magistarske teze odbranjene u poslednim godinama na Fakultetu za bezbednost u Skoplju, takođe sa dominantno viktomološkim sadržinama (npr. kompjuterska dečja pornografija, deca žrtve porodičnog nasilja, dečja prostitucija, trgovina ljudima, vršnjačko nasilje i td.).[2]

[1] Interesantno je da je u bivšoj SFRJ, posebno na Pravnim fakultetima, postojala ideja da se viktimologija izučava kao posebna nastavna disciplina. Na jednom od redovnih sastanaka predstavnika katedara za krivično pravo i kriminologiju Pravnih fakulteta sa cele teritorije SFRJ (koji su se održavali svake godine) ova ideja je operacionalizirana donošenjem zaključka o potrebi izučavanja viktimologije kao posebne discipline. Na žalost, taj zaključak sve do raspada SFRJ nije realizovan.

[2] Radi se o magistarskim radovima za koje imam uvid kao mentor ili član komisije za ocenu i odbranu rada.

Svi ovi radovi bili su obogaćeni i individualnim empirijskim istraživanjima, koja, zajedno sa određenim timskim i institucionalnim istraživanjima (o kojima ćemo nešto kasnije govoriti), omogućuju stvaranje dobre osnove za dalji rad na planu razvijanja i obogaćivanja viktimoloških saznanja.

Deo magistarskih i doktorskih teza iz kriminološke i kriminalističke oblasti prijavljenih i odbranjenih na Pravnom fakultetu i Fakultetu za bezbednost, Institutu za pravna i sociološka istraživanja u Skoplju i nekim drugim visokoobrazovnim institucijama u Republici Makedoiniji, sadržali su i viktimološki aspekt proučavanja, neophodan za sveobuhvatno proučavanje složenih kriminalnih pojava.

Uloga Udruženja za krivično pravo i kriminologiju Makedonije

Važnu ulogu u razvijanju viktimoloških ideja i saznanja imalo je i Udruženje za krivično pravo i kriminologiju Makedonije, koje je preko svojih aktivnosti, a pre svega preko organizovanja redovnih godišnjih savetovanja na kojima su učestvovali naučni radnici, sudije, tužioci, advokati, policija i dr., iz zemlje i inostranstva i na kojima su, osim kvalitetnih referata, saopštenja i diskusija, doneti i veoma značajni zaključci i predlozi koji su imali doprinos u stvaranju modernog kaznenog zakonodavstva (novi Krivični zakonik, Zakon o krivičnom postupku, Zakon o maloletničkoj pravdi i dr.). Deo tih referata, zaključaka i predloga odnosio se na žrtve krivičnih dela, njihov položaj i prava u krivičnom postupku, njihovoj ulozi u osmišljavanju i razvijanju koncepta restorativne pravde, diverzionog modela, fonda za obeštećenje žrtava i dr. Udruženje je sa zaključcima i predlozima redovno upoznavalo relevantne institucije (na pr. Skupštinu, Vladu, resorna ministarstva i dr. nadležne organe i tela). Ujedno Udruženje je počelo sa izdavanjem posebnog časopisa: Revija za kazneno pravo i kriminologiju (njen prvi broj izašao je povodom održavanja prvog savetovanja ovog Udruženja održanog iste godine u Ohridu) i od tada revija izlazi redovno (jedanput ili dva puta godišnje). Deo sadržina ovog časopisa odnosio se na viktimološku problematiku, što je uticalo na razvoj viktimologije u Makedoniji.

Razvoj viktimologije kao istraživačke aktivnosti i nastavne i naučne discipline

Istraživanja

a) Istraživanja sa dominantno viktimološkim sadržajem

Gledano hronološki, prvo viktimološko istraživanje, na koje su se u određenim vremenskim razmacima nadovezala još dva istraživanja, bila su posvećena problemu porodičnog nasilja i realizovana su od strane nevladine organizacije Humanitarna asocijacija (kasnije: Udruženje) za emancipaciju, solidarnost i jednakost žena. Ova činjenica ide u prilog sličnih iskustava nekih država iz susedstva (npr. Srbija) da su istraživanja ove problematike inicirana i realizovana od nevladinog sektora koji je imao „hrabrosti" i želju da otvori ovo veoma osetljivo pitanje i time omogući da se prevaziđu određeni stereotipi koji su postojali u vezi sa pojavom porodičnog nasilja. Za nas su ova istraživanja značajna jer se u njima centralno pitanje upravo odnosi na žrtve porodičnog nasilja (njihove karakteristike, odnos sa delinkventom, fenomenologija i etiologija, posledice nasilja, njegova prevencija i represija i sl.).

Prvo istraživanje porodičnog nasilja u Republici Makedoniji, sprovedeno je od strane gore navedene nevladine organizacije, a njegovi rezultati su objavljeni u 1997. g. u posebnoj publikaciji pod naslovom „Rea Silvija". Uzorkom istraživanja obuhvaćeno je ukupno 500 studenata različitih fakulteta (ukupno 18) u sastavu Univerziteta „Sv. Kiril i Metodij" u Skoplju. U istraživanju je korišćen upitnik, kao i podaci novouspostavljene (1994. god.) SOS linije za žene i decu žrtve nasilja Organizacije žena Skoplja. Ovo istraživanje imalo je uticaj na aktualiziranje porodičnog nasilja i podizanje javne svesti u vezi sa ovom pojavom u Republici Makedoniji (Mjelma i sar., 1997).

Istraživanje porodičnog nasilja od strane Udruženja za emancipaciju, solidarnost i ravnopravnost – ESE, realizovano je i 2000. godine. Uzorkom istraživanja obuhvaćeno je 850 ispitanica. Dominantan oblik nasilja prema ženama je psihičko nasilje, zatim fizičko nasilje, dok je najmanje zastupljeno seksualno nasilje.

Treće istraživanje iste problematike, objavljeno pod naslovom „Život u senci" (Čačeva, Friščić, Mišev, 2007) sprovedeno je na teritoriji cele države, na uzorku od 1432 ispitanika, punoletnih lica, ženskog pola, pri čemu su obuhvaćeni 21 grad i 27 sela. Za realizaciju ankete o viktimizaciji bio je korišćen upitnik kao osnovni instrument (sastavljen od 148 pitanja). Ispitivanje je pode-

ljeno na nekoliko tematskih celina: psihičko, fizičko, seksualno nasilje, podaci o poslednjem incidentu, reakcija vladinih i nevladinih organizacija, informisanost i stavovi građana o porodičnom nasilju – obim, inkriminisanje i td.

Istraživanje odnosa policije i žrtava krivičnih dela (organizovano krajem 1995. i početkom 1996. godine), preko proučavanja prvog kontakta između policije i žrtve ostvarenog prilikom prijavljivanja krivičnog dela od strane žrtve, sproveo je Oliver Bačanović i istraživački tim Fakulteta za bezbednost (sastavljen od aktuelnih studenata i diplomiranih kriminalista) u okviru empirijskog dela rada njegovog doktorskog rada. Istraženo je više pitanja, a samo istraživanje je imalo, uslovno rečeno, dva nivoa: mišljene žrtve u vezi sa ostvarenim kontaktom sa policijom pri prijavljivanju krivičnog dela i stavovi policije u odnosu na žrtve krivičnih dela. (Bačanović, 1997).

Isto tako u okviru istraživanja tamne brojke kriminaliteta (Taseva, 1995) i procene neispravnog merenja robe (Čačeva, 1996) korišćene su ankete viktimizacije (v. Bačanović, 1997: 157).

Institut za sociološka i političko-pravna istraživanja u toku 2005/6. godine sproveo je istraživanje „Javno mišljenje o korupciji u Republici Makedoniji" u okviru kojeg je jedan deo posvećen žrtvama korupcije na osnovu izvršene viktimološke analize. U suštini saznanja su dobijena preko sprovedene viktimološke ankete koja se odnosila na iskustva građana u vezi sa korupcijom. Korišćenjem viktimoloških anketa ispitivana je korupcija u nekoliko oblasti: visoko obrazovanje, zdravstvo, sudstvo, javna uprava. U fokusu istraživanja bila su dva oblika korupcije. Prvi se odnosio na dopunsko plaćanje javnih službenika za dobijanje prava koja pripadaju građaninu ili za brže ostvarivanje takvog prava. Drugi oblik korupcije koji je bio istraživan je plaćanje za sticanje prava koja ne pripadaju građaninu, odnosno davanje mita sa ciljem kršenja zakona.

Nacionalni izveštaj o ljudskom razvoju 2001. – Socijalna isključenost i nesigurnost građana Republike Makedonije (UNDP) izrađen je na osnovu istraživanja realizovanog od strane istraživačkog tima Instituta za sociološka i političko-pravna istraživanja iz Skoplja u periodu od 22. do 30. decembra 2000. godine. U njegovoj realizaciji korišćena je anketa i upotrebljen reprezentativan višefazan slučajan uzorak koji je obuhvatio 1199 punoletnih ispitanika. U okviru istraživanja akcenat je stavljen na istraživanje fenomena nesigurnosti, pri čemu je sa viktimološkog aspekta posebno interesantno proučavanje: ugrožavanja lične bezbednosti, nesređenih etničkih odnosa, političke i institucionalne nesigurnosti (u okviru koje je istraživan uticaj političkog sistema,

nesigurnost u odnosima sa državnim organima, neodgovarajuća sudska zaštita, pravna nesigurnost), ugroženost životne sredine.

Interesantno je da je u poslednjih nekoliko godina u Makedoniji realizovano, u najvećem delu od strane nevladinih organizacija, nekoliko istraživanja povezanih sa pojavom nasilja u školama.

Tako je u okviru istraživanja Prve dečje ambasade u svetu „Percepcija dece o pravima, diskriminaciji i nasilju nad decom" sprovedenog u 2009. godini bila uključena baterija pitanja koja se odnose na nasilje u školama. Istraživanjem su obuhvaćena 2234 ispitanika iz 60 srednjih i osnovnih škola, učenika od petog do osmog razreda i od prve do treće godine srednjih škola.

U 2010. godini nevladina organizacija Algoritam Centar sprovela je istraživanje koje se odnosi na nasilje u školama, u kojem je obuhvaćeno 1240 sedmoškolaca iz osnovnih škola u Skoplju, pri čemu je konstatovano da su najčešće vrste nasilničkog ponašanja u školama različite vrste maltretiranja- uvrede i podrugivanja, kao i fizički obračuni.

U 2010. godini istraživački tim Fakulteta za bezbednost u Skoplju sproveo je istraživanje o nasilju među decom u školama, u koje su bili uključeni učenici osmih razreda iz 14 osnovnih škola iz urbanih delova grada Skoplja, kao i nastavnički kadar, pedagozi i psiholozi iz škola. Pri tome su u istraživanju ispitanici anketirani preko posebnih grupa pitanja koja su se odnosila na žrtve, učinioce i svedoke, sa ciljem što je moguće realnijeg procenjivanja stepena nasilja (Bačanović, Jovanova, 2010).

Udruženje za bezbednosna istraživanja i edukaciju je u 2011. g. sprovelo istraživanje „Bezbednost u školama" na uzorku od 549 učenika treće godine srednjih škola Grada Skoplja. Osnovni ciljevi istraživanja bili su dobijanje objektivne procene o bezbednosnom stanju u srednjim školama, odnosno identifikovanje i razumevanje bezbednosnih problema u školama i njihova povezanost sa školskim ambijentom (Batić i sar., 2011).

b) Istraživanja povezana sa analizom sudskih presuda sa viktimološkog aspekta

Istraživanjem Zorana Sulejmanova u okviru njegove studije „Ubistva u Makedoniji" (1995. g.), obuhvaćeni su i viktimološki aspekti ubistava. Naime, na osnovu analize sudskih presuda autor je došao do saznanja o polu, uzrastu i zanimanju žrtve, kao i o interpersonalnim odnosima sa učiniocem, doprinosećem ponašanju žrtve i trajanju narušenih odnosa. Inače, može da se napomene, da je ovo istraživanje koncipirano po primeru istraživanja ubistava, koje

je prvi put, na prostorima bivše zajedničke države, sprovedeno na teritoriji Hrvatske pedesetih godina prošloga veka i u okviru koga su posebno i produbljeno analizirani, između ostalih, viktimološki aspekti ovog krivičnog dela (Ured za kriminološka ispitivanja DSUP-a NRH, 1959).

U ovom kontekstu spomenuli bi još jedno istraživanje sprovedeno u Makedoniji, od strane Borisa Murgoskog, u kojem su bila analizirana krivična dela protiv dostojanstva ličnosti i morala (sadržanih u glavi XI KZ tada važećeg krivičnog zakonodavstva) u periodu od 1978. do 1988. godine, pri čemu je posebna pažnja bila posvećena njihovoj viktimološkoj dimenziji, posebno imajući u vidu karakteristike žrtve, njeno provokativno ponašanje i odnos žrtve sa učiniocem. (Murgoski, 1992).

Pažnju zaslužuju i istraživanja, tačnije monitoring sudskih postupaka u vezi sa krivičnim delom trgovine ljudima od strane nevladine organizacije Koalicija „Site za pravično sudenje", realizovanog u okviru projekta „Nabljuduvanje na predmetite od oblasta na trgovijata so luđe i ilegalnata migracija", izvršenog u toku 2004. i 2005. godine (Velkoska, 2005). Poseban deo ovog istraživanja bio je posvećen pravima žrtve u postupku. U okviru ovog istraživanja, preko kvantitativne i kvalitativne obrade podataka iz sudskih predmeta u vezi sa krivičnim delima: „Trgovina ljudima"; „Posredovanje pri vršenju prostitucije" i „Krijumčarenje migranata", analizirana su pitanja zaštite svedoka, kompenzacije žrtve, dužine trajanja krivičnog postupka, kaznene politike sudova i dr.

Koalicija je realizovala i publikovala još dva istraživanja. Jedno pod naslovom: „Kaznenopraven odgovor organiziranom kriminalu" (Velkoska, 2007) u okviru kojeg je posebno analiziran položaj žrtve u toku postupka (preko ne/ostvarivanja njenih osnovnih prava) u praksi sudova u Republici Makedoniji. Drugo istraživanje „Trgovina ljudima i ilegalna migracija percepirani od glavnih aktera u krivičnom postupku" (Velkoska, 2008) u sebi uključuje više pitanja povezanih sa žrtvama trgovine ljudima (npr. problem nadoknade štete, potreba postojanja državnog fonda za kompenzaciju žrtava, status žrtava, dužina postupka i dr.).

U toku 2009. godine Institut za sociološka i političko-pravna istraživanja iz Skoplja realizovao je istraživanje seksualne zloupotrebe dece („Zapostavljeni i žigosani" – analiza stanja: seksualna zloupotreba dece). U okviru predmeta istraživanja, bile su analizirane sudske presude povezane sa ovom vrstom zloupotrebe dece, između ostalog i sa viktimološkog aspekta (Čačeva, Mirčeva, 2010). Analizirane su presude 231 osuđenog lica za seksualnu zloupotrebu dece, donesene u periodu od 2004. godine do polovine (prvih šest meseci)

2009. godine na teritoriji Republike Makedonije. U okviru ovog istraživanja analizirane su karakteristike žrtava i učinilaca sa aspekta pola, uzrasta, nacionalne pripadnosti, karaktera i okolnosti zloupotrebe, institucionalnog odgovora i sl.

c) Istraživanja u Makedoniji kao deo regionalnih i međunarodnih istraživanja

Makedonija je bila deo Međunarodne ankete o viktimizaciji koja je sprovedena u 1996. godini. Nacionalni koordinator istraživanja u Makedoniji bila je Violeta Čačeva (Zvekić, 2001) Uzorkom je obuhvaćeno 1600 ispitanika, od kojih je 700 ispitanika bilo iz Skoplja, u mestima do 15000 stanovnika po 100 ispitanika i u mestima iznad 30000 stanovnika po 200 ispitanika. Rezultati istraživanja odnose se na stepen viktimiziranosti, vrstu viktimizacije, (ne)prijavljivanju krivičnih dela od strane ispitanika i dr. (neobjavljeno međunarodno istraživanje[3] o žrtvama kriminala iz 1996. godine).

U 2009. godini projektni tim Fakultata za bezbednost u Skoplju, pod rukovodstvom prof. Olivera Bačanovića, bio je uključen u regionalno istraživanje: „Osećaj sigurnosti u glavnim gradovima pet država sa prostora prethodne Jugoslavije" (tačnije Ljubljane, Zagreba, Sarajeva, Beograda i Skoplja – Republika Makedonija). Uzorkom istraživanja obuhvaćeno je 394 ispitanika, punoletnih lica, članova izabranih domaćinstava na osnovu kriterijuma najbližeg rođendana. Istraživanjem je potvrđen uticaj nekih socio-demografskih karatektristika na stepen straha od kriminala. Za razliku od toga, prethodna neposredna viktimizacija i posredno iskustvo sa viktimizacijom, sa izuzetkom pojedinih slučajeva, generalno nije pokazalo statistički značajni utucaj na stepen straha od kriminala.

Iste godine Fakultet bezbednosti u Skoplju bio je uključen u još jedno regionalno istraživanje „Stavovi studenata u vezi sa kriminalitetom," zajedno sa još četiri gore spomenute države sa prostora bivše Jugoslavije. Uzorkom je obuhvaćeno 357 studenata četiri fakulteta članica skopskog i bitoljskog državnog univerziteta. U okviru upitnika grupa pitanja odnosila se na njihovo iskustvo (neposredno ili posredno) sa viktimizacijom.

Nasilje u školama je tema koja je u Republici Makedoniji aktuelizirana u prvoj dekadi novoga veka. Inicijator ovakvih istraživanja u našoj zemlji bila je Svetska zdravstvena organizacija (SZO). Tako je u okviru šireg istraživanja Svetske zdravstvene organizacije, koje se odnosilo na zdravstveno stanje

[3] Rezultati su dostupni autoru.

dece školskog uzrasta, istraživano i nasilje u školama. Takva istraživanja SZO sprovela je u Republici Makedoniji u martu 2002. godine i maju 2006. godine (uzorkom drugog istraživanja obuhvaćen je 5271 ispitanik, pri čemu su u oba istraživanja obuhvaćeni ispitanici tri uzrasta od 11, 13 i 15 godina). Napomena je da se ono svelo samo na maltretiranje (eng. bullying), kao segment nasilja među decom. Saglasno rezultatima naša zemlja se nalazi negde u sredini u odnosu na stepen viktimiziranosti ovih učenika.

Razvoj viktimologije kao nastavne i naučne discipline

Kao što smo već istakli viktimologija se na početku njenog uvođenja razvijala kao posebna nastavna disciplina i to kao obavezan predmet u okviru nastavnog plana prvog ciklusa studija na Fakultetu za bezbednost u Skoplju, što je slučaj i sa važećim nastavnim planom prvog ciklusa studija (koji je već dva puta akreditovan). Druga visokoobrazovna institucija na kojoj se kasnije uvodi predmet viktimologija i to kao izborni predmet je Pravni fakultet „Justinijan Prvi" u Skoplju. Interesantno je da se na Fakultetu za bezbednost izučava još jedan predmet sa zastupljenim viktimološkim sadržajima, a to je Maloletnička delinkvencija i kriminal na štetu dece. Karakteristično je da je za izradu kurikuluma iz ovog predmeta, u kome je učestvovao tim nastavnika i saradnika sa Fakulteta za bezbednost, izrađenog po uzoru na savremeno koncipirane predmete iz ove oblasti, ekspertizu od strane inostranog eksperta obezbedila Kancelarija UNICEF-a u Skoplju, u okviru zajedničkog projekta sa fakultetom.

Inače, viktimološki sadržaji na Fakultetu za bezbednost u Skoplju se izučavaju i u okviru pojedinih predmeta na drugom ciklusu studija (kao na pr. predmeta: kriminologija i kriminalna politika, viktimološki aspekti savremenih formi kriminaliteta, trgovina ljudima, maloletnička delinkvencija i kriminal na štetu dece, prevencija kriminaliteta). Interesantno je da je u okviru Elaborata za doktorske studije na ovom fakultetu, izrađenog pri kraju 2011. godine i koji je u fazi akreditacije, viktimologija predviđena kao predmet koji će se izučavati na trećem ciklusu studija.

U Makedoniji za sada nije objavljen univerzitetski udžbenik iz viktimologije.

Teorijska shvatanja o viktimologiji kretala su se od njenog shvatanja kao dela kriminologije (Marina 1960. i 1980., Arnaudovski 1987, Bačanović 1997) pa sve do shvatanja viktimologije kao samostalne nauke (Bačanović, 2010, 2011).

Službe koje pružaju pomoć žrtavama

U Makedoniji, na žalost, imamo relativno skromna iskustva u vezi sa postojanjem posebnih službi za pomoć žrtvama, bez obzira da li su u okviru državnih insitucija, ili pak u okviru nevladinih organizacija.[4] S druge strane ženske organizacije koje imaju i najviše iskustva u pružanju usluga na ovom planu i koje su u tome prepoznatljive u zadnje vreme smanjuju ili čak i prestaju sa svojim aktivnostima zbog nedostatka sredstava za svoj rad. S druge strane, država još uvek nema dovoljno kapaciteta (organizacionih, kadrovskih i finasijskih) da popuni prazninu koja je nastala zbog ovakvog stanja u nevladinom sektoru. U krajnjoj liniji, slobodni smo da konstatujemo, da ona nije dovoljno uočila i potrebu postojanja ovakvih službi, njihovog umrežavanja, a još manje stvaranja nacionalne mreže lokalnih službi za žrtve. Možemo da konstatatujemo da su neke žrtve (npr. porodičnog nasilja, trgovine ljudima) kada je u pitanju pomoć i podrška na neki način favorizovane u odnosu na žrtve nekih drugih oblika kriminaliteta, čije su posledice ozbiljne (npr. žrtve prevara, silovanja, kompjuterskog kriminaliteta, ucena, žrtve mobinga, nasilja u školama i dr.). U tom smislu sa pravom viktimolozi ukazuju na problem tzv. vidljivih i manje vidljivih žrtava (Mrvić-Petrović, 2012, Nikolić-Ristanović, 2012).

Jedan od problema u ovom kontekstu je činjenica da u Makedoniji nije osnovano posebno Viktimološko društvo (poput nekih takvih organizacija u susedstvu kao što je na pr. Viktimološko društvo Srbije) što bi dalo poseban impuls za razvijanje viktimologije i kao pokreta čija je glavna misija zaštita i unapređenja prava žrtava.

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[4] Prema našim saznanjima, najprepoznatljivije nevladine organizacije, kada je u pitanju pružanje pomoći i podrška žrtvama krivičnih dela, su: Organizacija na ženi na grad Skopje (Organizacija žena grada Skoplja), „Otvorena porta"– La Strada NVO za borbu protiv trgovija so ludje („Otvorena vrata" La Strada NVO za borbu protiv trgovine ljudima), Prva detska ambasada vo svetot (Prva dečja ambasada u svetu) „Međaši," Združenie za podrška na deca i semejstva pod rizik (Udruženje za podršku dece i porodica izloženih riziku) „Srećno detstvo", Združenie za pravata na decata, Dneven Centar za deca na ulica (Udruženje za prava dece, Dnevni centar za decu na ulici), Hera – Asocijacija za zdrastvena edukacija i istražuvanje – Skopje (Udruženja za zdravstvenu edukaciju i istraživanje), ESE- Združenie za emancipacija, solidarnost i ednakvost na ženite (Udruženje za emancipaciju, solidarnost i jednakost žena), Šelter Centar- Prifatiliste za ženi i deca žrtvi na nasilstvo (Centar Sklonište – Prihvatilište za žene i decu žrtve nasilja), Združenie za pomoš i edukacija na lica izloženi na mobing (Udruženje za pomoć i edukaciju lica izloženih mobingu) i dr.

Viktimološka saznanja kao deo legislativnih rešenja

Vitkimološka saznanja su bila prihvaćena posebno u Krivičnom zakoniku (pojedini instituti i sankcije), novom Zakonu o krivičnom postupku (prava žrtve i prava oštećenog, medijacija), Zakonu o maloletničkoj pravdi (koncept restorativne pravde, kategorija dece i maloletnika u riziku, odnos maloletnog učinioca i žrtve krivičnog dela pri izricanju nekih sankcija prema maloletnicima, položaj maloletne žrtve u krivičnom postupku, fond za obeštećenje žrtava), Zakonu o porodici (postupak u slučaju porodičnog nasilja, odredbe u odnosu na žrtve trgovine ljudima). Ovakva praksa omogućena je pre svega aktivnim učešćem naučnih radnika, a pre svega viktimologa, u radu odgovarajućih komisija za izradu spomenutih zakona. U funkciji sprovođenja zakonskih odredbi izrađeni su i brojni podzakonski akti koji između ostalog tretiraju i problematiku žrtava krivičnih dela. U ovom kontekstu sve su brojniji i tzv. protokoli za saradnju između nadležnih organa, službi i organizacija, kao i nevladinog sektora.

Umesto zaključka

Da li možemo da budemo zadovoljni postignutim u Makedoniji kada je u pitanju razvoj viktimologije, korišćenje viktimoloških saznanja, podizanje svesti o stradanjima, pravima i potrebama žrtava i dr. Iako je pomalo neskromno poređenje sa zemljama iz našeg okruženja, a pre svega sa onima sa kojima smo bili u zajedničkoj državi i koje su nam na ovom planu bili uzor, koji imaju bogatija iskustva i dužu tradicuju (pre svega Slovenija, Hrvatska, Srbija), mislim da su i u Makedoniji postignuti skromni, ali ipak značajni rezultati na ovom planu. Ovo utoliko pre što je postojeće stanje pre svega rezultat delovanja i entuzijazma pojedinaca, određenih grupa i pojedinih nevladinih organizacija, a ne jednog osmišljenog, koordiniranog i planskog procesa. Nadam se da upravo prethodno navedeno ide u prilog jedne ovakve ocene stanja na planu viktimologije, kao što je i nesporno da na ovom planu treba još mnogo toga da se uradi.

U tom smislu hteo bih da istaknem činjenicu (i to je ono što posebno ohrabruje) da se u Republici Makedoniji pojavljuje jedan novi „talas“ mladih naučnih radnika i istraživača viktimologije i viktimoloških tema. Svakako da su oni neophodan uslov da se viktimologija kao nauka i istraživačka aktiv-

nost uspešno razvija, kao i da kao samostalna nauka zauzme pravo mesto u sistemu krivičnopravnih i kriminoloških nauka.[5]

Na samom kraju osećam potrebu da se izvinim ukoliko sam u prikazu razvoja viktimologije u Makedoniji, svakako nenamerno, eventualno propustio da ukažem na nešto što je u ovom kontekstu isto tako bitno. Uostalom, ne može se ni očekivati da pojedinac, bez obzira koliko god bio posvećen i koliko god dugo da se bavio ovom problematikom, bude o svemu informisan. Radi se o prvom pokušaju da se sumiraju rezultati na ovom planu, pa se nadam da će ovaj rad biti dobra osnova i podsticaj za dalje kontinuirano i sistematsko praćenje razvoja viktimologije u Makedoniji.

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Oliver Bačanović

The development of victimology in Macedonia

The aim of this paper is to present the development of victimology in Macedonia. The author presents research activities in the field of victimology, the development of victimology as a scientific discipline that is being taught at appropriate higher education institutions, as well as the usage of victimology in the process of legislation reforms. The paper also deals with victim assistance services in this country, as well the victims' rights movement.

Keywords: victimology, victimology research, science, Macedonia.

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Razvoj viktimologije u Srbiji

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Rad ima za cilj prikaz i analizu razvoja viktimologije u Srbiji. Razvoj viktimologije u Srbiji sagledava se kroz tri vremenska perioda: period od početka 1980-tih do 1992. godine, period tokom ratova na prostoru bivše Jugoslavije (1992-2000) i period posle političkih promena 2000. godine. Na kraju rada, razvoj u Srbiji je ocenjen u kontekstu razvoja viktimologije kao nauke i dostignutog nivoa zaštite prava žrtava u praksi.

Ključne reči: *viktimologija, prava žrtava, razvoj, Srbija.*

Uvod

Na prostoru bivše Jugoslavije problemi vezani za žrtve dosta rano su uočeni kao mogući aspekt proučavanja u okviru kriminologije. Svojim radovima objavljenim u periodu između 1960. i 1981. godine, doprinos nastanku viktimologije, posebno su dali P. Marina (Makedonija), A. Makra, Z. Šeparović, A. Carić, K. Pospišl-Završki i R. Puškarić (Hrvatska), K. Vodopivec, J. Pečar, A. Šelih i P. Kobe (Slovenija), kao i M. Aćimović, I. Simic, B. Krstić, B. Kapamadžija i S. Pihler (Srbija).[1] Radovi ovih autora otvorili su vrata razvoju viktimologije tako što su uveli perspektivu žrtve u bavljenje raznim oblicima kriminaliteta i domaćoj naučnoj javnosti predstavili svetska viktimološka istraživanja i debate. Oni su stvorili osnovu za prve sistematizacije viktimoloških znanja, do kojih je došlo tokom 1980-tih godina.

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1 Prema Kramarić, 1982 i Šeparović, 1985.

Razvoj viktimologije u zemljama bivše Jugoslavije, uključujući i Srbiju, kasnio je, dakle, nekoliko decenija za njenim razvojem u svetu. Uz to, raspad Jugoslavije i ratovi na njenom prostoru uticali su na specifičnu dinamiku njenog razvoja, kao i na nešto drugačiji predmet i pristup bavljenju problemima žrtve. Imajući to u vidu, razvoj viktimologije u Srbiji može se sagledati kroz tri vremenska perioda[2]:

- period od početka 1980-tih do 1992. godine (do početka rata u BiH i uvođenja sankcija Srbiji)
- period od 1992. do 2000. godine
- period posle (političkih promena) 2000. godine.

Ovaj rad ima za cilj da prikaže i analizira razvoj viktimologije u Srbiji, kao i da taj razvoj sagleda i oceni u kontekstu šireg razvoja viktimologije kao nauke i dostignutog nivoa zaštite prava žrtava u praksi. Analiza razvoja viktimologije u Srbiji je rezultat mog duže vremenog praćenja i neposrednog učestvovanja u različitim viktimološkim aktivnostima, kao i istraživanja literature i drugih pisanih dokumenata. Međutim, iako sam se trudila da što obuhvatnije sagledam sve aspekte viktimološkog razvoja u Srbiji, sigurna sam da ima još viktimološki važnih radova i drugih dostignuća koji u ovom radu nisu našli mesto. Ipak, s obzirom da dokumentovanje razvoja jedne nauke mora biti kontinuirana aktivnost, nadam se da sam ovim radom postavila osnovu za dalja istraživanja, beleženja i analizu razvoja viktimologije u Srbiji.

Prvi period u razvoju viktimologije u Srbiji

Prvi period u razvoju viktimologije u Srbiji karakteriše pojava prvih sistematizovanijih radova koji su se bavili viktimologijom i problemima žrtava, kao i prvih empirijskih istraživanja i inicijativa za poboljšanje položaja žrtava. Pored toga, ovaj period u razvoju viktimologije u Srbiji, za razliku od kasnijih, odvijao se u okviru šireg, jugoslovenskog, društvenog i naučnog konteksta i otvorenosti prema svetu. U tesnoj vezi sa time je saradnja velikog broja istraživača i praktičara iz nekadašnje Jugoslavije i sveta koja je bila karakteristična za ovaj period.

[2] Treba imati u vidu da je podela napravljena prema dominantnim karakterstikama razvoja u različitim periodima, i da je nemoguće napraviti preciznu vremensku granicu između njih. Svaki sledeći period praktično je počinjao još tokom prethodnog perioda.

Za prvi period u razvoju viktimologije u Srbiji od posebnog značaja je bilo nekoliko važnih viktimoloških događaja. Najpre, 1984. godine u Dubrovniku su održani prva Međunarodna konferencija o pravima žrtava i prvi poslediplomski kurs iz oblasti viktimologije i pomoći žrtvama. Poseban značaj imalo je održavanje Petog simpozijuma Svetskog viktimološkog društva, 1985. godine u Zagrebu, a zatim i osnivanje Jugoslovenskog viktimološkog društva, 1988. godine, takođe u Zagrebu. Osnivanjem Jugoslovenskog viktimološkog društva došlo je do tesnijeg povezivanja istraživača i praktičara iz raznih delova bivše Jugoslavije koji su se u svojim sredinama već bavili različitim viktimološkim temama. Jugoslovensko viktimološko društvo je 1990. godine započelo sa objavljivanjem časopisa pod nazivom *Viktimologija*. To je ujedno bio period konsolidovanja viktimologije kao nauke, i period prvih konkretnijih inicijativa za poboljšanje položaja žrtve u Srbiji.

Sedište Jugoslovenskog viktimološkog društva bilo je u Zagrebu. Njegovi članovi bili iz različitih delova bivše Jugoslavije, uključujući i veoma aktivne članove iz Srbije, od kojih su neki bili i članovi predsedništva prof. Živojin Aleksić i prof. Jelka Ređep. Članovi iz Srbije, profesori Živojin Aleksić, Dušan Cotič i Mihajlo Aćimović, bili su uključeni i u rad organizacionog komiteta Petog simpozijuma Svetskog viktimološkog društva (Fifth international symposium on victimology, 1985). Raspad Jugoslavije i ratovi koji su se vodili na njenom prostoru doveli su do prestanka rada Jugoslovenskog viktimološkog društva. Ipak, razvoj viktimologije u Srbiji, koji je započet napred pomenutim aktivnostima na prostoru bivše Jugoslavije, nastavljen je i nakon prestanka postojanja Jugoslovenskog viktimološkog društva.

Tokom 1980-tih i početkom 1990-tih godina autori iz Srbije objavili su i, na viktimološkim konferencijama, prezentirali više radova posvećenih viktimološkim temama. Radovi su pretežno bili bazirani na rezultatima empirijskih istraživanja, i bavili su se temama poput: duševno bolesna lica kao žrtve i žrtvin iskaz u krivičnom postupku (Aćimović, 1979; Aćimović, 1981), politički zatvorenici kao žrtve (Janković, 1989), žrtve terorizma (Aćimović, 1980; Dimitrijević, 1984[3]), aktivnosti UN i žrtve (Cotič, 1984[4]), žrtve saobraćajnih krivičnih dela (Nikolić-Ristanović, 1987), prvi kontakt žrtve sa policijom (Nikolić-Ristanović, Mrvić, 1988), pravni položaj žrtava seksualnog nasilja (Nikolić-Ristanović, 1989), mladi ljudi i deca kao žrtve (Radovanović, 1988; Radovanović, 1989;

[3] Prema Šeparović, 1998.

[4] Prema Šeparović, 1998.

Nikolić-Ristanović, 1988), pravni položaj žrtve (Nikolić-Ristanović, 1982, Bejatović, 1993), strah od kriminaliteta (Nikolić-Ristanović, Mrvić, 1990) i bračno nasilje (Nikolić-Ristanović, 1993). Uz to, tema 14. redovnog savetovanja Saveza udruženja za krivično pravo i kriminologiju, koje je održano 1982. godine u Aranđelovcu, bila je „Oštećeni u krivičnom pravu."

Ipak, prva knjiga koja se u Srbiji na sistematičan i obuhvatan način bavila viktimologijom i žrtvama kriminaliteta bila je knjiga Vesne Nikolić-Ristanović *Uticaj žrtve na pojavu kriminaliteta,* bazirana na istoimenom magistarskom radu, odbranjenom na Pravnom fakultetu u Beogradu (Nikolić-Ristanović, 1984). U ovoj knjizi[5] se po prvi put u Srbiji predstavlja nastanak i razvoj viktimologije, njeni ciljevi i zadaci, različita shvatanja njenog predmeta i pojma žrtve, kao i osnovni viktimološki pojmovi, i značaj podrške i pomoći žrtvama. Knjiga je zasnovana na teorijskom i empirijskom istraživanju karakteristika koje ljude čine izloženim viktimizaciji, odnosa izvršilac – žrtva, ponašanja žrtve koja doprinose viktimizaciji ili je sprečavaju, posledica viktimizacije i procesa oporavka, kao i pravnog položaja žrtve.

Nekoliko godina kasnije, ista autorka je objavila i drugu knjigu koja se na sistematičan način bavila jednom kategorijom žrtava – ženama žrtvama kriminaliteta. Knjiga *Žene kao žrtve kriminaliteta* predstavlja objavljenu doktorsku disertaciju, odbranjenu na Pravnom fakultetu u Beogradu (Nikolić-Ristanović, 1989a). To je bio prvi put da se u Srbiji jedna doktorska disertacija i jedna naučna knjiga bave temama kao što su: žene – žrtve nasilja u porodici i silovanja, sigurne kuće, SOS telefoni za pomoć žrtvama, potreba za kažnjavanjem nasilja u porodici i bračnog silovanja, neadekvatno postupanje sudija, tužilaca i policije prema žrtvama, posebno prema žrtvama seksualnih delikata, potreba za zaštitom žrtava u krivičnom postupku i sl. Takođe, ova knjiga se, pored viktimizacije žena rodno baziranim nasiljem, bavila i ženama kao žrtvama drugih oblika kriminaliteta, poput telesne povrede, krađe, razbojništva, uvrede i prevare. Zanimljivo je da je, pored osnovnog empirijskog istraživanja baziranog na podacima iz sudskih predmeta, za potrebe ovog rada urađena, po prvi put u Srbiji, i jedna anketa o viktimizaciji. Radilo se o probnom istraživanju na uzorku od 206 učenica i studentkinja iz Beograda, kojima su, po ugledu

[5] Na ovu knjigu je ukazao profesor Zvonimir Šeparović još u svojim intervjuima za medije datim 1984. godine, kao i u knjizi *Viktimologija:studije o žrtvama* , koja je objavljena 1985. godine (Šeparović, 1985: 9, 316). Takođe, istu knjigu je prof. Oliver Bačanović koristio kao udžbenik viktimologije na Policijskoj akademiji (sada Fakultetu bezbednosti) u Skopju).

na slična strana istraživanja, bila postavljana pitanja o tome da li su u periodu 1980-1985. godina bile viktimizirane nekim kriminalnim ponašanjem.

Knjige *Uticaj žrtve na pojavu kriminaliteta* i *Žene kao žrtve kriminaliteta,* budući da su objedinile dotadašnja saznanja o žrtvama u zemlji i svetu, činile su dobru osnovu za dalji razvoj viktimoloških istraživanja u Srbiji. Pri tome je knjiga *Žene kao žrtve kriminaliteta* poslužila kao važan osnov za, još u to vreme od strane feministkinja inicirano, zalaganje za pravne reforme u Srbiji.

Drugi period u razvoju viktimologije u Srbiji

Ratovi koji su vođeni na prostoru bivše Jugoslavije, kao i ekonomske sankcije koje su nametnute Srbiji zbog uloge koju je imala u njima, oblikovali su čitav društveni život u našoj zemlji, pa, samim tim, i razvoj viktimologije u ovom periodu. Pri tome, nekoliko faktora je bilo od posebnog značaja. Ratna stradanja, najpre posredno a onda i neposredno, i masovna kršenja ljudskih prava od strane režima Slobodana Miloševića, postali su 1990-tih godina svakodnevica u Srbiji. Istovremeno, početkom 1990-tih godina, politički pluralizam i sloboda udruživanja, kao deo započete političke tranzicije ka demokratskom društvu, stvorili su uslove za razvoj civilnog društva, očitovanog u osnivanju različitih nevladinih organizacija. Viktimizacija na ratnom području, dolazak velikog broja izbeglica i bračno i porodično nasilje od strane učesnika rata koji su se vraćali sa ratišta, kao i političko nasilje i druga kršenja ljudskih prava od strane državnih organa, zaokupili su pažnju aktivistkinja i aktivista ženskih grupa, organizacija za ljudska prava i humanitarnih organizacija, ali su postali i nova tema za istraživače.

Nevladine organizacije su u ovom periodu odigrale važnu ulogu u obelodanjivanju i beleženju podataka o stradanja ljudi, ali i u pružanju različitih oblika pomoći i podrške žrtvama, koju država nije bila u stanju, ili nije želela da pruži (na primer, kada se radilo o žrtvama kršenja ljudskih prava koja su činjena od strane samih državnih organa, ili prema pripadnicima etničkih grupa koje su smatrane neprijateljskim). Osim toga, u ovom periodu je, zbog ekonomskih sankcija, finansiranje državnih istraživačkih institucija svedeno na puko preživljavanje, uz istovremen dolazak i postepeno uvećavanje stranih donacija koje su u to vreme, zbog politike koju je vodio tadašnji režim, mogle dobiti samo nevladine organizacije. Pri tome, treba naglasiti da su strane donacije u ovom periodu bile veoma ograničene i da je veliki broj, posebno

ženskih organizacija, u ovom periodu uradio mnogo za žrtve, u istraživačkom i u praktičnom smislu, sa veoma malom ili nikakvom finansijskom podrškom.

Stoga nije neobično da je u ovom periodu većina viktimoloških istraživanja rađena u okviru nevladinih organizacija i od strane istraživača-pojedinaca, kao i da su njihove teme tada na različite načine bile povezane sa ratom i drugim oblicima državnog nasilja, a nešto kasnije i sa socio-ekonomskim uticajem tranzicije. Sprovedeno je nekoliko važnih akcionih istraživanja viktimizacije žena u ratu, uključujući ratna silovanja i prisilne trudnoće (Nikolić-Ristanović i dr., 1995; Nikolić-Ristanović i dr., 1996; Nikolić-Ristanović, 2000), kao i nasilje od strane policije prema građanima (Nikolić-Ristanović i dr., 1997). Ova akciona istraživanja podrazumevala su ne samo prikupljanje podataka već i različite oblike podrške i osnaživanja žrtava. Pored toga, istražene su i psihičke posledice rata (Bojanin, Išpanović-Radojković, 1994; Kaličanin i dr, 1993), uticaj rata na nasilje u porodici (Nikolić-Ristanović, 1993), uticaj tranzicije i rata na rodne identitete, nasilje nad ženama i društvene odgovore na njega (Nikolić-Ristanović, Milivojević, 2000; Nikolić-Ristanović, 1996; Nikolić-Ristanović, 2002; Nikolić-Ristanović, 2008), ratna viktimizacija (Nikolić-Ristanović, 1999a; Milivojević, 1999; Nikolić-Ristanović, 2000a), kao i uticaj rata i ekonomskih sankcije na uslove života u zatvoru za žene (Nikolić-Ristanović, 1997).

Krajem 1990-tih godina objavljeno je i nekoliko pionirskih studija, koje su se na obuhvatan način bavile do tada neistraženim temama, poput nasilja nad decom (Banjanin-Djuričić, 1998), incesta (Mršević, 1997), veze između nasilja nad ženama i kriminaliteta žena (Nikolić-Ristanović, 2000b) i naknade štete žrtvama (Mrvić-Petrović, 2001). Pored toga, nakon ukidanja ekonomskih sankcija, 1996. godine, Institut za kriminološka i sociološka istraživanja sproveo je prvu i za sada jedinu anketu o viktimizaciji na reprezentativnom (gradskom) uzorku kod nas. Ova anketa je sprovedena u okviru Međunarodne ankete o viktimizaciji – International Crime (Victim) Survey, na uzorku od 1094 ispitanika sa teritorije Beograda (Nikolić-Ristanović, 1998; Nikolić-Ristanović, 1999; Zvekić, 2001).

Tokom rata, fokus zalaganja za prava žrtava bio je usmeren na žrtve rata, pre svega na žene žrtve nasilja u ratu. Ipak, rad na podizanju svesti javnosti i zalaganje za bolju pravnu zaštitu žrtava nasilja u porodici, započeto 1980-tih godina, nije prestajalo ni tokom ratnih godina. Tokom 1990-tih godina, aktivistkinje ženskih grupa su osnovale prve SOS telefone, skloništa i savetovališta za žene i decu žrtve nasilja. Prvi SOS telefoni su osnovani 1990. godine u Beogradu i Kraljevu, a nesto kasnije u Nišu i u drugim gradovima. Nekoliko godina kasnije osnovano je i prvo sklonište za žrtva nasilja u porodici.

Prve službe za žrtve u Srbiji bile su, dakle, specijalizovane službe za žene i decu žrtve nasilja. Ženske grupe i feminističke istraživačice su doprinele vidljivosti problema žrtava nasilja u porodici, ali i žrtava seksualnog nasilja i trgovine ljudima (Nikolić-Ristanović, 2007). Kasnije su osnovane i druge specijalizovane službe, poput službi za žrtve torture i rata. Do kraja 1990-tih godina, u Srbiji su zalaganje za žrtve i podrška žrtvama uglavnom bili ograničeni na žene i decu žrtve nasilje. Međutim, osnivanje Viktimološkog društva Srbije-VDS 1997. godine označilo je početak zalaganja za prava svih žrtava kriminaliteta, nezavisno od oblika viktimizacije i drugih svojstava.

Cilj osnivanja VDS bio je da okupi što veći broj istraživača, eksperata, praktičara i aktivista, zainteresovanih da rade na razvoju viktimologije i unapređenju prava svih žrtava kriminaliteta, rata i kršenja ljudskih prava – bez obzira na njihov pol, versku i religijsku pripadnost, politička opredeljenja ili druge karakteristike. Viktimološko društvo Srbije je članska organizacija, koja se bavi različitim aktivnostima od značaja za žrtve kriminaliteta .

Osnivanjem Viktimološkog društva Srbije uspostavljen je kontinuitet između viktimoloških aktivnosti u Srbiji koje su se odvijale pre i nakon raspada SFRJ. Viktimološko društvo Srbije-VDS osnovala je grupa bivših članova Jugoslovenskog viktimološkog društva iz Srbije, zajedno sa drugim naučnim radnicima i praktičarima, zainteresovanim za unapređenje prava žrtava. Grupa koja je inicirala osnivanje društva, na čelu sa Vesnom Nikolić-Ristanović, od 1994. godine je aktivno delovala u okviru Grupe za ženska prava Evropskog pokreta u Srbiji. U okviru ove Grupe tokom 1990.tih godina urađena su značajna viktimološka istraživanja, i započete aktivnosti u vezi zalaganja za prava žrtava, koja su kasnije intenzivirana u okviru VDS.

Treći period u razvoju viktimologije u Srbiji

Osnivanje Viktimološkog društva Srbije, stvaranje povoljnije klime u zemlji nakon političkih promena 2000.godine, kao i veći priliv stranih donacija, stvorili su bolje uslove za realizaciju različitih inicijativa za poboljšanje položaja žrtava. Sve to skupa, stvorilo je pretpostavke za snažniju nego ikada konsolidaciju viktimologije kao nauke i kao praktične aktivnosti u Srbiji.

Viktimološko društvo Srbije je ubrzo nakon osnivanja iniciralo pokretanje čitavog niza novih programa značajnih za unapređenje prava žrtava u Srbiji: početak objavljivanja prvog časopisa o viktimizaciji, ljudskim pravima i rodu

Temida, sprovođenje anketa o viktimizaciji i drugih viktimoloških istraživanja, predlaganje promena zakonodavstva i prakse i zalaganje za njihovo usvajanje, iniciranje unošenja podataka o žrtvama u pravosudnu statistiku, podizanje svesti javnosti o problemima žrtava, zalaganje za uvođenje viktimologije na fakultete i u redovnu edukaciju stručnjaka i sl. Gotovo sve ove inicijative su imale pionirski karakter i dovele su do značajnih promena na širem društvenom planu. Takođe, VDS je 1999. godine postalo član Svetskog viktimološkog društva, a 2004. godine i Evropskog foruma službi za žrtve (sadašnji naziv Evropska pomoć žrtvama). Članstvo u ovim organizacijama od velikog je značaja za međunarodnu saradnju VDS sa stručnjacima iz sveta, i u velikoj meri je uticalo na razvoj kvalitetnih istraživačkih i praktičnih programa u Srbiji.

Viktimološko društvo Srbije je u početku bilo organizovano po modelu Svetskog viktimološkog društva i nacionalnih viktimoloških društava u drugim zemljama, ali su vremenom njegova organizacija i način funkcionisanja instutucionalizovani, što je bio rezultat prilagođavanja potrebama i uslovima u Srbiji. Aktivnosti Viktimološkog društva Srbije danas obuhvataju čitav niz stalnih delatnosti koje se obavljaju u okviru dve organizacione jedinice: VDS info i podrška žrtvama (služba za žrtve kriminaliteta) i VDS centar za istraživanja i edukaciju. U okviru VDS razvijen je i poseban program koji se bavi istinom i pomirenjem i koji ima za cilj dolaženje do modela istine i pomirenja koji odgovara Srbiji. Na ovaj način, aktivnosti VDS su u osnovi institutskog karaktera i omogućavaju, međusobno povezano, praktično i teorijsko bavljenje problemima žrtava. S tim u vezi treba napomenuti da se u okviru VDS odvija i praktična nastava i obuka studenata iz oblasti viktimologije.

VDS je organizovalo veliki broj nacionalnih i međunarodnih konferencija koje su se bavile raznim temama relevantnim za žrtve, poput ratne viktimizacije, nasilja u porodici, istine i pomirenja, i alternativnih sankcija. Od 2010. godine VDS organizuje redovne godišnje konferencije koje predstavljaju priliku za susret i razmenu iskustava i znanja istraživača, aktivista i praktičara iz Srbije, regiona i sveta. Od 2009. godine, u cilju podsticanja viktimoloških istraživanja i viktimološke prakse, VDS dodeljuje godišnje nagrade mladim talentovanim istraživačima koji se bave viktimološkim temama, nagradu za unapređenje prava žrtava, kao i nagradu Treći put, za doprinos konstruktivnom bavljenju prošlošću u postkonfliktnom društvu.

U ovom periodu sproveden je veći broj značajnih viktimoloških istraživanja, prvenstveno od strane istraživača okupljenih oko Viktimološkog društva Srbije i Autonomnog ženskog centra. VDS je sprovelo nekoliko pionirskih

istraživanja, poput: anketa o viktimizaciji nasiljem u porodici na reprezentativnom uzorku za Srbiju i Vojvodinu (Nikolić-Ristanović, 2002; Nikolić-Ristanović, 2010), mapiranje usluga za žrtve u Srbiji (Nikolić, 2007; Ćopić, 2007; Nikolić-Ristanović, 2007), istraživanje rasprostranjenosti i karakteristika viktimizacije trgovinom ženama, decom i muškarcima, potreba žrtava, kao i zakonodavnog i institucionalnog okvira za njihovu podršku i zaštitu (Nikolić-Ristanović i dr., 2004; Bjerkan, 2005; Nikolić-Ristanović, 2009; Nikolić-Ristanović, Ćopić, 2010), istraživanja o žrtvama i restorativnoj pravdi (Ćopić, 2010), žrtvama i pomirenju u postkonfliktnom društvu (Nikolić-Ristanović, Hanak, 2004; Nikolić-Ristanović, Srna, 2008), o pravnom položaju žrtava (Nikolić-Ristanović, Ćopić, 2011) i nevladinim organizacijama koje pružaju pomoć žrtvama u Srbiji (Nikolić-Ristanović, 2011).

Nevladina organizacija Autonomni ženski centar (AŽC) – Centar za promociju ženskog zdravlja iz Beograda, sprovela je 2002. godine istraživanje nasilja u porodici u Beogradu, kao deo komparativnog istraživanja koje Svetska zdravstvena organizacija sprovodi u većem broju zemalja (Otašević, 2005; Garcia-Moreno i dr., 2006). Pored toga, AŽC je sproveo nekoliko istraživanja sudske prakse u slučajevima nasilja u porodici (Konstantinović-Vilić, Petrušić, 2004 i 2007). Takođe, nevladina organizacija SECONS sprovela je 2010. godine istraživanje rasprostranjenosti nasilja u porodici u centralnoj Srbiji (Babović, Ginić, Vuković, 2010), a 2004. i 2009. godine sprovedena su i prva istraživanja koja su imala za cilj dolaženje do saznanja o rasprostranjenosti i karakteristikama nasilja nad starima (Kostić, 2010; Stevković, Dimitrijević, 2010). Takođe, Viktimološko društvo Srbije, u saradnji sa međunarodnom organizacijom UN Women, tokom 2011. godine sprovelo je prvu anketu o diskriminaciji žena na radnom mestu (anketa o viktimizaciji), koja je uključila i prikupljanje podataka o seksualnom nasilju na radnom mestu i mobingu.

Važno je pomenuti i jedno važno istraživanje koje je bilo u toku u vreme pisanja ovog rada, a koje sprovodi Fakultet za specijalnu edukaciju i rehabilitaciju. U pitanju je istraživanje nasilja nad decom, koje predstavlja deo komparativnog istraživanja koje se sprovodi u okviru FP7 programa Evropske Unije, pod nazivom Balkanska epidemiološka studija zloupotrebe i zanemarivanja dece – Balkan Epidemiological Study on Child Abuse and Neglect (BECAN). [6]

Pored pomenutih, sprovedena su i druga relevantna viktimološka istraživanja i objavljeni brojni radovi koji su se bavili različitim temama, uključujući

[6] http://www.fasper.bg.ac.rs/projekti/becan.html, stranici pristupljeno 15.4.2012.

posebno nasilje u porodici, trgovinu ljudima, nasilje nad decom, homofobično nasilje, nasilje na radnom mestu, službe za žrtve i naknadu štete žrtvama. Takođe, 2011. godine objavljena je i knjiga *Žrtve kriminaliteta: međunarodni kontekst i situacija u Srbiji,* koja je namenjena edukaciji policije, ali i sudija, tužilaca, socijalnih radnika i aktivista i aktivistkinja nevladinih organizacija. U ovoj knjizi prvi put je na obuhvatan način predstavljena hronologija razvoja viktimoloških istraživanja i prava žrtava u Srbiji, i taj razvoj sagledan u međunarodnom kontekstu (Lindgren, Nikolić-Ristanović, 2011).

Od 2008. godine viktimologija se izučava kao poseban predmet na Pravnom fakultetu u Nišu[7], na Fakultetu za specijalnu edukaciju i rehabilitaciju[8], i na Fakultetu za bezbednost i Policijskoj akademiji u Beogradu, a poslednjih godina je akreditovano više programa edukacije stručnjaka koji dolaze u kontakt sa žrtvama. Pored toga, od 2008. godine nasilje nad decom u porodici se izučava kao posebni izborni predmet na Fakultetu za specijalnu edukaciju i rehabilitaciju, dok je iste godine na Pravnom fakultetu u Nišu uveden i izborni predmet Pravne studije roda. Takođe, na Pravnom fakultetu u Nišu od 2006. godine realizuje se Klinički program obuke za zaštitu prava žena (pravna klinika) (Petrušić, Konstantinović-Vilić i Žunić, 2008). Takođe, pravne klinike su osnovane i funkcionišu i na pravnim fakultetima u Kragujevcu i Beogradu.[9]

Prva knjiga koja je u Srbiji u svom naslovu imala reč viktimologija objavljena je 2009. godine pod nazivom *Okviri viktimologije,* autorke Ivane Simović-Hiber. Dve godine kasnije, objavljena je i knjiga *Viktimologija,* čiji autori su Đorđe Ignjatović, i Biljana Simeunović-Patić. Ove knjige se koriste kao udžbenici na Fakultetu bezbednosti i na Policijskoj akademiji u Beogradu. Knjiga *Okviri viktimologije* posvećena je predstavljanju stanja viktimologije u svetu,

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7 Viktimologija je imala važno mesto u okviru predmeta Kriminologija na Pravnom fakultetu u Nišu još od 1998. godine. Za potrebe nastave korišćen je (i još uvek se koristi redovno ažurira) udžbenik *Kriminologija,* autorki S. Konstantinović-Vilić i V. Nikolić-Ristanović, koje su po prvi put u Srbiji u jedan univerzitetski udžbenik uvrstile teme poput: žrtava kriminaliteta, viktimologije, nasilja nad decom, nasilja u porodici, silovanja u braku, pokreta za prava pretučenih žena, trgovine ljudima, mobinga, proganjanja, feminističke metodologije i feminističke teorije (Konstantinovič-Vilić, Nikolić-Ristanović, 1998, 2003, 2004; Konstantinović-Vilić, Nikolić-Ristanović, Kostić, 2009, 2010).

8 U periodu između 2004. i 2008. godine, pre nego što je Viktimologija postala poseban predmet, proučavanje viktimologije je imalo značajno mesto u okviru predmeta Kriminologija na Fakultetu za sprecijalnu edukaciju i rehabilitaciju u Beogradu.

9 http://www.ius.bg.ac.rs/Pravna%20klinika/PRAVNA%20KLINIKA.htm, stranici pristupljeno 10.4.2012.

bez pominjanja viktimologije u Srbiji. Na drugoj strani, knjiga *Viktimologija* daje pregled viktimoloških znanja, kako u svetu tako i u Srbiji. Pri tome je zanimljivo pomenuti da u njenom Predgovoru autori ističu da je „naša literatura koja se bavi viktimološkim problematikama veoma oskudna" (Ignjatović, Simeunović-Patić, 2011:9), što, pretpostavljam, podaci navedeni u ovom radu demantuju.

Rezultati viktimoloških istraživanja i zalaganja VDS i drugih nevladinih organizacija, u dobroj meri bazirana na njima, zajedno sa zahtevima međunarodne zajednice, doveli su do čitavog niza aktivnosti i važnih promena: poboljšanje zakonske regulative o žrtvama, osnivanje službi za žrtve kriminaliteta, podaci o žrtvama po prvi put su se našli u pravosudnoj statistici 2008. godine, i sl. Zahvaljujući zalaganju VDS došlo je i do izvesnog poboljšanja u pravnom tretmanu žena žrtava nasilja koje su ubile nasilnike.

Nasilje u porodici, trgovina ljudima i krijumčarenje ljudi po prvi put su propisani kao krivična dela, usvojen je novi koncept seksualnih krivičnih dela koji omogućava krivičnopravnu zaštitu nezavisno od pola i odnosa između izvršioca i žrtve, propisane su zaštitne mere od nasilja u porodici, proširen je krug mera bezbednosti u cilju prevencije budućeg nasilja, predviđeno je više mera za zaštiti žrtava-svedoka itd.[10] Ženske grupe od 1990-tih godina organizuju redovno obeležavanje 25. novembra – Međunarodnog dana borbe protiv nasilja nad ženama, dok Viktimološko društvo Srbije od 2005. godine redovno obeležava 22. februar – Međunarodni dan žrtava. Takođe, nevladina organizacija I.A.N. je inicirala obeležavanje Međunarodnog dana borbe protiv torture. U Srbiji se poslednjih godina obeležava i mesec borbe protiv trgovine ljudima (oktobar), kao i 18. oktobar – Evropski dan borbe protiv trgovine ljudima. Kao i u drugim zemljama, organizacije koje se bave žrtvama u Srbiji koriste ove datume, ali i sve druge mogućnosti, kako bi organizovale događaje usmerene na podizanje svesti i skretanje pažnje javnosti i države na probleme sa kojima se žrtve suočavaju. Uz sve to, nevladine organizacije koje se bave žrtvama su do sada organizovale i brojne obuke za različite stručnjake, uključujući policiju, socijalne radnike, sudije, tužioce i zaposlene u sistemu zdravstvene zaštite.

U ovom periodu osnovan je veći broj organizacije koje su radile na podizanju svesti javnosti o žrtvama, zalagale se za promene zakona i pružale neposrednu pomoć žrtvama. Pomoć žrtvama i dalje pružaju uglavnom specijalizovane organizacije koje se bave pojedinim oblicima viktimizacije, i pružaju pomoć uglavnom ženama i deci, ali su osnovane i nevladine organizacije

[10] Detaljnije o ovome videti u Lindgren i Nikolić-Ristanović, 2011.

koje pružaju pomoć žrtvama nasilja na radnom mestu, Romkinjama i invalidkinjama. Prva i do sada jedina opšta služba za žrtve, tj. služba koja pruža podršku žrtvama svih oblika kriminaliteta, i to oba pola i nezavisno od bilo kog drugog svojstva, osnovana je 2003. godine u okviru Viktimološkog društva Srbije (VDS info i podrška žrtvama).

Nakon 2000. godine, prve službe za žrtve su osnovane i u okviru državnih institucija. Državne službe su uglavnom pratile opšti trend razvoja usluga u NVO u smislu njihovog fokusa na žene i decu žrtve nasilje. Od 2010. godine primećuju se novi trendovi: zatvaranje pojedinih nevladinih organizacija koje su pružale podršku žrtvama (SOS telefoni i skloništa), a koje su razvijane sa puno entuzijazma i koje su generisale dragoceno iskustvo aktivista i aktivistkinja. Njihove aktivnosti su delom preuzele državne institucije, kojima, za razliku od nevladinih organizacija, često nedostaju znanje i iskustvo potrebno za izlaženje u susret potrebama žrtava (Nikolić-Ristanović, 2011a).

Ukupno posmatrano, razvoj usluga i programa za žrtve, kako u okviru nevladinih organizacija, tako i u okviru državnih službi, u Srbiji nije bio pravolinijski i sistematičan. Iako značajan, ovaj razvoj je uglavnom bio rezultat entuzijazma grupa pojedinaca/pojedinki i fragmentarnih napora države. Osim toga, iako je primetan određeni nivo saradnje različitih službi, nacionalna mreža lokalnih službi za žrtve, koja postoji u mnogim zemljama, još uvek nije osnovana. Takođe, jedna od ključnih karakteristika razvoja u vezi sa žrtvama u Srbiji je da je on doprineo društvenoj vidljivosti i svesti o određenim kategorijama žrtava, dok su, pak, druge žrtve i dalje prilično nevidljive i neprepoznate. Rasprostranjenost specijalizovanih usluga i organizacija za žrtve doprinela je vidljivosti određenih žrtava, kao što su žene žrtve nasilja u porodici, deca žrtve seksualnog zlostavljanja, žrtve trgovine ženama i decom, i, od skora, žrtve zlostavljanja na radu. Druge žrtve, poput žrtava razbojništva, provala, uličnog nasilja, ali i muškarci kao žrtve i slično, su mahom nevidljive i neprepoznate.

Međutim, veća vidljivost određenih žrtava i postojanje više usluga za njih ne znači da se u praksi njihovim potrebama na adekvatan način izlazi u susret niti da ih ima dovoljno. Naprotiv, ukupan broj službi za žrtve je veoma mali pa samim tim može da pomogne malom broju žrtava. Uz to, i postojeće službe za žrtve koje vode nevladine organizacije sve teže preživljavaju jer smanjenje stranih izvora finansiranja nije praćeno povećanjem finansiranja od strane države. Nažalost, sve više njih ili prestaje da pruža podršku žrtvama ili se preusmerava na druge aktivnosti. Sa druge strane, novoosnovanim državnim službama nedostaju znanje i iskustvo, kao i entuzijazam i fleksibilnost nevladinih organizacija.

Umesto zaključka

U skladu sa kriterijumima koje je postavio Mendelsohn (1956, 1959, 1976), a koje su kasnije dalje razvili Kirchhoff i Morosawa, može se smatrati da je viktimologija konstituisana kao nauka onda kada su ispunjeni sledeći formalni uslovi: postoji (naučno, odnosno naučno-stručno) viktimološko društvo, održavaju se redovni naučni skupovi, izdaje se viktimološki časopis, postoje instituti ili slične ustanove/organizacije koje se bave viktimološkim istraživanjem kao svojom redovnom aktivnošću, i postoje udžbenici i druga naučna literatura (Kirchhoff, Morosawa, 2009). Na osnovu izloženog se može zaključiti da viktimologija u formalnom smislu deluje kao nauka, kako u svetu tako i u Srbiji.

Zahvaljujući razvoju viktimologije kao nauke, kao i razvoju pokreta za prava žrtava, poslednjih decenija, kako sam, nadam se, pokazala u ovom radu, postignute su značajne pozitivne promene u vezi prava žrtava. Ipak, neophodno je još mnogo toga uraditi, kako na teorijskom, tako i na praktičnom planu, kako bi žrtve zaista bile zaštićene i bile tretirane u skladu sa svojim potrebama, i to bez obzira da li su prijavile izvršeno krivično delo ili ne.

Neophodno je raditi na razvoju viktimološke teorije i sistematskih oblika edukacije – kroz stvaranje istraživačke infrastrukture, istraživačkih programa i istraživačkog podmlatka. Takođe, od velike važnosti je razvijanje sistemskih rešenja koja će obezbediti obuhvatan sistem za pomoć i podršku svim žrtvama. U tom smislu, od posebnog značaja je razvoj obuhvatnijih empirijskih istraživanja, poput redovnih anketa o viktimizaciji o različitim i-ili specifičnim oblicima kriminalne viktimizacije. Takođe, za obuhvatan i sistematičan pristup problemima žrtava potrebno je izgraditi opštu zakonsku osnovu koja će regulisati pitanja bitna za sve žrtve (npr. kroz Zakon o žrtvama), obezbediti mehanizme za prevenciju viktimizacije i standardizaciju i kontrolu kvaliteta pomoći i podrške žrtvama, za podsticanje i podršku razvoju i održivosti novih programa, za sprečavanje zloupotrebe žrtava u političke svrhe i od strane medija i sl.

Država bi morala da počne da se bavi službama za žrtve na jedan obuhvatan način, sa jasnom idejom o tome kako namerava da iskoristi postojeće kapacitete i razvije nove – u najboljem interesu svih žrtava. Zakon o socijalnoj zaštiti koji je donet 2011. godine mogao bi biti dobar polazni osnov za naredne korake u tom pravcu (Lindgren, Nikolić-Ristanović, 2011). Za to je svakako potrebno da najvažniji državni organi Srbije pređu sa reči na dela, i da obezbeđivanjem adekvatnih i redovnih sredstava za istraživanja, edukaciju i različite praktične mere pomoći žrtvama doprinesu stvaranju dovoljnog broja

održivih i kvalitetnih usluga podrške i zaštite, koji su dostupni svim žrtvama kojima su potrebni.

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Vesna Nikolić-Ristanović

Development of Victimology in Serbia

This paper intends to review and analyze development of victimology in Serbia. Development of victimology in Serbia is presented chronologically, through three periods: the period from 1980 to 1992, period during the wars on the territory of the former Yugoslavia (1992-2000) and period after political changes 2000. At the end, development in Serbia is assessed in the context of development of victimology as an academic discipline and achieved level of protection of the rights of victims in Serbia.

Keywords: victimology, victims' rights, development, Serbia.

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Positive Victimology – An innovation or "more of the same"?

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This article discusses the theoretical and practical development of a new perspective called Positive Victimology. A review of constructing worlds such as Positive Criminology and Positive Psychology is examined in their importance and contribution towards founding the preliminary yet innovative discipline of Positive Victimology. However since this domain is an enhancement or improvement of already existent terminology there is a need to investigate the true theoretical and practical need for a new field while weighing the advantages and shortcomings of producing new territory.

Keywords: *positive victimology, terminology, discipline.*

In recent years a sub field named "Positive Criminology" has been presented as an innovative concept that utilizes an inclusive perspective in criminology (Ronel, Elisha, 2011). This perspective focuses on integrating and unifying forces and influences that are experienced as positive by target individuals and groups. Positive criminology is a continuation of Positive Psychology, the study of positive experiences (Seligman, Csikszentmihalyi, 2000). However, it adds crime desistance, reduction or prevention as a necessary condition. Positive criminology inspires to expand the understanding beyond the usual focus of criminology on separating, excluding, and disintegrating forces and processes that lead individuals and groups to embrace deviant and criminal lifestyles and activities (Braithwaite, 1989; Ronel, Frid, Timor, 2011). Our main goal is to further broaden these

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concepts, which mainly focus on offenders. These concepts shall be adapted and applied to victimology, thus suggesting *Positive Victimology*. Victimology in its purest form, guided by Mendelssohn's theory (1963), examines individual and group victims, as well as a victim's social behavior and interaction. Our primary focus is to examine the possibility and necessity of defining positive victimology as a victimology subfield, similarly to the formation of positive criminology within the wider criminology.

What is Positive Victimology?

The main goal of positive criminology is to highlight and enhance the study and adaptation of „positive components" (e.g., acceptance, compassion, encouragement, faith, forgiveness, gratitude, humor, positive modeling, spirituality) with individuals and groups participating in prevention, rehabilitation, and recovery programs. It was recurrently found that this focus might, in turn, lead some individuals to develop similar positive qualities and thereby increase their chances of turning their lives around, for the benefit of themselves as well as society (Duckworth, Steen, Seligman, 2005; Elisha, Idisis, Ronel, 2011, 2012; Fredrickson, 2001; Martin, Stermac, 2010; Ronel, 2006; Ward, Mann, Gannon, 2007). Overall, positive criminology seeks to strengthen the unifying force between offenders and members of the normative community rather than emphasize, or privilege, the separating forces of law-enforcement (e.g., imprisonment, exclusion, shaming) (Braithwaite, Ahmed, Braithwaite, 2006).

The corner stone of positive criminology as founded on a socially deviant population begs the question of whether this perspective can be utilized and embraced with victims as well. In other words, what is "positive victimology" and is there a need for this new filed? Will this idea of using positively experienced, integrative forces as been proven to be of help to a "non conventional" population can be as productive when assembled on victims? If so, what needs to be modified and what are the limitations of this concept?

Utilizing the definition of positive criminology suggested by Ronel and Elisha (2011), positive victimology is defined as a perspective within victimology that is comprised of at least three components. The first one being integration directed to individuals that experienced past victimization. The integration may be divided into three levels: a social inclusion process, a self-integration experience and a spiritual unification challenge. The second component

suggests that the practicum should be perceived as a positive experience by the target population. Having said that, the process of therapy and recovery might reveal unavoidable pain, as this is common in these types of proceedings. However, the positive experience might overcome this pain. The third and final component is the intent to achieve closure concerning primary victimization by the individuals involved as well as abolish secondary victimization, i.e. the subjective consequences of the primary victimization (Ronel, 2009).

Research conducted from a similar point of view confirms the hypothesis that traumatic events and negative experiences can lead to positive changes, despite the inevitable pain involved. Furthermore this type of change is correlated with consistent psychological adaptation (Ai, Park, 2005), and at times may lead to a positive spiritual transformation (Balk, 1999; Marrone, 1999). Optimistic, religious and spiritual characteristics can also influence and assist the rehabilitation and healing process. These are perceived as a crotch for psychological adjustment after a negative event. The basic assumption in positive psychology is that positive experiences are not secondary to negative ones (Duckworth, Steen, Seligman, 2005). This assumption is also reflected in the fields of positive criminology and victimology.

It can be stated, that while positive criminology places focus on teaching and practicing positive unifying components, distancing one from deviant and criminal behavior, positive victimology does the same for the victim, while aspiring to minimize the impact the offence might have. In addition, positive victimology focuses on empowering the victims as well as assisting him or her grow on a personal and social level despite being hurt as a result of a negative traumatic event. Becoming a victim insinuates a process of social, self and spiritual detachment (Ronel, 2009), therefore healing expresses the victim's need for a complete positive experience of unification and social connection. As a completion to positive psychology, which focuses on personal psychological process, positive criminology and victimology place an emphasis on the social aspect, including the reaction of society to self, and expanding the opportunities for personal and interpersonal growth despite the traumatic or hurtful event. In addition, they address law-enforcement processes with the underlying principles of positively experienced, integrating and healing processes. Although law enforcement might raise conflicts between offenders, victims and societies, positive criminology and victimology share a call for a new practice that will be guided by the above principles, as will be portrayed shortly.

Positive Victimology in practice

Though positive criminology was focused on a delinquent population hoping to prevent recidivism, it is important to understand the methods and approaches used, which have been proven to be successful. In the field of positive victimology, these methods may be adapted and improved when applied on victims. In our humble opinion, by creating a platform to the field of positive victimology, we are in fact giving a voice to the victim, while being attentive to his or her special needs in this process of reconnection. In other words, in order to build a perspective that will reflect the voice of the victims (Ben-David, 2000), we must check the unifying components that were presented in regards to the criminal population.

Positive victimology addresses an element of prevention. Despite the fact the subject of prevention is already established within the world of criminology (e.g., Hawkins, Arthur, Olson, 1997), prevention of victimization or further victimization is in need of a special focus, that of the victim. This practice may be a continuation to the communitarian approaches discussed in many prevention models (e.g., Etzioni, 1988, 1997; Hawkins, Catalano, 1992), only with a different level of sensitivity to the current or potential needs of the victims.

When it comes to victims' rehabilitation, a holistic, spiritual approach exemplifies positive victimology, as it highlights the possibility for growth beyond the pain (Ronel, 2009; Hart, Shapiro, 2002). Such an approach may include self-help components, similar to those used successfully in the recovery of other populations (Brende, 1993, 1995), in which social acceptance, understanding and support are key features. Since victimization many times creates a process of social alienation (e.g., Levy, Ben-David, 2008; van Dijk, 2006), the role of social acceptance and inclusion is central to positive victimology.

In the field of law-enforcement, positive victimology should take on a victim-oriented, integrating practice. Unfortunately, law-enforcement systems in their current approach, as seen worldwide, tend to cause secondary victimization (Hulsmann, 2006). Positive victimology raises the need for a different approach by, for example, expanding the concept of „due process", traditionally directed towards offenders only. Positive victimology aspires to include victims under "due process" during law-enforcement proceedings (Luria, 2012). Furthermore it should include victim-oriented practices by law-enforcement that have the ability to enhance positive experiences for survivors (Aharoni-Goldenberg, Wilchek-Aviad, 2008; Bitton, 2008).

Positive victimology supports the ideas inspiring to promote a therapeutic jurisprudence model, and those suggesting rehabilitation for all the involved parties (Dancig-Rosenberg, 2008). Finally, the principles of positive criminology in law-enforcement are to a great degree exemplified by the practice of restorative justice, that attempts to bring together the interests of all parties involved (Shachaf-Friedman, Timor, 2008; Timor, 2008).

Restorative justice raises another related component of recovery, according to positive victimology, that is, reconciliation and forgiveness (McCullough, 2000). Although it is challenging for victims to forgive their offenders (Maltby, Macaskill, Day, 2001), the study of forgiveness repeatedly presents the value for victims as they succeed, under appropriate conditions, to experience some degree of forgiveness (Flanigan, 1992; Kaminer, Stein, Mbanga, Zungu-Dirwayi, 2001). Forgiveness, by definition, is an inclusive practice. It might be the cornerstone of recovery programs designated for survivors of victimization (Freedman, Enright, 1996).

Early victimological literature indicated several categories of victims. Most of these typologies named weak individuals or groups as potential victims with woman, the young, the old and the mentally retarded being primary examples (Drapkin, Viano, 1974). However, Ben-David (2000) questions how much these observations do represent an objective? Positive victimology attempts to provide an answer by changing the way we look at victims: rather than emphasizing their weakness and risks, we attempt to appreciate their strengths and opportunities for growth. The event or process of victimization, which is usually a turning point in an individual's life, is viewed as a challenging process aspiring to end with a positive transformation that accepts the victimization, while gradually moves forward.

Conclusion

Following our presentation of positive victimology – still one might wonder-Is there a real need for defining positive victimology as a new perspective in victimology? One of the main arguments is seemingly lack of innovation. Is there a substantial need for a new term, for a discipline that already exists within the broad discipline of victimology? Another counterclaim is the question of whether we are distancing ourselves from the victim and true meaning of victimization by setting the focus on positive

objectives, while to some degree minimizing the negative experience and the impact it leaves behind?! There is still no definite solution to this potential criticism. However, we see a potential advantage in the association of existing components of a defined field to create a new whole that is bigger than the sum of its already known parts. Consequently, we assume that the definition of positive victimology, though encompasses existing theories, models and practices, places a stronger emphasis on the underlying perspective defined here as "positive", and thus creates a new whole with some unique characteristics. Future research is required to assert the accuracy and practice of these suggested assumptions.

To summarize, we briefly examined the primary steps taken to develop a new perspective extracted from victimology and positive criminology. Positive victimology is not a completely new discipline but a new perspective on successful healing components and theories borrowed from other academic worlds. It has emphasized the importance of providing a platform for victims to express their special, still positive, needs and possibilities. Positive victimology reaches out to the survivors of traumatic painful behavior and desires to assist them while using positive components as a main road in their journey towards rehabilitation and healing. We have no doubt that this pioneer perspective inspired to grow is in need of much more enforcement and practice to define it in a more accurate and territorial aspect. Its true authentic success could only be examined with time.

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Natti Ronel
Tyra Ya'ara Toren

Pozitivna viktimologija – Inovacija ili nešto staro?

Članak razmatra teorijski i praktični razvoj novog pravca pod nazivom Pozitivna viktimologija. Analizira se način konstruisanja svetova kakav nude pozitivna kiriminologija i pozitivna psihologija, a ove dve discipline razmatraju se pre svega kroz njihov značaj i doprinos osnivanju pozitivne viktimologije kao inovativne discipline u začetku. Ipak, kako je domen pozitivne viktimologije neka vrsta unapređenja već postojećih koncepata, potrebno je istražiti istinsku teoretsku i praktičnu potrebu za otvaranjem novog polja istraživanja, a istovremeno i proceniti koje su prednosti i mane kreiranja jedne potpuno nove sfere.

Ključne reči: pozitivna viktimologija, terminologija, disciplina.

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Pregledni rad

Limits to Tolerance: Tribal Social Order versus Human Rights

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In a globalized world, there are clear differences in ideologies that are usually not spelled out. The paper follows the approach prescribed by Ben David's "Victim's Victimology" (2000) and applies a classical approach to ideologies in social sciences by W.B. Miller (1973). The main subject of this paper is the difference between local order ideology and human rights ideology. The aim is to show that formal social control is determined or influenced by these different ideologies. The authors analyze four cases of victimization of women in different social settings , in Sudan (2012), Canada (2012), India (1985) and in Pakistan (2002). In all these cases the local order ideology clashes with a human rights ideology. Limits to tolerance must be clear.

Keywords: *ideology, social control, victimization, human rights.*

Introduction

One World, really?

Do we really live in a globalized "one world"? We have to believe the messages in the mass media – who does not most of the time? Who has the chance or possibility to control the veracity of their messages? Mass media create realities – (Barkhuizen, 2007). They created the world for us and described

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it. Mass media make us believe that our world is totally globalized. The authors contend that we live in multitude of "ideologies." Ideologies are held to be the cause of "Clash of Civilizations" (Huntington, 1996). The role of permanent talk about globalization is to cover up these diversities in ideologies.

The word "ideology" itself often has a negative connotation. Ideologies have become synonymous for political ideologies, be it a socialist or a conservative one. In reality, each of us has an ideology. The authors try to be aware of their own ideology. These ideological differences are usually silenced and consequently covered up. This paper tries to avoid such cover ups. The informational source of this paper is internet based. This form of mass media is very "fluid," and is exactly the kind of "globalized" information that should be challenged. During the analysis of these cases, the authors soon became aware that they could not "objectively" analyze these cases, as it is usually expected from academic research – the news evoked acute emotional charges.

Where do these emotional charges come from? To answer this poignant question, the authors consulted Walter B. Miller (1973) who analyzed the impact of ideologies in social sciences.

Emotions and Ideology in Social Science

Walter B. Miller (1973) defined "ideology" as a set of general and abstract beliefs or assumptions about the correct or proper state of things, particularly with respect to the moral order and political arrangements. They serve to shape positions on specific issues. Everyone has his/her ideology. Scientists have them as well. The social order and social control is based on ideologies. Ideologies are like a pair of sunglasses that we permanently use. They color what we see. They color how we interpret what we observe. They color how we react. Just like everyone else, victimologists rarely address their ideologies directly.

According to Miller, ideologies are generally pre-conscious. This is why people are seldom aware of them. Ideologies have three specific characteristics. (1) They are unexamined, (2) they carry emotional charges and (3) they are relatively stable.

Ideologies are unexamined presumptions underlying positions taken openly. Scientific articles are open statements. The background meanings of the open statements are used as "self explanatory and self understood". This is why they are usually not mentioned. It is commonly held that scientists

are interested in "neutral objectivity." It is therefore difficult to argue against differences in ideologies. Scientists are surrounded and molded by ideologies.

Ideologies have a strong emotional charge. This statement can be reversed: if we become emotional in our reactions, basic ideologies are often involved. The events to be discussed in this article do not allow for disinterested rationality. They clearly engage emotions.

This is not unusual for victimologists, as they cannot always stay neutral. We want to be conscious about our ideology, along with wanting the reader to be conscious of these reactions. In scientific work, usually we do not express our dismay, our shock and our horror. Even though we discipline our verbal reactions, our ideologies have strong emotional charge even if we hide them within scientific language.

Once they are established, it is almost impossible to change these ideologies. The reason for this is: these general presumptions serve to receive or reject new evidence. In a way, everyone exists in a self-contained and self-reinforcing system. We do not want to allow this system to be challenged. There is very little room for negotiations between the two diverse positions: convictions and beliefs which are against our ideology. They signal the end of tolerance. The limits of tolerance irritate our attempts to stay rational.

Conflicting Ideologies: "Individual Freedom" and "Local Order."

In this paper, the authors will argue that there is a Human Rights oriented ideology which contrasts local traditional religious social order ideology. It is impossible to let both sides stand side by side as equally valid positions. Our ideology allows us to take one position. We are challenged to reject the juxtaposed position. This is especially the case if we take notice of such contradictions in a presumably "globalized" world. We have to decide where and what we want to "tolerate" and what we want to reject.

The authors are assuming that the most of the readers share Human Rights oriented ideology which values freedom of the individual from superfluous oppressions and restrictions. Such ideology values choice and decisions as well as perceptions of alternatives from which we can choose. We are aware that "superfluous," "oppression" and "restriction" are terms loaded with ideology.

The concrete cases that will be presented confront us with two divergent ideologies: one is the "local order" ideology, traditional patriarchic (often) religious influenced basic belief systems about the "correct and proper" state of things (see Miller 1973 above). In the literature it is often called "Local Culture." We prefer "Local Order" since the realization of this local order ideology is coupled with power and control. This ideology is enforced powerfully and – since it does not care about individual decisions about right or wrong – it victimizes.

The local order ideology assigns the right and the duty to control female (sexual) behavior and to correct transgressions. The control is in the hand of men. Females are regarded as one of the highest good in these cultures. However, at the same time, the "highest good" pays the highest price when her individual behavior clashes with traditional local religious and tribal perceptions of the right "order." The informal and the formal systems of social control often defend the traditional orders. Individual human rights represent another ideology that is more clearly expressed in Western social systems. There is no room for adherence to traditional male oriented social control – victim's victimology and human rights orientation are very close together.

Victimological perspectives on four cases

The authors look to four cases as victimologists and interpret them. The cases serve to illuminate the different positions towards individual rights. The first case illustrates the clash between individual rights and traditional local order in justice. Modern "Western justice" is the base of the second case: Individual rights limit fundamentally the validity of traditional social orders. The two further cases deal with the rights of women in fundamentally group oriented social orders. The repeated juxtapositions of traditional group orientation and individual human right orientation leads the authors to maintain that there are limits to multiculturalism and tolerance.

The Darfur Rape (2012)

In a rural district in South Darfur, four men and four women were sentenced to death for the rape of an eighteen years old Darfurian woman. The death sentence was executed eleven days after the rape (Hands off Cain, 2012a., Radio Dabang, 2012).

a) The event

On the 12th of January, four men approached the parental house of the young woman, pretending to be arresting her. Unknown to the family and the victim, they were hired to rape the young woman by a group of four women who paid each of the man 50 Sudanese dollars. The four men took the victim away. Three hours later she reappeared in her father's house. She was raped. Her hair was shaven off. The father reported the rape to the police. The event soon became public by the local radio. The police identified the four men and a fifth "helper." Pressurized by an "angry Arab community" – according to the news – the police immediately involved the local court. The raped woman confessed that she had a sexual intercourse with the man who promised to marry her. This enraged one of the women, the wife of the man, and she therefore "organized" the revenge.

Eleven days after the rape, four men and four women were sentenced to death. A fifth man, who allegedly was a policeman, was sentenced with five years of imprisonment for shaving the victim's head. The 18 year old woman was sentenced to be lashed 100 times for "inappropriate sexual relations." The sentence against her was executed.

b) A victimological approach

Victimological analysis should place the victim in the center of considerations – Ben David calls this "Victim's Victimology" (Ben David, 2000). This aspect structures the analysis: authors do not focus on the unacceptable fact that eight persons are sentenced to death – and if it is only for the extremely short time after the crimes were committed (12 January offence, 29th of January death penalty handed down and lashing of the victim). The authors follow Ben David's approach: the victim is placed in the center of the analysis: she is raped by four men, and in addition to this, the judge has her

lashed 100 times for "inappropriate" sexual relationships with a married man! (Note that the man is not lashed!) The young woman must have experienced this rape as a terrifying attack on her life, on her honor, on her sexual self determination. In addition, she must have suffered extremely: after being raped, her hair was shaved. This is a visible stigma for the woman, a sign of dishonor and social exclusion: in Muslim societies, women mostly cover their heads with scarfs to hide their beauty from other men in the society. In certain South Asian Hindu cultures, widows are socially devalued and excluded. This exclusion and devaluation is made visible by forcing them to shave their heads (Godavari, 2000).

As if she is not destroyed enough by what happened to her: the victim is sentenced to be lashed 100 times. It sounds fully inacceptable: but it is indeed an "official" reaction. It is indeed the application of law: in a UN Report we read that raped victims may be accused of having consensual sex before marriage or committing "zina" (adultery) in violation of the Sudanese Penal Code (article 152, see Ertuerk, 2004 p.3). The sentence of 100 lashes of the victim is executed in a rural community – and that most probably means that adequate medical help – if the victim survives the punishment – is not available. A sentence of 100 lashes might come close to a death sentence.

c) Limits of tolerance

Most readers will be shocked with this story. Victimologists have difficulties in understanding what the authors described. Human Rights oriented victimologist in modern democracies are not aware of the meaning of difference in "cultures." It is the basic discrepancies between different ideologies that leave the authors so clueless. They confront the limits of tolerance. The authors are aware that there are cultures and social orders that do not value individual human rights higher than local orders.

Some societies are labeled "multicultural." The minimal meaning of this is: they are inhabited by people from different heritages, ethnics, cultures, casts, or religions. These different groups are addressed by the term "local cultures." The authors prefer to call these "local orders." The term "multi-cultural" is open to many interpretations: How to find order in these multifaceted cultures? How can multicultural countries be setting limits to an endless tolerance? For the authors this is evident: there must be a guiding culture, there must be a measuring rod that tells the members of society who is right and who is

wrong. The emphasis on this "limit of tolerance" is needed. If we do not do that, we have to accept each and every form of social control. Accepting every "cultural" form of social control, the authors are convinced that this is not a victimologically sound approach. The measuring rod that has to be applied, are individual human rights.

This measuring rod is clearly demonstrated by the Canadian "Shafia" case we analyse next.

The "Shafia" case

While this essay was written in January 2012, Justice Robert Maranger in Canada told an Afghanistan-born family that they adhered "completely twisted concept of honor… that has absolutely no place in any civilized society." (The Shafia case, see CTV, 2012). Very different from the described Darfur rape case, the Canadian sentence was found "after a grueling 10-week trial" (Canadian TV, 2012). The court in Toronto/Canada found three Afghan immigrants guilty of killing four young female members of the family for the three believed their victims had dishonored the family by defying its strict rules on dress, dating, socializing and using the internet. As a punishment for these transgressions against their fundamental ideology, the three older family members murdered with the intent to restore family dignity after the women's perceived rebellious behavior.

In a world that fancies itself as being globalized we must draw clear lines: in multi-cultures there is nevertheless a leading order. Multi-cultures must determine where the limits of tolerance are to be drawn. The leading individual human rights oriented order must express itself clearly, against tribal traditional motivated killings of women.

The language of the Canadian judge is strong and clear. The authors believe that most victimologists would share the opinion of the Canadian judge. This corresponds with the ideology of "victim's victimology."

The Sha Bano (1985) verdict and its consequences

Shah Bano, 73 years old, after fourty three years of being married, claimed wife support after she was divorced by her husband according to Muslim RULE. According to the Muslim Personal Law, a woman is entitled to receive monthly alimonies from her (former) husband during the first three months

after the divorce. Shah Bano claimed wife support for a period longer than 3 months. Her claim was rejected. On her appeal, the Supreme Court sentenced the ex-husband to pay a monthly sum for support: according to the Indian state law, a woman is entitled to receive wife support. Consequently, the Supreme Court sentenced the ex-husband to pay monthly support (Ahmad Khan v. Shah Bano Begum AIR 1985 SC 945).

That decision created a public uproar, stirred by Muslim clerics. They regarded the decision of the Supreme Court as a sign of an unacceptable trend to absorb Muslim minority into the main Hindu culture. They claimed it would weaken the Muslim identity in India. The campaign was finally successful: one year after the Supreme Court's decision, the Indian parliament succumbed to the pressure of conservative Muslim clerics: it overruled the court's decision and enacted the "Muslim Women's Protection of Rights of Divorce Act." Despite its conspicuous name, the Act removed the right of the Muslim women to appeal to a secular court of law for maintenance in the post-divorce period.

While the Indian constitution adheres the modern ideology of individual rights, the local ideology is a conservative and patriarchal (often religiously motivated) ideology. This ideology was finally victorious in the case of Shah Bano. The authority of the local community was upheld.

The case of Mukhtar Mai 2002

The rights of local communities to sort out their own affairs led to the famous case of Mukhtar Mai (Taseer 2011, New York Times 2009).

a) The event

In June 2002, a fourteen year old boy was falsely accused and brought before the village's tribal council, the panchayat. The allegations were that he had sexual relationships with a higher status (higher cast) woman. The village's tribal council ordered that his sister was to be raped by four men in order to be punished for the alleged crime of the boy. It was obviously not difficult to find executioners – in a way, the whole village participated in this execution by chasing the nude young woman through the village after she was publicly raped.

b) The long term consequences

Obviously this "sentence" had the function to dishonor the victim. Obviously it was expected that the raped victim would commit suicide or in another way ensure that the traditional concept of honor and proper behavior was upheld.

However, the victim did not give in to local customs. She stood up against the local customary council, a position that was honored by the Pakistani President (Kristof 2004). However, this decision of the president did not influence the final outcome of the criminal case: it lingered in the Pakistan justice system till 2011. Then, almost ten years after the rape, the Supreme Court (Special Shariat Branch) decided to acquit four men (Masood, 2011): the court did not find enough evidence – very difficult to understand – after all, most villagers saw and participated passively in the victimization of Mukhtar Mai. In an interview with Taseer (2011), the young woman describes her disappointment. She states that she had lost any trust in justice. This is how her reaction is described.

Obviously this interpretation is influenced by a human rights oriented ideology. She has obviously been very successful in mobilizing support of people that adhere to the Human Rights oriented ideology.[1] The consequence of this ruling of the highest court is a reinforcement of the local order – the same situation as in the previous Indian case.

In our context, it is important to realize that obviously the traditional ideology in the long run is stronger than individual rights influenced thinking. The traditional ideology is reinforced by such an acquittal. For those who share the Human Rights ideology, such an outcome is truly disquieting and not acceptable.

Conclusion

According to the authors, consequences of the Canadian verdict in the Shafia case are much more acceptable and convincing than decisions made in other cases. Our human rights ideologies often make it impossible to really understand and appreciate the solutions in traditional rural, tribal, male

[1] http://michaelthompson.org/mai/

oriented backward societies. It will be impossible to argue for amelioration or adjustment. It is not acceptable that the other side argues on the base of a family-group oriented ideology. It is simply a question of social control. It is not the question of rationally being right or wrong, but the question of what will guide our social actions, our social control. If immigrants want to live in their new country, they must follow the basic ideology which prevails there. If their principles of conviction really clash with the principles and ideology in the accepting society, then they must find another society were their convictions are respected. This is not the case to argue for more tolerance. Contradicting ideologies cannot be activated in a society – social control must have a direction. For ideological reasons, we cannot live together in one society with people who have a different ideology and who claim to have the right to let this different ideology guide their action. Judge Maranger's clear sentences are appreciated.

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Gerd Ferdinand Kirchhoff
Nazia Khan

Granice tolerancije: Plemenski društveni poredak protiv ljudskih prava

U globalizovanom svetu postoje jasne razlike u ideologijama koje obično nisu izrečene. Članak prati pristup Ben Dejvidove (Ben David, "Victim Victimology," 2000) i primenjuje klasičan pristup ideologijama u društvenim naukama V. B Milera (W. B. Miller, 1973). Glavna tema ovog članka je razlika između ideologije lokalnog društvenog poretka i ideologije ljudskih prava. Cilj je da se pokaže da je formalna društvena kontrola determinisana ovim različitim ideologijama. Autori analiziraju četiri slučaja viktimizacije žena u različitim društvenim kontekstima: u Sudanu (2012), Kanadi (2012), Indiji (1985) i u Pakistanu (2002). U svim ovim slučajevima ideologija lokalnog društvenog poretka sukobljava se sa ideologijom ljudskih prava. Granice tolerancije moraju biti jasno postavljene.

Ključne reči: ideologije, društvena kontrola, viktimizacija, ljudska prava.

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Razvoj savremenog koncepta restorativne pravde: ka većoj vidljivosti žrtava kriminaliteta

Sanja Ćopić*

Savremeni koncept restorativne pravde oživljava krajem šezdesetih i početkom sedamdesetih godina XX veka, u momentu kada su represija i socijalna isključenost počele da pokazuju svoje nedostatke. On je ponikao na kritici klasičnog krivičnopravnog odgovora društva na kriminalitet, koji oduzima moć i žrtvi i učiniocu, posebno zanemarujući žrtvu i minimizujući njenu ulogu u postupku. I dok je u represivnom diskursu akcenat na krivičnom delu i kazni, u restorativnom je akcenat na odnosu među stranama koje su uključene u krivični događaj, koje stoga treba da imaju aktivnu ulogu u nalaženju rešenja za nastalu situaciju. Polazeći od toga, ne čudi što su na razvoj savremenog koncepta restorativne pravde poseban upliv imala učenja, koncepti i pokreti koji su bili fokusirani na žrtvu, njena prava i položaj. Imajući to u vidu, u radu se razmatra uticaj koncepta „konflikt kao svojina", viktimologije, pokreta za restituciju, pokreta za prava žrtava i feminističkog pokreta na razvoj savremenog koncepta restorativne pravde, ali i mogući povratni uticaj koji restorativna paradigma može da ima na njih.

Ključne reči: *restorativna pravda, žrtve, vidljivost i aktivitet žrtava.*

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Pisanje rada nastalo je u okviru projekta Instituta za kriminološka i sociološka istraživanja br. 47011 *Kriminal u Srbiji: fenomenologija, rizici i mogućnosti socijalne intervencije,* koji finansira Ministarstvo prosvete i nauke Republike Srbije, rukovodilac projekta je prof. dr Vladan Joldžić. Osnov ovog rada je jedan deo doktorske disertacije pod nazivom *Restorativna pravda i krivičnopravni sistem,* koju je autorka odbranila 2010. godine na Pravnom fakultetu Univerziteta u Nišu, a koji je za potrebe rada izmenjen, dopunjen i prilagođen.

Uvod

Tokom protekle dve decenije, uporedo sa jačanjem represivnih mehanizama reagovanja na kriminalitet i retributivnog modela pravde, uočava se sve veće zalaganje za primenom različitih alternativnih, društveno zasnovanih odgovora na kriminalitet baziranih na principima restorativne pravde. Restorativna pravda je oživela u momentu kada su represija i socijalna isključenost počele da pokazuju svoje nedostatke, ogledajući se u smanjenoj sigurnosti, neprijatnostima i nezadovoljstvu rezultatima krivičnopravne reakcije, kako žrtava, tako i učinilaca, ali i samog društva (Walgrave, 2008: 1). Utoliko restorativna pravda predstavlja dinamičan proces vraćanja odnosa narušenog krivičnim delom u pređašnje stanje i umanjivanja štetnih efekata prouzrokovanih krivičnim delom, uz aktivno uključivanje svih zainteresovanih strana: žrtve, učinioca i zajednice. Stoga u konceptu restorativne pravde težište reakcije nije na kažnjavanju učinilaca i odmazdi, što odlikuje represivni diskurs, već na naknadi štete i popravljanju odnosa narušenih krivičnim delom. Utoliko restorativna pravda predstavlja holistički pristup kriminalitetu: to je model koji se bavi učiniocem i njegovim prihvatanjem odgovornosti kako za štetu/povredu koju je naneo krivičnim delom, tako i za njeno popravljanje, stavljajući u fokus žrtvu, ali uz istovremeno uključivanje društva, i to kroz lokalne zajednice koje brinu za učinioca i žrtvu (više u: Ćopić, 2010).

Restorativna pravda, kako navode brojni autori, ima dugu istoriju (Gavrielides, 2005: 3, Morris, 2003: 470, Mrvić-Petrović, 2001: 156, Braithwaite, prema Daly, 2003: 366, Weitekamp, 1996: 99-121, Christie, 1977), pa ona ne predstavlja potpuno novu paradigmu, već vraćanje na obrasce koje su u odgovoru na neprihvatljiva ponašanja koristila mnoga društva u ranim fazama svog razvoja (Driedger, 2001: 318). Pa ipak, istorijski razvoj koncepta restorativne pravde izaziva brojne polemike. Međutim, zbog ograničenog prostora u ovom radu se neće ulaziti u dublju analizu razvoja koncepta restorativne pravde kroz istoriju, jer to zahteva produbljeno i kritičko sagledavanje odnosa restorativne i retributivne pravde, već će fokus biti samo na razvoju savremenog koncepta restorativne pravde.

Razvoj savremenog koncepta restorativne pravde vezuje se za kraj šezdesetih i početak sedamdesetih godina XX veka, odnosno vreme kada krivičnopravni odgovor na kriminalitet, koji ignoriše i zanemaruje žrtve krivičnih dela, fokusirajući se na učinioca i izvršeno delo, dolazi pod udar kritike (Weitekamp, 2000: 102). Stoga ne čudi što su na razvoj restorativne pravde posebno snažan

upliv imali pokreti, koncepti i učenja koja su u fokusu imala žrtvu. Tako su na razvoj restorativnih mehanizama reagovanja posebno uticale ideje „pokreta za neformalnu pravdu", a naročito koncept „konflikt kao svojina", koji je razvio norveški kriminolog Nils Christie; potom, razvoj viktimologije, kao i pokret za restituciju, pokret za zaštitu žrtava i feministički pokret. Polazeći od toga, cilj ovog rada je da ukaže na njihov doprinos razvoju koncepta restorativne pravde, kao i na to da li i na koji način razvoj restorativnih mehanizama reagovanja na kriminalitet deluje povratno na njih.

Koncept „konflikt kao svojina"

Posmatrano sa sociološkog aspekta, represivni sistem reagovanja na kriminalitet nije u stanju da razreši društvene konflikte, odnosno, on društvene konflikte transformiše u pravne, podvodeći određena ponašanja pod pojam krivičnog dela (Hagemann, 2003: 221). Utoliko se u retributivnom diskursu krivični događaj ne sagledava kao konflikt između učinioca i žrtve, već kao odnos između učinioca, koji narušava ravnotežu pravde, i države, koja svojim mehanizmima pokušava da je ponovo uspostavi. Polazeći od toga, norveški kriminolog Nils Christie razvio je koncept „konflikt kao svojina", kojim je postavio osnove diverzionog pristupa reagovanju na kriminalitet. Suština ovog koncepta je u tome da krivično delo predstavlja konflikt, a konflikt je svojina onih koji su u njega, direktno ili indirektno, umešani: učinilac, žrtva i zajednica, te oni treba da budu ti koji će ga razrešiti, a ne profesionalci (pravnici), koji u tradicionalnom krivičnopravnom sistemu „kradu" konflikt od onih kojima zapravo pripada (Christie, 1977: 4). Drugim rečima, u klasičnom krivičnopravnom sistemu dolazi do premeštanja težišta od žrtve koja trpi posledice krivičnog dela, ka državi koja, uglavnom, obezvređuje žrtvu, njena osećanja, razmišljanja i stavove (Platek, 2006: 27). U takvom okruženju država je ta koja, preko profesionalaca, odnosno organa formalne socijalne kontrole, obezbeđuje monopol nad rešavanjem konflikta između pojedinaca, ali istovremeno zanemarujući te iste pojedince.

Vraćanje, pak, konflikta onima kojima pripada, pre svega, žrtvi i učiniocu, vodi većem uključivanju svih zainteresovanih strana u rešavanje problema nastalog krivičnim delom, boljem pristupu pravdi, deprofesionalizaciji, decentralizaciji i minimizaciji stigmatizacije i primene prinude. Drugim rečima, „participatorna pravda predstavlja bolji odgovor na kriminalitet jer je karakteriše

neposredna komunikacija onih koju su u konfliktu, a koja treba da dovede do kompenzacije" (Christie, 1981: 92). Pri tome, primarno mesto nema ishod (što je ujedno osnovna karakteristika krivičnog postupka oličena u formi kazne koja se izriče učiniocu), već okvir u kome se konflikt razrešava i proces traganja za najoptimalnijim rešenjem. Sam proces, pak, karakteriše inkluzija i davanje srazmerno jednakog prostora svim licima da na određeni način učestvuju u razrešenju nastale situacije.

Ovakvo shvatanje je u osnovi ideje koncepta restorativne pravde, koji počiva na shvatanju da je krivično delo primarno povreda ljudi, a tek sekundarno povreda pravnih normi, pa shodno tome, ljudi koji su najviše pogođeni određenim događajem (krivičnim delom) treba sami da odluče na koji način se treba baviti konkretnim problemom i nastalim posledicama (Johnstone, Van Ness, 2007: xxi). To je došlo do izražaja i u definisanju restorativne pravde u *Osnovnim principima UN o primeni programa restorativne pravde u krivičnim slučajevima* (2002): restorativna pravda podrazumeva sve programe koji su bazirani na *restorativnom procesu* i teže ostvarivanju *restorativnih ciljeva*. Restorativni proces podrazumeva uključivanje svih zainteresovanih strana - žrtve, učinioca i članova lokalne zajednice u rešavanje situacije nastale izvršenjem krivičnog dela i iznalaženje adekvatnih rešenja, kao što su posredovanje, pomirenje, rasprave i krugovi kažnjavanja. Restorativni ciljevi, pak, podrazumevaju postizanje sporazuma kao rezultata restorativnog procesa, uključujući naknadu štete, rad u korist zajednice i druge programe koji su osmišljeni tako da omogućavaju reparaciju za žrtve i zajednicu, i reintegraciju za žrtvu i učinioca. U ovoj definiciji naglasak je na participatornom procesu, koji je kreiran tako da dovede do željenih rezultata, a osobe koje učestvuju u takvom procesu, uključujući žrtvu, smatraju se strankama, što je jedna od suštinskih razlika u odnosu na krivični postupak.

Restorativna pravda i viktimologija

Bavljenje žrtvama kriminaliteta, odnosno proučavanje žrtve, njenih prava, položaja i zaštite dugo vremena je bilo zanemarivano, ostajući u senci proučavanja ličnosti delinkventa i njegovog kriminalnog ponašanja (Nikolić-Ristanović, 2001: 45). Tek sa razvojem viktimologije, posebno tzv. druge viktimologije (Konstantinović-Vilić, Nikolić-Ristanović, Kostić, 2009: 460), dolazi do većeg obraćanja pažnje na žrtvu kriminaliteta, koja počinje da se posmatra neza-

visno od uticaja koji ima na nastanak krivičnog dela i nezavisno od učinioca (Nikolić-Ristanović, 2001: 45). Drugim rečima, razvoj tzv. druge viktimologije je, kroz skretanje pažnje na položaj žrtve tokom krivičnog postupka, pružanje pomoći i podrške žrtvi, postupanje prema njoj i naknadu štete, doprineo većoj vidljivosti žrtava.

Međutim, i pored ovih zalaganja, kako primećuje Howard Zehr, krivičnopravni sistem ne radi u korist žrtava: one bivaju izložene sekundarnoj viktimizaciji, sistem im, kao i učiniocu, poriče moć koja im je već jednom, od strane učinioca oduzeta, a njihova uloga u postupku je minimizovana (Zehr, 1990: 33). U krivičnom postupku se posebno zanemaruje potreba žrtava da budu informisane o konkretnom događaju, toku postupka, dostupnim službama za podršku, da saznaju zašto se krivično delo dogodilo baš njima; mogućnost da žrtva ispriča svoju priču u vezi sa konkretnim događajem i izrazi svoja osećanja je ograničena; zanemaruje se osnaživanje žrtve, čime joj se praktično oduzima kontrola nad događajem, pa time i nad sopstvenim osećanjima. Tek vraćanjem kontrole u ruke žrtve ona može da bude osnažena, što je važno u daljem procesu oporavka. Najzad, zanemaruje se restitucija, i to ne samo u smislu naknade štete (materijalna satisfakcija), već, možda i više, u smislu simbolične reparacije kroz prihvatanje odgovornosti od strane učinioca za ono što se dogodilo i neokrivljavanja žrtve. Zato žrtve retko dožive osećaj pravičnosti i ostvarenje pravde kada se krivični slučaj rešava samo u okviru krivičnopravnog sistema (Zehr, 1990: 33).

Upravo na kritici tradicionalnog krivičnopravnog sistema i zalaganjima viktimologije za veće fokusiranje pažnje sistema na žrtve ponikao je koncept restorativne pravde. Tako restorativna pravda u fokus stavlja žrtvu, ali se u isto vreme ne orijentiše samo na nju i njene potrebe. U uspostavljanju ravnoteže između interesa i potreba žrtve i učinioca vidi se ključna vrednost restorativnog pristupa, dok su naknada štete žrtvi, popravljanje odnosa narušenih krivičnim delom, osnaživanje žrtve, podrška žrtvi i slično samo neki od ciljeva i vrednosti restorativne pravde, koji su, sa druge strane, u skladu sa viktimološkim učenjima i zalaganjima.

Pokret za restituciju i restorativna pravda

Tokom šezdesetih godina XX veka došlo je do oživljavanja pokreta za restituciju, što je imalo značaja za razvoj savremenog koncepta restorativne pravde. Jedan od utemeljivača ovog pokreta i njegovih glavnih zagovornika, Stephen Schafer, smatrao je da restitucija može ponovo da postane sredstvo kažnjavanja, bilo kao alternativa zatvaranju ili kao sporedna kazna uz kaznu lišenja slobode jer je era kompenzatorne pravde predstavljala „zlatno doba za žrtve" (Van Ness, Strong, 2002: 19). Pokret za restituciju bio je baziran na ideji da naknada štete može da bude krajnje adekvatna krivična sankcija jer je žrtva ta koja je krivičnim delom povređena, oštećena, te postoji potreba za sankcijama koje će voditi njenom zadovoljenju. Pristalice ovog pokreta u restituciji vide i mogućnost za rehabilitaciju učinioca. Najzad, njena primena može da vodi smanjenju osvete i retributivnog odnosa kada javnost shvati njenu suštinu, a to je da učinilac aktivno učestvuje u popravljanju štete koju je žrtvi naneo izvršenjem krivičnog dela.

Korak dalje u razvijanju ideje restitucije učinili su Abel i Marsh, koji su razvili model prema kome zatvaranje učinilaca predstavlja krajnje sredstvo reagovanja na kriminalitet, koje se primenjuje samo u slučaju lica koja predstavljaju posebnu opasnost za društvo (prema Van Ness, Strong, 2002: 19). Prema njihovom shvatanju, većina učinilaca krivičnih dela bi trebalo da ostane na slobodi, pod različitim oblicima nadzora, da radi i nadoknadi štetu. Međutim, čak i licima kojima je izrečena kazna lišenja slobode treba dati mogućnost ili čak predvideti obavezu da rade, zarade i nadoknade štetu koju su žrtvi prouzrokovali. Još radikalniji stav izneli su Barnett i Hagel, prema kojima krivično pravo treba da bude abolirano i zamenjeno građanskim pravom, te da restitucija čini novu paradigmu pravde, koja je povoljnija i prihvatljivija u odnosu na krivičnopravni sistem i pokušaj ostvarivanja pravde unutar njega (prema Van Ness, Strong, 2002: 19).

Ove ideje su uticale na razvoj restorativne pravde, koja, kao što je naglašeno, nije usmerena na kažnjavanje i osvetu, već na naknadu štete i popravljanje odnosa narušenih krivičnim delom, što je ujedno i jedan od osnovnih principa na kojima koncept restorativne pravde danas počiva.

Uticaj pokreta za zaštitu žrtava na razvoj restorativne pravde

Uporedo sa razvojem tzv. druge viktimologije, tokom sedamdesetih godina XX veka dolazi do iniciranja pokreta za zaštitu žrtava. Pri tome, kako navodi Goodey, dok se razvoj (akademske) viktimologije odnosio na istraživanja i teoriju, pokret za zaštitu žrtava bio je više povezan sa stremljenjima u pogledu pružanja pomoći i podrške žrtvama (Goodey, 2005, prema Green, 2007: 172). Polazeći od toga da su uloga, položaj i prava žrtava krivičnih dela u klasičnom krivičnom postupku ignorisani, zanemareni i marginalizovani, pokret za zaštitu žrtava izniče na tri osnovne premise: povećati broj i vrstu usluga koje se pružaju žrtvama nakon krivičnog dela, povećati mogućnost za kompenzaciju i reparaciju, i proširiti mogućnost intervenisanja žrtve tokom postupka, odnosno poboljšati njen položaj u krivičnom postupku.

Uticaj i značaj pokreta za zaštitu žrtava ogleda se u uvođenju kompenzacije od strane učinioca i od strane države u brojna zakonodavstva počev od sedamdesetih godina XX veka. Dolazi do izvesnog poboljšanja položaja žrtava u krivičnom postupku, na primer, kroz uvođenje izjave koju žrtva daje u pogledu uticaja krivičnog dela na nju i njenog viđenja odnosa pravosudnih organa prema učiniocu (tzv. *victim impact statement*), obezbeđivanje zaštite žrtava od sekundarne viktimizacije, uspostavljanje standarda za obaveštavanje žrtava o toku postupka, puštanju osuđenog na slobodu i slično. Pod uticajem pokreta za zaštitu žrtava, krajem šezdesetih i početkom sedamdesetih godina XX veka dolazi do osnivanja prvih službi za pomoć i podršku žrtvama kriminaliteta.

Imajući to u vidu, sasvim je jasno da je pokret za zaštitu žrtava, koji je težio većem fokusiranju javnosti i krivičnopravnog sistema na žrtve krivičnih dela, njihova prava i položaj, imao značajan uticaj na razvoj koncepta restorativne pravde. Jer, restorativna pravda i jeste ponikla na potrebi drugačijeg odnosa prema žrtvama u okviru postojećeg (krivičnopravnog) sistema. Jedan od ključnih ciljeva restorativne pravde je osnaživanje žrtve i davanje žrtvi mogućnosti da se čuje njen glas i da ona bude prepoznata, priznata i poštovana, kao i da aktivno učestvuje u procesu traganja za najadekvatnijim načinom rešavanja situacije nastale izvršenjem krivičnog dela, dakle, upravo ono na čemu pokret za zaštitu žrtava insistira. Stoga ne čudi što je evropska organizacija službi za žrtve *Evropska podrška žrtvama* 2005. godine usvojila Dokument o položaju žrtve u procesu posredovanja, u kome je navedeno da nijedan program ne bi

trebalo označiti kao restorativan ukoliko nije primarno orijentisan na pomoć žrtvi da se oporavi od preživljene viktimizacije.[1]

Značaj feminističkog pokreta za razvoj restorativne pravde

Feminizam, kako navodi Kay Harris, predstavlja skup vrednosti, verovanja i iskustava, odnosno, način gledanja na svet, koji ne znači samo zalaganje za prava žena, već nudi daleko širu viziju (Harris, 2003: 33). I pored razlika u određivanju feminizma, uočava se postojanje nekoliko osnovnih vrednosti kojima se teži, pa feminizam počiva na tri ključne premise: svi ljudi imaju svoje dostojanstvo i jednako vrede kao ljudska bića, harmonija i sreća, odnosno, odnosi među ljudima su važniji od moći i posedovanja, i personalno (lično) je političko, odnosno, isti principi treba da kanališu odnose u privatnoj sferi i u javnom diskursu (French, 1985, prema Harris, 2003: 33). Na taj način, u prvi plan se stavljaju pojedinci i individualni odnosi, ali se ne zanemaruje značaj zajednice u kojoj se odnosi među pojedincima uspostavljaju. Uz to, ističe se potrebe za jednakim odnosom prema individuama kako u javnoj, tako i privatnoj sferi. Zalaganja feministkinja stoga ne idu ka iznalaženju načina na koji bi mogao da se eliminiše kriminalitet u društvu, već teže pronalaženju načina postupanja koji bi ispunili navedene vrednosti i obezbedili harmoniju u zajednici, a ne bi vodili daljoj represiji i pojačanoj kontroli.

Jedna od osnovnih vrednosti feminizma, koja doprinosi razvoju koncepta restorativne pravde ogleda se u tome što se apostrofira potreba da pojedinci, grupe i društvo kao celina prihvate daleko veću odgovornost za prevenciju i smanjenje uslova, vrednosti i struktura koje proizvode nasilje, kriminalitet i konflikte. S tim u vezi je i ideja o potrebi decentralizacije moći i stalnog preispitivanja akcija, praksi i pretpostavki, koje veličaju moć, kontrolu i dominaciju, te iznalaženje alternativnih okvira postupanja. Ono što je osnovno jeste jednakost, a ona, pak, označava težnju za interakcijom koju treba da karakterišu participacija, demokratičnost, saradnja i inkluzija, što se i nalazi u osnovi restorativne pravde. U pogledu reagovanja na nekomformistička, pa i kriminalna ponašanja pojedinaca, vrednosti feminizma upućuju na to da ograničavanje slobode ima daleko manje veze sa zgradama i zidovima, a mnogo više sa ljudskim kontaktima i odnosima (Harris, 2003: 38). Zato se neophodnim

[1] Dokument o položaju žrtve u procesu posredovanja, *Temida* (2006), br.1, str. 49-54.

čini uspostavljanje takvih oblika reagovanja koje bi karakterisali saosećajnost, konstruktivnost i briga za pojedince. Zalaganja feministkinja tako idu u pravcu nereagovanja zlom na zlo, već traženja oproštaja, pomirenja i oporavka, što jesu neke od ključnih ciljeva i/ili vrednosti koncepta restorativne pravde.

Kada se govori o odnosu feminizma i restorativne pravde, posebna pažnja se poklanja pitanju primene restorativnog pristupa u reagovanju na rodno zasnovano nasilje. S tim u vezi nailazi se na različite, čak i krajnje oprečne stavove: od onih prema kojima je primena restorativne pravde moguća, čak i poželjna, zbog težnje za iznalaženjem manje punitivnih i stigmatizirajućih odgovora države na ovu vrstu kriminalnih ponašanja (Daly, Stubbs, 2006), preko onih koji pokazuju određenu dozu rezerve i skepticizma, do onih koji u potpunosti odbacuju mogućnost reagovanja restorativnim mehanizmima na ove forme nasilja nad ženama, argumentujući to prevashodno odsustvom bezbednosti i zaštite žrtava. Ključna kritika primene restorativne pravde u slučajevima rodno zasnovanog nasilja bazira se na shvatanju da ako se „ozbiljna krivična dela ne tretiraju ozbiljno, učiniocu se šalje pogrešna poruka" (Daly, Stubbs, 2006: 17). Drugim rečima, primena restorativne pravde u ovim slučajevima može da vodi „privatizaciji" muškog nasilja nad ženama, a feministkinje su se dugi niz godina borile da upravo ova vrsta nasilja izađe iz sfere „privatnog" i uđe u sferu javne, državne reakcije. Restorativna pravda, pak, „omogućava da napredak postignut na tom planu bude umanjen zato što dozvoljava da se o takvim zločinima raspravlja na privatnim sastancima, gde žene mogu biti dodatno viktimizirane zbog nemogućnosti da se izbegne neravnoteža moći" (Kostić, 2005: 47). Utoliko se kao glavni argumenti protiv primene restorativne pravde u slučajevima rodno zasnovanog nasilja navode: neravnoteža moći između žrtve i nasilnika koja može da ugrozi dinamiku procesa i dolaženje do restorativnih ishoda; položaj žrtve u restorativnom procesu i pitanje njene bezbednosti i zaštite; minimizacija i tolerisanje muškog nasilja nad ženama i njegova „dekriminalizacija", i diskutabilnost ostvarivanja ciljeva restorativnog procesa, tj. neproporcionalnost i ohrabrivanje pogrešnih vrednosti (Daly, Stubbs, 2006, Nancarrow, 2006, Konstantinović-Vilić, Kostić, 2006, Morris, Gelsthorpe, 2003). Sa druge strane, pak, pristalice primene restorativne pravde u slučajevima rodno zasnovanog nasilja kao jedan od ključnih argumenata za to navode neuspeh postojećeg krivičnopravnog sistema u zaustavljanju nasilja (Hudson, 2002: 622, Gaarder, Presser, 2006) i izlaganje žrtava reviktimizaciji i sekundanoj viktimizaciji. Stoga se kao osnovni argumenti u prilog primeni restorativne pravde navode: obezbeđivanje aktivnog učešća žrtve; vrednovanje žrtve i prihvatanje odgovornosti od strane učinoca; komunikacija i fleksibilnost naspram rigidnosti i formalizmu krivične procedure; podržava-

juće okruženje i popravljanje odnosa (Daly, Stubbs, 2006, Coker, 2006, Cook, 2006, Konstantinović-Vilić, Kostić, 2006).[2]

Zaključak

Restorativna pravda je, posebno tokom devedesetih godina XX veka, postala sinonim za čitav niz neformalnih (tradicionalnih) procesa ostvarivanja pravde (Roche, 2003: 6). Međutim, nju ne treba posmatrati kao pokret koji teži deinstitucionalizaciji odgovora na kriminalna ponašanja, već kao pokret koji za cilj ima reformu postojećeg sistema državnog reagovanja na kriminalitet (Blad, 2006: 93). Restorativna pravda je pristup koji teži vraćanju pravde u društvenu zajednicu. Ona potencira aktivno učešće, popravljanje štete i reintegraciju kako učinioca, tako i žrtve, što su osnovni principi na kojima ovaj koncept počiva, a koji ga razlikuju od tradicionalnog krivičnog postupka. Utoliko restorativna pravda nastoji da od onih koji su u krivičnopravnom sistemu posmatrači, posebno žrtve, načini aktivne učesnike. Restorativni procesi omogućavaju žrtvama da neposredno učestvuju u rešavanju situacije nastale krivičnim delom, da dobiju odgovore na pitanja u vezi sa krivičnim delom i učiniocem, da iznesu svoj doživljaj uticaja dela na njih same, da im šteta bude nadoknađena ili popravljena, da im se učinilac izvini, kao i da, kada je moguće, poprave odnos sa njim (UNODC, 2006: 17). Aktivno uključivanje žrtve u dijalog i proces iznalaženja rešenja za nastali sukob, pak, doprinosi povraćaju osećaja sigurnosti i dostojanstva, osnaživanju, osećaju da je pravda zadovoljena, kao i dobijanju društvene podrške. Drugim rečima, ključne vrednosti restorativnog procesa su: poštovanje, saradnja, osnaživanje i dobrovoljnost (Raye, Roberts, 2007: 217), što u mnogome nedostaje u klasičnom krivičnom postupku, posebno kada se posmatra položaj žrtve.

Imajući to u vidu, može se zaključiti da je uticaj koncepta koji je razvio Nils Christie, kao i viktimologije, pokreta za žrtve, pokreta za restituciju i feminističkog pokreta na razvoj savremenog koncepta restorativne pravde i njegovo veće fokusiranje na žrtve nesumnjiv i svakako značajan. Restorativna pravda je ponikla na kritici konvencionalnog krivičnopravnog sistema, koji posebno zanemaruje žrtvu. Sa druge strane, koncepti, učenja i pokreti analizirani u ovom radu, kroz afirmisanje principa aktivne participacije, poštovanje prava žrtava i popravljanje/naknadu štete pričinjene krivičnim delom, zalažu se za poboljšanje ukupnog položaja žrtava, što se i postiže kroz različite programe

[2] Više o ovim argumentima videti u Ćopić, 2010.

restorativne pravde.[3] Međutim, pitanje koje se nameće je da li dalji razvoj resotrativne pravde može povratno da utiče na razvoj viktimologije, pokreta za žrtve ili feminističkog pokreta. Odgovor je svakako pozitivan, pa se može govoriti o dvosmernom uticaju. Fokusiranje na žrtvu, povećanje njene vidljivosti i davanje žrtvi aktivne uloge u restorativnim procesima, otvara novo polje za empirijska istraživanja, teorijska promišljanja i zalaganja.

Tako je, na primer, potrebno sprovoditi redovna istraživanja položaja i uloge žrtve u restorativnim procesima, nivoa poštovanja njihovih prava, zaštite, kao i nivoa zadovoljstva žrtava restorativnim procesom i njegovim ishodom. U protivnom, postoji opasnost da se restorativni proces preobrazi u svoju suprotnost, odnosno da se dođe u situaciju da se „neki retributivni i punitivni programi jednostavno prepakuju u restorativne" (Zehr, Mika, 1997: 49), što može da ima negativne posledice po položaj žrtve. Ili, ukoliko se prikloni stanovištu da je primena restorativne pravde u slučajevima rodno zasnovanog nasilja moguća, čak i poželjna, onda to otvara novo polje za praćenje položaja žena žrtava rodno baziranog nasilja u restorativnim procesima, kako bi se sprečila „privatizacija" muškog nasilja nad ženama i kako bi se doprinelo boljoj zaštiti žrtava tokom ovih procesa.

Imajući sve to u vidu, može se reći da je razvoj savremenog koncepta restorativne pravde značajan korak ka većoj vidljivosti žrtava, njihovoj aktivnoj ulozi u razrešenju situacije nastale krivičnim delom i zadovoljenja njihovih potreba. Jer, kako pokazuju rezultati pojedinih istraživanja, odnosno evaluacija nekih restorativnih programa, kao što je posredovanje između žrtve i učinioca, ono što žrtve (i od tradicionalnog krivičnopravnog sistema) žele je mogućnost da izraze svoja osećanja, da budu saslušane, priznate i poštovane, kao i da njihova mišljenja/stavovi budu uzeti u obzir prilikom donošenja odluke, a da ne budu tretirani samo kao svedoci, odnosno, puki izvori dokaza (Wemmers, Cyr, 2003: 6-9). Na tim postavkama počivaju koncepti, učenja i pokreti o kojima je bilo reči u ovom radu, pa se može zaključiti da su oni imali zaista snažan upliv na razvoj restorativne pravde, ali i da razvoj restorativne pravde povratno utiče na njihov dalji razvoj, te kanalisanje novih istraživanja, teorijskih promišljanja i zalaganja.

[3] Više o tome videti u Ćopić, 2010.

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Sanja Ćopić

Development of the contemporary concept of restorative justice: towards increased visibility of crime victims

Contemporary concept of restorative justice emerged at the end of 1960s and the beginning of 1970s, at the time when repression and social exclusion stared to show their lacks. Restorative justice has emerged on the critics of the conventional criminal justice response to crime, which denies the power to both the victim and the offender, and particularly neglecting a victim and minimizing his/her role in the procedure. While the accent of the repressive discourse is on the crime and punishment, restorative discourse is focused on the relationship between parities involved in a criminal case, who should actively participate in the process of finding out adequate solution of the problem arose from the criminal offence. Keeping that in mind, it is quite obvious that theoretical knowledge, concepts and movements that are focused on victims, their rights, legal and overall position had the strongest impact on the development of restorative justice. Taking that as a departure point, the impact of the "conflict as property" concept, victimology, movement for the restitution, movement for victim's rights, and feminist movement, on the development of a contemporary concept of restorative justice is analyzed in this paper, and vice versa.

Keywords: restorative justice, victims, victim's visibility and agency.

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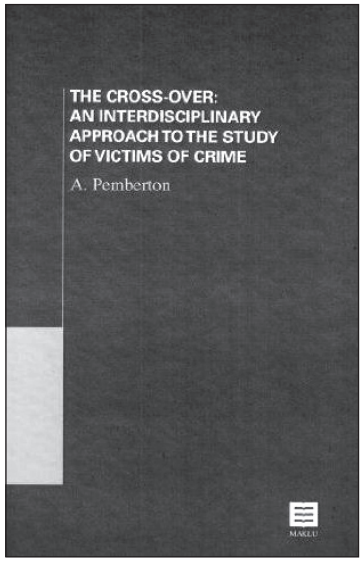
Anthony Pemberton

The Cross-Over: An interdisciplinary Approach to the Study of Victims of Crime

(Ukrštanje: Interdisciplinarni pristup proučavanju žrtava kriminaliteta)

Maklu-Uitgevers, Apeldoorn, Antwerpen, Portland, 2009, str. 236



Anthony Pemberton, vanredni profesor i istraživač Međunarodnog viktimološkog instituta Univerziteta u Tilburgu i stručni konsultant Evropske komisije, svoju je karijeru posvetio izučavanju žrtava različitih krivičnih dela, naročitu pažnju posvećujući njihovom položaju u krivičnom postupku. Ovaj stručnjak za prava žrtava, socijalnu psihologiju viktimizacije, restorativnu pravdu i viktimizaciju u političkom kontekstu i u ovoj knjizi koristi pristupe različitih disciplina (političkih nauka, socijalne i kliničke psihologije, kriminologije, pravne filozofije i krivičnog prava) oslanjajući se prvenstveno na teorijske koncepte, a nastojeći da čitaocima predstavi kompleksnost fenomena žrtve i procesa viktimizacije. Knjiga je zapravo doktorska teza autora, retrospektiva njegovog istraživačkog rada u Međunarodnom viktimološkom institutu Univerziteta u Tilburgu. Ona je kompilacija devet članaka, koji pokrivaju četiri osnovne teme, i bavi se (prvenstveno) odnosom žrtava i krivičnopravnog sistema u čijim se okvirima razvija koncept restorativne pravde.

Prva tema se tiče viktimoloških podela i nastojanja da se premosti jaz između različitih disciplina koje zanima položaj žrtve u krivičnopravnom sistemu. Svaka od njih preispituje problem viktimizacije i položaja žrtve u kri-

vičnom postupku isključivo sa svojih pozicija i svojih saznanja, zanemarujući dostignuća drugih. Tako su na jednoj strani krivično pravo i kriminologija, a na drugoj klinička i socijalna psihologija, duboko podeljeni. Autor se zalaže za prevazilaženje jaza između njih, insistirajući prvenstveno na uvažavanju i primeni psihološke perspektive u domenu rezervisanom za krivično pravo i sa njim povezane discipline. O uspešnosti ovog ukrštanja govori „terapeutska jurisprudencija" – disciplina koja se bavi izučavanjem uticaja pravnih procedura (npr. krivičnog postupka) na duševno (blago)stanje učesnika u njima, dok je drugi značajni pokazatelj primena pristupa restorativne pravde unutar krivičnopravnog sistema. Autor ističe da prevazilaženje podela može imati dodatnu korist za učvršćivanje položaja viktimologije kao akademske discipline i njenog iskoraka izvan okvira kriminologije, jer kombinovanje kriminoloških teorija sa dostignućima iz oblasti psiholoških studija o žrtvama može podržati ideju o viktimologiji kao samostalnoj disciplini.

Pored ove teme (podela u viktimologiji), autor se bavi temom „esencijalizacije viktimizacije". On je protiv esencijalizacije i stereotipa o žrtvama. Insistira na složenosti kriminaliteta kao pojave (ali i svakog krivičnog dela ponaosob), te tako i na različitim kategorijama žrtava. Ne sme se zanemariti činjenica da žrtve imaju različite (psihološke) karakteristike, potrebe i reakcije na viktimizaciju. Ovu različitost moraju poštovati i svi ka žrtvi orijentisani pristupi u okviru krivičnopravnog sistema. Autor dovodi u pitanje i sam pojam žrtve, jer žrtva kao takva, kao jednoznačan pojam ne postoji, pošto različita krivična dela stvaraju različite žrtve, a ni žrtve istih ili sličnih dela nemaju ista iskustva, reakcije niti potebe. Sagledavanje individualnih razlika u viktimološkim istraživanjima je, po autoru, od velike važnosti. On vešto upoređuje potrebe i reakcije žrtava kriminaliteta sa onima koje imaju žrtve prirodnih katastrofa ili drugih događaja, još jednom negirajući uniformnost pojma žrtve (kriminaliteta) i ističući značaj poštovanja različitosti na individualnom nivou.

Sledeća važna tema jeste „emocionalna osnova krivičnog prava" za koju se vezuju različita osećanja, a naročito osećanja straha i ljutnje (pri čemu se obe emocije mogu povezati i sa osnovnim ciljevima krivičnopravnog sistema, naročito retribucijom i kontrolom ponašanja učinioca). Autor posebnu pažnju posvećuje osećanju ljutnje, koje se može vezati za potrebu za osvetom i odmazdom, ali i za proces opraštanja, te se bavi problemom prevazilaženja osećanja ljutnje u sučeljavanju ove dve težnje. Prema autoru, iz perspektive žrtava, krivičnopravni sistem može poslužiti redukciji osećanja koja opterećuju žrtvu.

Poslednja tema kojom se autor bavi jeste realistička perspektiva u sagledavanju položaja žrtava u okvirima krivičnopravnog sistema. Prvi „realitet" se odnosi na konflikt potreba (naročito između učinioca i žrtve, ali i između samih žrtava), drugi na domete restorativne pravde i velika očekivanja od nje, dok se treći tiče ljudske prirode, a u vezi sa odnosom drugih prema žrtvama (okrivljavanje umesto podrške) i žrtava prema drugima (projektovanje besa i ljutnje na one koji su „slični" ili bliski učiniocu).

Iako su pomenute teme ono što povezuje devet članaka, svaki od njih predstavlja zanimljivo štivo za čitaoca, nudeći interesantna zapažanja, korisne informacije o viktimološkim dimenzijama stranih krivičnopravnih sistema (naročito holandskog) i brojnim teorijama, te originalne ideje, zapažanja i zaključke autora.

Tako je u prvom članku „Kontroverzna priroda učešća žrtve u krivičnom postupku: terapeutska svojstva iskaza žrtve o posledicama krivičnog dela" predstavljen institut iskaza žrtve o posledicama krivičnog dela (fizičkim, emocionalnim, finansijskim), odnosno o uticaju koje je delo imalo na nju. Reč je o mogućnosti da žrtva u krivičnom postupku izloži svoj pogled na krivično delo, odnosno da govori o svom iskustvu viktimizacije. Autor se bavi terapeutskim efektima ovakvih iskaza (sa aspekta redukcije osećanja ljutnje i anksioznosti) i suprotstavlja se onima koji smatraju da u krivičnom postupku nema mesta unošenju terapeutskih metoda, jer se radi o, za krivičnopravne principe, "stranom telu," kao i da su ovakvi iskazi, odnosno njihova "upotreba" upravljeni protiv prava okrivljenog. Zanimljivo je isticanje argumenta da se ciljevi iskaza žrtava upravo slažu sa ciljevima krivičnopravnog sistema, a to su kažnjavanje i kontrola ponašanja. Ljutnja i anksioznost žrtve su upravo u saglasju sa ovim ciljevima, dok svedočenje o posledicama dela može imati korisne terapeutske efekte u smislu redukovanja ovih osećanja kod žrtve.

Članak pod nazivom „Uzimanje žrtve za ozbiljno u konceptu restorativne pravde" daje kritički osvrt na koncept restorativne pravde koji se definiše a priori kao „ka žrtvama orijentisan" koncept, dok se zanemaruju i na adekvatan način ne evaluiraju iskustva žrtava u njegovim okvirima. U ovom radu, a u vezi sa konceptom restorativne pravde i iskustvima žrtava, autor analizira teorije koje se bave ljutnjom i anskioznošću (naročito posttraumatskim stresnim poremećajem), dvema uobičajenim reakcijama žrtava na krivično delo, te efektima koje socio-psihološka dinamika, koju nosi susret sa učiniocem (u okvirima pristupa restorativne pravde), može imati na žrtvu u vezi s pomenutim osećanjima i to, kako dobrim, terapeutskim, tako i negativnim. Autor

ponovo ukazuje na značaj prepoznavanja i poštovanja različitosti žrtava i njihovih reakcija i potreba u vezi sa viktimizacijom i protivi se generalnim, paušalnim ocenama o dobrobiti i korisnosti restorativne pravde kada su u pitanju žrtve (ističući da u nekim slučajevima/programima koristi ima samo učinilac).

Sledeći članak predstavlja produbljivanje teme o iskustvima žrtava u okvirima koncepta restorativne pravde (naslov je „Evaluiranje iskustava žrtava u okvirima koncepta restorativne pravde"), a dominira polemika sa teorijskim postavkama i rezultatima istraživanja koje brane Strang i Sherman. Kao najvažnije pitanje iskustava žrtava (na čijem razlikovanju i ovde insistira) postavljeno je pitanje „emocionalne restauracije" žrtava, sa akcentom na ljutnji i anksioznosti. Ističe se značaj (različitosti) psiholoških karakteristika i ličnosti žrtava, iskustava koje su žrtve imale posle viktimizacije (pored težine, karakteristika dela i učinioca) kod utvrđivanja njihovih reakcija, potreba i očekivanja, te je nemoguće (i pogrešno) zaključiti da će koncept restorativne pravde biti uvek bolji od krivičnopravnog.

Četvrti članak „Holandski model susreta žrtve i učinioca: teorijsko istraživanje" posvećen je programu restorativne pravde koji potencira „viktimocentričan" pristup, primenjuje se kod teških krivičnih dela i predstavlja krivičnom postupku komplementarnu proceduru (može se izvesti pre, za vreme ili posle krivičnog postupka). Autor govori o terapeutizaciji koncepta restorativne pravde i emotivnom oporavku žrtava kao važnom cilju, ne samo u slučaju žrtava sa kliničkom dijagnozom, već svih koje osećaju strah i/ili ljutnju, a koji se može postići i u okviru krivičnog postupka i to merama koje nisu terapeutske (kao što je iskaz žrtve o posledicama dela). On razvija dalje terapeutske perspektive krivičnog postupka, kao što je kanalisanje osvetoljubivosti koje se postiže putem pravičnog postupka (prema iskustvu žrtve), što pokazuje srodnost dva koncepta po pitanju ostvarenja terapeutskih ciljeva. On govori i o vezi dve osnovne karakteristike koje odlikuju „suprotstavljene" koncepte: retribuciji i oproštaju. Za lakša krivična dela programi restorativne pravde (reparacija i kompenzacija) mogu biti dovoljni, dok je za teška dela neophodna i retributivna komponenta, koja može uticati na žrtvu da oprosti učiniocu. Kada govori o značaju oproštaja učiniocu od strane žrtve, autor ukazuje na nužnost izbegavanja „iznuđivanja" izvinjenja od učinioca, jer je neophodno da žrtva prepozna izvinjenje kao iskreno, a ne instrumentalno.

U petom članku Pemberton polemiše sa autorima (Deams, Kaptein, Walgrave) koji su kritikovali njegove ideje. U nastojanju da odbrani svoje stavove, on iznosi i najvažnija promišljanja pomenutih protivnika koja čitaocima mogu

biti veoma zanimljiva: o nastojanjima da se terapeutskim svojstvima kaznene politike opravda njena strogost i/ili da se umanji korpus prava okrivljenog, o zloupotrebi prava žrtava u populističkoj retorici i kriminalnoj politici; o potrebi za „civilizacijom" krivičnog prava (u smislu da retributivnu dimenziju krivičnog prava ne treba da ispunjava kažnjavanje nego naknada štete); o punitivnom i restorativnom „apriorizmu."

Poseban rad je posvećen odnosu koncepta restorativne pravde i partnerskog nasilja. Autor ukazuje na ograničene domete u primeni programa restorativne pravde u slučajevima partnerskog nasilja, ali, za razliku od nekih autora/ki (feminističke orijentacije), ne smatra da je nemoguća primena ovakvog pristupa. On dovodi u pitanje homogenost slučajeva partnerskog nasilja, zalažući se za podelu na slučajeve „partnerskog terorizma" i situacionog nasilja. Situaciono partnersko nasilje karakteriše nepostojanje jasne podele uloga nasilnika (muškarca) i žrtve (žene), ne odlikuje ga kontekst prinude i kontrole, te je moguća i delotvorna primena programa restorativne pravde (naročito radi redukcije ljutnje).

Sedmi članak se bavi viktimološkim aspektima globalnog terorizma ističući da viktimološke reakcije na terorističke napade koje je izvela Al Qaeda imaju važnu ulogu u njenoj strategiji i organizaciji. On se usredsređuje na indirektne žrtve koje odlikuje osećanje ljutnje (ne nužno i straha) koje diskriminišu sugrađane muslimane, jer ih povezuju sa organizacijom koja je izvršila napad. Redukcija ljutnje kod indirektnih žrtava je od izuzetnog značaja, jer diskriminacija / viktimizacija muslimana može dovesti do novog kruga nasilja, odnosno odmazde čiji će nosioci biti oni – žrtve indirektnih žrtava.

Pokreti koji se bore za prava žrtava i mogući načini manipulacije žrtvama u njihovim okvirima su tema pretposlednjeg eseja. Autor predstavlja različite pokrete koji se bave zaštitom interesa žrtava ne vodeći računa o različitosti njihovih potreba, odnosno naglašavajući određeni tip potrebe: 1) grupe koje zastupaju prava žrtava i insistiraju na retribuciji, aktivnom učešću žrtve u krivičnom postupku i uticaju na sankcionisanje učinioca (što je karakteristično za SAD); 2) pokreti koji se bave nasiljem nad ženama insistiraju na bezbednosti žrtve, dok je kažnjavanje učinioca kompleksna tema (učešće žrtve u postupku se sagledava isključivo sa aspekta korisnosti i dobrobiti za žrtvu); 3) zagovornici koncepta restorativne pravde vide učešće žrtve u postupku kao vrednost, koja će omogućiti žrtvi kompenzaciju i pomirenje sa učiniocem; 4) mreža organizacija koje se bave pružanjem pomoći i podrške žrtvama u Evropi (Victim Support Europe) prednost daje različitim uslugama koje obez-

beđuju žrtvama pomoć i podršku (a ne samim pravima žrtve i njenom učešću u postupku). Interesantno je izlaganje o političkoj manipulaciji žrtvama u okvirima postojećih pokreta: prvi koriste žrtve za opravdanje oštre kaznene politike, drugi za dobrobit učinioca, treći ih iskorišćavaju u službi feminizma, a četvrti u službi krivičnopravnog sistema.

Poslednji članak je posvećen preispitivanju viktimologije „pravednog sveta" i teorijskih koncepata koje je postavio M. Lerner, a koji predstavljaju značajno teorijsko objašnjenje za fenomen okrivljavanja žrtve (jednostavno: dobre stvare se dešavaju dobrima, loši zaslužuju loše). Autor dovodi u vezu pomenutu teoriju sa učenjem o idealnoj žrtvi (čiji je tvorac N. Christie) i etiketiranju žrtve (Van Dijk), koristeći se i rezultatima relevantnih viktimoloških istraživanja. On ističe pesimističku prognozu po pitanju efekata verovanja u pravdu i pravednost što se tiče zadovoljenja pravde sa aspekata žrtve i kompenzacije kao prioriteta. Osnovna ljudska reakcija na zločin jeste kažnjavanje i kontrola ponašanja učinioca (a ne kompenzacija), dok se samoj žrtvi prebacuje zbog osvetoljubivosti. Autor zaključuje da je iluzija povezana sa verovanjem u pravdu svojstvena ljudskoj prirodi, ali i da je od ključnog značaja za razvoj viktimologije.

Na kraju knjige je „Epilog: zaključci i smernice za budućnost" u kome autor daje osvrt na teme koje povezuju predstavljene članke, još jednom ističući najvažnija pitanja i nudeći smernice za njihovo rešavanje, tačnije za nova istraživanja sa širim vidicima, uz uvažavanje različitih teorijskih koncepata i na prvi pogled nesrodnih naučnih disciplina.

Obilje teorijskih postulata koje autor koristi za podupiranje svoje argumentacije ili sa kojima polemiše, originalne ideje i ukrštanja različitih pristupa čine ovu knjigu veoma korisnom za sve one koji se bave viktimologijom, dok je jednostavnost jezika i stila preporučuju i onima koji tek razvijaju zanimanje za ovu disciplinu.

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Poziv na saradnju i pretplatu

TEMIDA je časopis o viktimizaciji (stradanju), ljudskim pravima i rodu. Časopis objavljuje naučne i stručne radove koji za svoj predmet imaju problem žrtava kriminaliteta, rata, kršenja ljudskih prava i drugih oblika stradanja (sa posebnim naglaskom na probleme žena, dece, manjinskih grupa, osoba sa invaliditetom i drugih kategorija koje su posebno izložene viktimizaciji), strah od kriminaliteta, kršenje ljudskih prava u zatvoru i u krivičnom postupku, prevenciju viktimizacije i slično. Svaki broj je tematski koncipiran, ali se objavljuju i tekstovi van određenih tema.

Teme za 2012. godinu su: broj 3. – **Evidentiranje podataka o kriminalitetu i žrtve** (rok za predaju radova je 1. septembar 2012.)**,** broj 4. – **Žene i zatvor** (rok za predaju radova je 1. novembar 2012.). Članci van ovih tema mogu biti predati Redakciji bez obzira na navedene rokove.

Radovi (članci i prikazi) se dostavljaju u elektronskoj formi prema priloženim tehničkim uputstvima na e-mail: vds@eunet.rs.

Svi članci se anonimno recenziraju od strane dva kompetentna stručnjaka/ stručnjakinje, na osnovu čega Redakcija donosi odluku o štampanju. Rukopisi se ne vraćaju.

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1. Članak treba da bude obima do 16 strana kucanog teksta duplog proreda. Koristiti font Times New Roman i veličinu slova 12.
2. Prva stranica teksta treba da sadrži: **naslov rada**, **ime i prezime autora/autorke**, **apstrakt** (do 150 reči) i **4-5 ključnih reči**.

2.1 Odmah iza prezimena autora (na prvoj stranici) otvoriti fusnotu u kojoj treba dati naziv institucije u kojoj autor radi, zvanje autora, i e-mail.
Primer: Petar PETROVIĆ*

3. Naslove pojedinih odeljaka u tekstu dati u sledećem obliku:
Naslov odeljka (Times New Roman, 12, Bold)
Podnaslov 1 (Times New Roman, 12, Italic)
Podnaslov 2 (slovo abecede u poluzagradi, Times New Roman, 12, Regular)

Primer:

Službe koje pružaju pomoć žrtvama
Kategorije korisnika
a) Žene i deca

4. Koristiti harvardski sistem citiranja. Na kraju citata u tekstu otvoriti zagradu i u njoj upisati prezime autora, godinu objavljivanja i broj strane.
Primer: (Christie, 2005: 28).

4.1. U fusnotama davati samo propratne komentare, članove zakona i Službene glasnike.

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* Dr Petar Petrović je docent na Fakultetu..... u Beogradu. E-mail: nikola@primer.net

4.2. Strana imena pisati izvorno.

5. Ukoliko se u tekstu nalaze slike ili tabele, na odgovarajućem mestu u tekstu uputiti na njih, npr. (Tabela 2).
   Naslove dati iznad slika i tabela.
   Primer: **Tabela 1.** Struktura viktimizacije prema polu
6. Obavezno priložiti popis **literature** na kraju teksta. Navesti sve citirane bibliografske jedinice abecednim redom, prema prezimenu prvog autora. Bibliografska jedinica treba da sadrži:

za knjige: prezime i prvo slovo imena autora, godina izdanja u zagradi, naslov knjige (kurzivom), mesto izdanja, naziv izdavača.

Primer: Milutinović, M. (1977) *Penologija*. Beograd: Savremena administracija.

za poglavlja u knjizi: prezime i prvo slovo imena autora, godina izdanja u zagradi, naslov poglavlja, u: prvo slovo imena (urednika), prezime (urednika), skraćena oznaka uredništva (u zagradi), naslov knjige (kurzivom), mesto izdanja, naziv izdavača, broj prve i poslednje strane poglavlja.

Primer: Benton, T. (2006) Do we need rights? If so, what sort? In: L. Morris (ed.) *Rights: Sociological perspectives*. New York: Routledge, str. 21-36.

za članke u časopisima: prezime i prvo slovo imena autora, godina izdanja u zagradi, naziv članka, naziv časopisa (kurzivom), broj i broj prve i poslednje strane članka.

Primer: Christie, N. (2005) Restorativna i retributivna pravda u kontekstu rata i ratnih zločina. *Temida*, 4, str. 27-32.

za dokumenta preuzeta sa interneta: pored web strane upisati datum pristupa internet stranicama sa kojih su preuzeta.

Primer: http://webrzs.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=2, stranici pristupljeno 5.10.2012.

Pre web strane može stajati i ime autora (ako je poznat) kao i naslov teksta. U tom slučaju ispred web strane dopisati – dostupno na:

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Primer: Zakon o krivičnom postupku, Službeni glasnik RS, br. 58/04.

za saopštenja sa naučnih skupova: prezime i prvo slovo imena autora, godina u zagradi, naslov rada, naziv konferencije (kurzivom), broj strane u knjizi apstrakata u zagradi, mesto izdanja, naziv izdavača.

Primer: Kelly, L. (2011) Violence against women and children in the national legislations of the EU member states: an overview of the research results. *Druga godišnja konferencija Viktimološkog društva Srbije – Žrtve kriminaliteta i žrtve rata: međunarodni i domaći kontekst, knjiga apstrakta* (str. 13). Beograd: Viktimološko društvo Srbije i Prometej.

za članke iz novina: prezime i prvo slovo imena autora, godina i dan u zagradi, naslov teksta, naziv novina, broj strane.

Primer: Jovanović, A. (2012, 5. decembar) Otkriveni plagijati naučnih radova, Blic, str. 5.

Moguće je navesti i web izdanje novina, kada se umesto strane stavlja – dostupno na: a zatim web adresa stranice i datum pristupa stranici.

Dodatna napomena: U popisu literature ne sme biti bibliografskih jedinica koje se ne navode u tekstu rada.

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Npr. Nedovoljno dobri mehanizmi prepoznavanja su najverovatniji razlog malog broja zabeleženih žrtava starosti ispod 18 godina (Nikolić-Ristanović, 2009).

Isto pravilo važi i za slučaj da se pozivate na navode nekog istraživanja:

Npr. Istraživanje nasilja u porodici u Vojvodini pokazalo je da skoro svaka druga žena trpi psihičko nasilje (Nikolić-Ristanović, 2010).

Ukoliko je jedini način da izrazite navode drugog autora ili autorke doslovno citiranje njihovih reči, neophodno je da te rečenice stavite pod znake navoda, a da u zagradi pored imena autora/autorke i godine u kojoj je rad objavljen, navedete i broj strane na kojoj se te rečenice nalaze u njihovom tekstu.

Npr. Autorka navodi da „manji broj maloletnih žrtava verovatno više govori o slabim mehanizmima prepoznavanja" (Nikolić-Ristanović, 2009: 255).

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Prikaz treba da bude obima do 6 strana kucanog teksta duplog proreda, font Times New Roman 12.

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Prikaz knjige: naziv u originalu, prevod naziva na srpski jezik u zagradi (ukoliko je naziv na stranom jeziku), naziv izdavača, mesto izdanja, godina izdanja i broj strana.

Prikaz skupa: naziv u originalu, prevod naziva na srpski jezik u zagradi (ukoliko je naziv na stranom jeziku), mesto i datum održavanja skupa.

Radovi ne smeju biti već objavljeni, niti predati za objavljivanje na nekom drugom mestu.

Pretplata

Cena pojedinačnog primerka je 750 dinara. Pretplata za 2012. godinu iznosi za pojedince 3.000 dinara i 10.000 dinara za institucije. Cena pojedinačnog primerka za inostranstvo je EUR 30. Za inostranstvo pretplata iznosi EUR 60 za pojedince, odnosno EUR 120 za institucije. U vezi pretplate molimo Vas da se obratite Redakciji.

Časopis je dostupan u elektronskoj formi na: www.vds.org.rs, www.nauka.gov.rs i www.doiserbia.nb.rs

Call for papers and subscription

Temida is the peer reviewed journal on victimization, human rights and gender, which is accredited as an academic journal by Serbian Ministry of Science. Papers are mainly published in Serbian. Papers written in other languages are either translated in Serbian or published in the language they are written in.

Topics for 2012 include: No 3 – **Crime data recording and victims** (submission deadline: September 1, 2012), No 4 – **Women and prison (**submission deadline: November 1, 2012).

Contributions not specifically dedicated to these themes, as well as conference and book reviews, may be submitted irrespective of the indicated terms. Manuscripts should be submitted by e-mail: vds@eunet.rs.

All articles will be peer reviewed anonymously by two competent scholars. Afterwards, the Editorial Board will decide about its publishing. The manuscripts will not be returned.

Technical instructions for authors of articles

1. Contributions should not exceed 16 pages typed in double line spacing. The recommended font type is Times New Roman 12.
2. First page should contain: **the title, the author's name, abstract** (up to 150 words) and **4-5 key words**.

2.1 After the author's surname put the footnote that should contain the name of the institution where the author works, academic title, and e-mail.
Example: Petar PETROVIĆ*

3. Subheadings should be written in the following way:
Paragraph heading (Times New Roman, 12, Bold)
Sub-Heading 1 (Times New Roman, 12, Italic)
Sub-Heading 2 (alphabet letter in the bracket, Times New Roman, 12, Regular)

Example: **Victim support services**
Categories of the users
a) Women and children

4. Please use the Harvard referencing system. At the end of citation you should open a bracket and give the author's surname, the year of publication and page number.
Example: (Christie, 2005: 28).

4.1. Footnotes should contain only brief accompanying comments, law articles and Official Gazzetes.

4.2. Foreign names should be written originally.

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* Dr Petar Petrović is docent at the Faculty... in Belgrade. E-mail: petar@example.

5. If the pictures and tables are included, please make a reference to them at the proper place, E.g. (Table 2)
   Please give the titles above the pictures/tables.
   Example: **Table 1.** Structure of victimization by gender
6. It is necessary to enclose the list of the **literature** at the end of the paper. List all the references in alphabetical order, according to the first author's surname. A list of references should contain:

For books: surname and initials of the author, year of publication (in the bracket), title of the book (italic), place of publication and publisher.

E.g. Milutinović, M. (1977) *Penologija*. Beograd: Savremena administracija.

For book chapters: surname and initials of the author, year of publication (in the bracket), chapter title, In: initial, surname of the editor followed by ed. in the bracket, title of the book (italic), place of publication, name of publisher and the page numbers of the chapter.

E.g. Benton, T. (2006) Do we need rights? If so, what sort? In: L. Morris (ed.) *Rights: Sociological perspectives.* London and New York: Routledge, pp. 21-36.

For journal articles: surname and initials of the author, year of publication (in the bracket), title of the article, title of the Journal (italic) and page numbers of the article.

E.g. Christie, N. (2005) Restorativna i retributivna pravda u kontekstu rata i ratnih zločina. *Temida*, 4, pp. 27-32.

For documents accessed by internet: give the electronic address and the date you accessed the source.

E.g. http://webrzs.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=2, page accessed 5. 10. 2012.

Prior to the web page there can be the author's name (if known) and the title of the text. In this case, in front of the web page write – available at:

For laws: next to the name of the law, mention the Official Gazette in which it was published.

E.g. Zakon o krivičnom postupku, Službeni glasnik RS, br. 58/04.

For conference papers: surname and initials of the author, year of publication (in the bracket), title, name of the conference (in italics), page number in the book of abstracts (in the bracket), place of publication, name of the publisher.

E.g. Kelly, L. (2011) Violence against women and children in the national legislations of the EU member states: an overview of the research results. *Druga godišnja konferencija Viktimološkog društva Srbije – Žrtve kriminaliteta i žrtve rata: međunarodni i domaći kontekst, knjiga apstrakta* (str. 13). Beograd: Viktimološko društvo Srbije & Prometej.

For newspapers articles: surname and initials of the author, year and day of publication in the bracket, headline, newspaper name, page number.

E.g. Jovanović, A. (2012, 5. decembar) Otkriveni plagijati naučnih radova, Blic, p. 5.

It is possible to specify the web edition of the newspaper, when instead of the page you can write – available at: and then web site address and the date of accessing the site.

Additional note: In the reference list there must not be bibliographic items that are not mentioned in the text.

7. Be sure to attach the title, abstract and keywords in English at the end of the manuscript.

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Please be sure to properly use the intellectual property of other authors during the presentation of statements, research results, and graphics from their texts. The journal Temida is a subject of plagiarism **control** and is located in the **DOI (Digital Object Identifier) database** and in the **Serbian Citation Index (SCIndeks).**

Changing a few words from the sentence of the original author, as well as changing the order of words in their sentences is plagiarism if the author is not cited.

When you paraphrase a text of another author you should reproduce the exact meaning of their ideas, but express them through your own words and with a different sentence structure:

E.g. Lack of good mechanisms of recognition is the most probable cause for the small number of identified victims under the age of 18 years (Nikolic-Ristanović, 2009).

The same rule applies in the case when you wish to refer to the assertion from another research:

E.g. The survey of domestic violence in Vojvodina has shown that almost every second woman suffered psychological abuse (Nikolic-Ristanović, 2010).

If the only way to express the assertions of another author is to quote their words, you must put these sentences in quotation marks, and indicate the page number on which these sentences are located in their text in the bracket next to the names of the authors and the year in which their paper was published:

E.g. The author states that „a smaller number of minor victims probably speaks more of a poor mechanism of identification" (Nikolić-Ristanović, 2009: 284).

Technical instructions for authors of reviews

The review should not exceed 6 pages typed in double line spacing. Recommended font is 12 point Times New Roman.

Title of the review should include:

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Conference review: title of the conference in original, translation of the conference title in Serbian in the bracket (if the title is in foreign language), place and date of conference.

Papers should not be already published neither submitted for publishing at some other place.

Subscription

Price for single copy is 750 Dinars. Annual subscription in the year of 2012. is 3000 Dinars for individuals and 10 000 Dinars for institutions. Price for single copy for abroad is 30 EUR. Annual subscription rates for abroad is 60 EUR for individuals and 120 EUR for institutions. Regarding the subscription please contact the Editorial office.

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