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Temide (*Themis*), Marble statue from Ramnusa, 300 A.D., Athens, National museum

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DUBRAVKA ŽARKOV[1]

War Rapes in Bosnia
On Masculinity, Femininity and Power of the Rape Victim Identity[2]

This text is concerned with representation of war rapes in Bosnia in academic texts. It is well known that media took special interest in reporting the rapes. It has been acknowledged that media reports possibly contributed to the decline in rapes[3] as well as engaged in propaganda[4]. Academic debates following rapes in Bosnia, however, have been largely free from scrutiny.

In this text I will analyze patterns through which victims of the war rapes in Bosnia are represented in academic texts. My main argument is that some academics have been engaged in constructing the Rape Victim Identity, preserving it exclusively for Muslim women. I will examine notions of gender and meanings of sexual violence underpinning that Identity and analyze its consequences.

In focusing on constructed identities, notions and meanings I recognize the criticism it may provoke: it may seem as not recognizing that there are human beings, men and women, beyond constructions. Particularly when bearing in mind that according to all international agencies and institutions investigating war crimes in former Yugoslavia, Muslim women of Bosnia and Herzegovina have been the most prevalent victims of rape and other forms of sexual assault, and Serb men have been the most prevalent perpetrators. By analyzing representation of Muslim women rape victims I by no means wish to redress the facts established so far, nor to put into question the patterns of rape documented as a part of war strategy on the side of Bosnian Serb forces, and those who fought the war with, and for them.

I address these issues with a strong belief that they are consequential to both doing justice to victims and to prosecuting perpetrators. Discourse within which the war rapes in Bosnia are discussed is shaped by academics in many different fields, from human rights and international law to feminist studies. And while the world audience listens to media, the judges from the International War Tribunal call upon academics to give their opinion about the crimes, the victims and the culprits.

With these concerns in mind I will first analyze how the Identity of Muslim woman rape victim is constructed. Then I will analyze notions of masculinity and femininity underpinning that construct. Finally I will address its consequences.

Rape Victim Identity - Muslim women only

The book most often quoted by the academics dealing with rapes in Bosnia is *Mass Rape - The War against Women in Bosnia-Herzegovina* (1993), edited by Alexandra Stiglmayer (1993). Writing about rapes of woman in the Balkans

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2 A slightly shorter version of this text was first published in a Dutch journal *Tijschrift voor Criminologie*, 1997, 39(2):140-151

3 Bassiouni, M.C. et al. (1996) *Sexual Violence: An Invisible Weapon of War in the Former Yugoslavia*, Chicago: DePaul University, International Human Rights Law Institute, Occasional Paper, No.1. p.22.

4 Ibidem, p.26-27.

Brownmiller[5] warns that Balkan women "have been thrust against their will into another identity. They are victims of rape in war." Her warning finds a cynical reflection on the pages of the same book. In the foreword, Roy Gutman, a journalist whose effort contributed to making the facts of rapes in Bosnia visible, states:

Rape occurs in nearly every war, but in this one it has played a unique role. The degradation and molestation of women was central to the conquest [...] A great many of the women were raped while held captive, unprotected and vulnerable, their husbands and fathers having been taken away [...]. In the conservative society in which the Muslims of rural Bosnia grew up, women traditionally remain chaste until marriage. Rape is a trauma with far-reaching consequences for these victims, who have well-founded fears of rejection and ostracism and of lives without marriage and children.[6]

The representation of traditional, conservative, rural Muslim Bosnia is but a map on which a Muslim woman of Bosnia is drown: the moral map full of remote villages with traditional people, and chaste girls awaiting life of marriage and childbearing. The word `chaste', so powerful in revoking images of innocence and vulnerability, frames the presumption that this situation is particular to Muslim community and Muslim women of Bosnia only, and that because of that, rape has far-reaching consequences for them. In these statements, Rape Victim is produced into an Identity, preserved for Muslim women exclusively.

Regrettably, Gutman is only one of many who, in the same book, construct the same imagery. And many more follow. Azra Zalihić-Kaurin[7] praises the Muslim society and men in Bosnia for their courtesy, respect and honour of women. She gives an idyllic picture of Muslim traditions before communism, condemns socialism for marginalizing Islam, and welcomes the return to the Islamic traditions in post-communist Bosnia. These traditions are defined through the Muslim women's virginity:

Young Muslim women today may wear miniskirts and have boyfriends, may study and work, but they still respect the commandment of virginity. Marriage is as self-evident as is a mother's responsibility for the education of her children. In remote villages Muslim traditions are even more alive. There is still the custom that after the wedding night a mother-in-law hangs out the sheet on which a young couple has slept so that everyone could see that the bride was a virgin.[8]

Her contribution ends with a glorification of a young Muslim woman - a heroin from a World War II story - who honoured her virginity more than her life, and demanded to be killed, rather than raped, by Cetniks. The image of a Muslim woman who prefers death to `dishonour', framed into the discourse of Muslim traditions of male protection of women, erases whatever female agency could have been in the story, and reduces Muslim woman once again to the blind follower of the cultural norms. The fact that in this particular text these norms are celebrated, while in others they are implicitly condemned, makes no difference whatsoever for the representation of the raped Muslim women.

Writing about her work with raped women from Bosnia and Croatia medical doctor Folnegović-Smalc notes that there are cases where husbands have killed their wives after learning about rapes, as well as that raped wives have committed suicide[9]. She also affirms that because of the social and cultural pressures raped women "even now respond only rarely to offers of psychological or psychiatric help and seldom ask for help on their own initiative. If they do come forward they try to remain anonymous" (Folnegović-Smalc, 1993: 177).

Seada Vranić (1996), journalist from Bosnia, asserts in her book '*Breaking the Wall of Silence - The Voices of Raped Bosnia*' that the biggest problem she faced in compiling her book with testimonies and accounts of rape was silence: silence of the victims was the biggest, and often invisible, obstacle to discovering the truth [...] The silence of the victims during my investigation was also my adversary. Very often I felt as if I were standing in front of a wall, yet it was human beings, not bricks, that were in front of me. Human beings who were unhappy, shamed, humiliated and lost[10].

At the same time, Vranić states - without noticing any contradiction - that her own book is the result of over 200 interviews with raped women, men and girls. So, obviously, they did not keep silent. Nevertheless, the same imagery of silent

5 Brownmiller, S. (1993) "Making Women's Bodies Battlefields" in A.Stiglmayer (ed.) *Mass Rape - The War against Women in Bosnia-Herzegovina*, Lincoln and London: University of Nebraska Press, p.180.

6 Gutman, R. "Foreword" in A.Stiglmayer, p.X.

7 Zalihić-Kaurin, A.,(1993) "The Muslim Woman", in A. Stiglmayer, p.170-173

8 Ibidem, p.172-3

9 Folnegović-Smalc, V., (1993) "Psychiatric Aspects of the Rapes in the War Against the Republics of Croatia and Bosnia-Hercegovina" in A.Stiglmayer, p.179

10 Vranić, S.,(1996) *Breaking the Wall of Silence: The Voices of Raped Bosnia*, Zagreb: AntiBarbarus, p.29.

and ashamed Muslim women is used in many other texts, by authors whose claims were, if not explicitly feminist, then certainly informed by feminist analyses of rape. Krass[11] for instance states that the stigma attached to victims of rape "proves especially severe in Muslim communities, where the religion emphasizes virginity and chastity before marriage". Using the adjective 'Bosnian' as synonymous to 'Muslim', Kohn[12] states that "Because of their culture, many Bosnian women, especially those in small villages, are ashamed to come forward and testify publicly about the torture they endured". Jordan[13] quotes a Western diplomat claiming "the greater-then-usual degree of shame felt by the primary victims, the Bosnian Muslims, as a result of their religious beliefs".

After reading these texts, I could not help but asking: how much that imagery of ethnic chastity corresponds with the situation of Bosnia in the late 1980s, with educated, urbanized and modern Muslim women who are by no means different from educated, urbanized and modern Croat, Serb, Yugoslav or any other women living in Bosnia, for whom the pre-marital sex is a fact of life? Or how different are Muslim women who cherish the importance of virginity, and for whom 'life without marriage and children' is not worth living, from Croat and Serb women who think the same? Is rape less a trauma for those who do not think of marriage and children as their only future? Are non-Muslim women less `chaste' and does rape hold less consequences for them, because of that? Further, if the experience of rape is so tightly related to religion, how different is the experience of rape for a devoutly Catholic women from equally devout Muslim or Orthodox women? Does rape has less traumatic consequences for women who are not religious? What is the usual degree of shame appropriate for the rape victim? Finally, why is Bosnian Muslim community singled out as the one that will stigmatize, ostracise and further victimize women rape victims?

Answering these questions is, in my view, as urgent as unavoidable. For the consequences of the above construction of ethnicity-cum-femininity are too serious to be overlooked, or pushed aside for the sake of political correctness. The Identity of a powerless Rape Victim presented in the above quotations - engulfed in her shame, hidden from the public eyes - is for many of the rape victims a direct insult. For only courage and determination could have generated a decision to name one's own rape and the rapist, to re-live the trauma and give it shape in a testimony. The United Nations Commission of Experts (Pursuant to Security Council Resolution 780, 1992) used more then 700 interviews with refugees from former Yugoslavia commissioned from the governments of Austria, Germany and Sweden, as well as 223 interviews with refugees in Bosnia, Croatia and Slovenia, conducted in its own filed work[14]. Through these interviews a database was established, containing allegations of rape and sexual assault. Out of "tens of thousands of allegations" (UN Annex IX :7) and over 4.500 reports, 1.100 cases were documented in more detail[15]. From these data Commission concluded that "there may be about 10.000 additional victims the reports could eventually lead to", and possibly as many as 20.000 victims (UN Annex IX:7). Besides determining the scale and possible numbers of rape victims, the Commission determined and documented patterns that "strongly suggest that a systematic rape policy and sexual assault policy exists, but this remains to be proved" (UN Annex IX:11). Although the half sentence "this remains to be proved" could render the finding relative, presented evidence indicates that rape and sexual assault was related to the policy of the so called 'ethnic cleansing', as conducted by Bosnian Serb forces. Out of 1.100 documented cases of rape, about 600 occurred in detention, indicating that they were neither random nor opportunistic (UN Annex IX:12-13). While rapes in detention were also practised in camps run by Croats and Muslims (UN Annex IX:10), there are strong indicators that in the case of Bosnian Serbs it was a rather consistent policy. Medical experts working for the United Nation Human Right Commission inquiring allegations of rapes documented 119 pregnancies resulting from rape. Stating that medical studies suggest that one in every 100 rapes result in pregnancy, they concluded that 119 cases of pregnancies "were likely to represent about 12.000 cases of rape" (UN Annex II:64).[16]

11 Krass, C.D.(1993) "Bringing the Perpetrators of Rape in the Balkans to Justice: Time for an International Criminal Court", *Denver Journal of International Law and Policy*, 22/2&3, p.327

12 Khon, E.A.(1994) "Rape as a Weapon of War: Women's Human Rights During the Dissolution of Yugoslavia", *Golden Gate University Law Review*, 24, p.204.

13 Jordan, M.J, (1995) "Rape as warfare", *Transition*, 1/20, p. 20

14 Bassiouni, M.C., p.9

15 Ibidem, p. 10

16 Both Commissions concluded that these findings do not represent the full extent of rapes. Considering multiple and repeated rapes especially, these figures may only serve as a guide to the general scale of the problem (cf. UN Annex II:67, UN Annex IX:7, and Bassiouni et al, p.6).

Without the men and women interviewed, there would be no prosecution, for there would be nobody to prosecute. As to now, these interviews resulted in 700 named perpetrators, as well as knowledge about 162 detention camps in which the sexual assaults took place (UN Annex IX:7). As stated in the UN Annex IX.A, several of the interviewed men and women were assessed "as key witnesses, because they have not only seen or experienced a great deal, but also have the emotional strength and clarity of presentation to play a pivotal role in a prosecution case." (UN Annex IX.A:5)

Sexual violence is one of the least reported peace-time crimes everywhere - from the Netherlands to the Balkans. Women raped during the wars sometimes took decades to admit - first to themselves, and then to others - that it even occurred. The fact that the investigation of rapes in Bosnia ever even started has been attributed to media coverage, to the outrage of world's public opinion, and to humanitarian groups and activists, but should not it be attributed first to those women and men who refused to be silent and ashamed? Construction of the Rape Victim Identity of Muslim women from Bosnia precludes any possibility to do so, and that is one of its significant consequences.

But before further elaborating on the consequences, there is another issue to address: the ideas about femininity and masculinity underpinning the construction of the Rape Victim Identity. The presumptions of female vulnerability and male power - power to protect as well as power to attack - shape that Identity, as much as it shapes some academic texts concerned with doing justice to the victims of sexual assaults.

On masculinity

In their analysis of the legal aspects of prosecution and conviction of perpetrators of rape and other types of sexual assault in former Yugoslavia, Tineke Cleiren and Melanie Tijsen, (1996) start by explaining their approach:

We start our analysis from the legal point of view that rape and other types of sexual violence should not be regarded as specifically gender-based offenses but as crimes of violence of a sexual nature, although gender should not be disregarded when such crimes are committed against women. If violence is considered to be the determining element, then there is no ground to distinguish between male and female victims, or between adult and child victim. Until now, however, international law has not paid much attention to sexual assaults on men. This is hardly surprising since homosexuality is a topic not freely talked about in many cultures. But sexual assault on men, both of a homosexual nature and a non-homosexual nature (such as mutilation of genitals), have been reported in the war in the former Yugoslavia. In general, it can be said that customary international humanitarian law does not discriminate on the ground of sex and that, therefore, the law relevant to sexual assault on women should apply with equal force to men.[17]

In the above statement there are obvious misconceptions of gender as well as of meaning of sexual violence. The misconception of gender is most clear in the presumption that it matters for women, but not for men. The presumption that violence as determining element gives no ground to "distinguish between male and female victims, or between adult and child victim" demonstrates the idea that sexual violence has the same meaning for everybody. Sexual mutilation of men as an example of violence of a 'non-homosexual nature' displays ignorance on what sexual violence is about.

It is thus necessary to start by saying that neither the fact of sexual violence against men nor any particular act of violence are, in themselves, either homo- or heterosexual. Understanding that gender is not only about women gives an answer why is it so. If gender is understood as a social and cultural system through which masculinity and femininity are defined, and male and female roles divided (between both children and adults), then gender is about both men and women, as well as about masculinity and femininity. Sexuality is about gender too, albeit not exclusively. For the sake of this paper, suffice to say that masculinity and femininity presume certain types of sexuality. Violence and aggression, for instance, are presumed to be not only a part of masculinity, but a part of masculine sexuality, too. This presumption is underpinning attempts to define rape as being simply a 'rough' sex. It also lies behind the reasons why rape has hardly ever been prosecuted as a war crime. Men fight wars, and men rape, so the two merge: rape and pillage, soldiers out of control, or in need of a 'let out'. I will come back to that later. But for now, it is crucial to stress that sexuality, as much as gender, is an organizing principle on which all of the cultures that we live in - from the Netherlands to the Balkans - are based. Simply

17 Cleiren, T. i Tijsen, M. (1996) "Rape and Other Forms of Sexual Assault in the Armed Conflict in the Former Yugoslavia", *Nemesis Essays*, 3, p. 111.

because men and women are presumed heterosexual. Heterosexuality is the norm we live with, whatever our sexual orientation. Construction of masculinity is thus inseparable from the construction of heterosexuality.

Another essential element of masculinity is power. On the level of social and cultural organization this translates into hierarchical advantage of the masculine over the feminine: 'reason' over 'emotions', as a classical example. On everyday level that power translates into male domination over women. But masculinity as power has much deeper consequences, not necessarily related to femininity. Maleness and manhood are defined through power, and a man cannot be a man, unless he embodies power.

The consequence of thus constructed masculinity for the understanding of sexual violence is impossible to overstate. The base of violence against both men and women is not in hetero- or homo-sexuality of an individual male actor but in an inseparable construction of masculine=heterosexual=power. In that light, sexual mutilation of men - euphemism for acts such as cutting off man's penis - has a specific meaning for men. It is an act of physical as much as symbolic de-masculinization, of striping men of his masculine powers symbolized in his penis. It is making a man into a non-man. It is not in itself an act of a perverted homosexual desire, it is an act of perverted desire for power. The fact that sexual violence against men is invisible - in the war through which Yugoslavia disintegrated as well as in everyday life anywhere in the world - is, consequently, not due to homosexuality as a hidden topic. It is due to the fact that masculinity in our societies is inseparable from power, and thus, unimaginable as victimized. Because victimized man is not a man. This is, simply, *contradictio in adjecto.* Within the definition of masculinity in our societies, men are always and only rapists, and thus, unrapable.

Homosexuality has a role in that, nevertheless. As in our cultures the construction of masculinity is inseparable from the heterosexuality and power, even calling a man homosexual is a verbal de-masculinization, an act of verbal violence against men. In the case of physical violence, a man raped or sexually assaulted by another man is often associated with homosexuality, and thus lives through a double jeopardy: both his masculinity and his sexuality are in question.

The power of masculine-heterosexual-power is, thus, so consequential for men that it, in itself, provides a war weapon. For when a man is not defined only in gender terms - i.e a heterosexual masculine male - but in ethnic terms - a Muslim, a Croat, a Serb man - de-masculinization carries multiple symbolism. The pictures of starved bodies of Muslim men from the camps organized by Bosnian Serb forces were public, albeit for a short. But nobody saw a photo of a raped man, and only a few texts mentioning sexual assault of men were ever published in the press. From November 1991 to December 1993 there were only six such texts in Croatian main daily, for instance, compared to over 100 texts about other forms of torture experienced by Croat men in Serb camps. Academic text have shone from the topic even more. Few texts have ever mentioned that men have been sexually assaulted. Niarchos[18] recognizes that the "situation of male victims raises different issues" but she does not pursue it. Jones[19] is, to my knowledge, the only one who asserted that there was gender specific violence against men in former Yugoslavia.

The UN Reports and the text by Bassiouni (1996) describe a number of sexual assaults on men. These assaults were committed mainly in detention and by all sides.[20] The camps run by Serbs in Bosnia are, however, pointed out as "by far the ones where the largest numbers of detainees have been held and where the cruellest and largest number of violations occurred" (Final Report, Section IV, E:3). The Commission also stated that it gathered "significant information concerning war crimes taking place in Croatia [...] particularly [...] regarding rapes in detention and sexual assault of men, including castration in detention." (Annex.IX.A:5). Nevertheless, in the conclusion, there is no explicit statement that the sexual assault against men was systematic. And although conclusion does not specify that the findings on systematic rape and sexual assault concern only women, it is easy to read it that way, considering the number of cases involved and considering that the established patterns of rape refer specifically to women.[21]

18 Niarchos, C.N.(1995) "Women, War and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia", *Human Rights Quarterly*, 17/4, p.653

19 Jones, A. (1994) "Gender and Ethnic Conflict in ex-Yugoslavia", *Ethnic and Racial Studies*, 17/I, p.115-134.

20 As examples the following camps in Bosnia are named: Serb-run camp Trnopolje, Croatian-run camp Odžak and Muslim-run camp in Goražde (Annex IX:10).

21 The number of the reported cases seem to preclude the analysis. The witness in front of the Tribunal also pointed that the number of reported sexual assaults concerning women is bigger (Transcript, p.19).

I would, however, like to suggest that the persistent invisibility of the male victim - in academic texts as well as in public - is strongly related to the construction of masculinity. Thus the number of reported cases cannot be taken as determining. Namely, those men who survived rapes and sexual assault may have decided not to speak out, fearing that their masculinity and sexuality will be put in question, again. For they already survived one demasculinization in the act of violence itself. The act of acknowledging that violence may prove to be too much. Obviously, the shame of women is easier to bear then the shame of men. And if this last sentence is to cynical to read, I will say it differently: in gender distribution of roles, it is not the role of man to be a victim of rape, it is the role of a woman.

On Femininity

It may be difficult to believe, but there is hardly anything that de-feminizes women. Unlike men, women seem to be women, whatever the circumstances. One among few things, however, that comes close to de-feminisation is - power. Not all powers, though. For, there are feminine powers: the power of female sexuality or the power of motherhood, for instance. The feminine power, however, is different from the masculine power. For it is the latter that is power to define, to name, to set itself as a norm. In political practice, that means constructing and maintaining social, cultural and political systems. Thus, while the figures of a devouring female or a furious mother are, albeit different, still within the definition of femininity, a politically active woman is on the verge of de-feminization.

The exercising of political power is essential for de-feminization of women. For in the realm of politics every aspect of femininity has a new meaning. In the domesticated realm of the private - where femininity dwells - having no children may be a reason for pitting woman (although pitting her man is as common). Within that same realm lesbian sexuality is framed into a titillation for male fantasy (if its existence is acknowledged at all). But in the realm of politics, these are the proofs of women not being real women. And certainly, not being the women of those who define the politics. Within ethnic definitions of politics, these women are often denounced as ethnic Other. But they are defined as Other even if they belong to the same ethnic group as their accusers. Represented as militant, aggressive or violent they are as close to being de-feminized, as possible.

But, while exercising political power never completely de-feminizes women, it, nevertheless, delegitimizes position of femininity in the politics. Political realm preserves only one legitimate place for femininity: that of a victim of political practices. This is no wonder at all, for femininity is the ultimate definition of victimisation, as much as masculinity is the ultimate definition of power. Weak and powerless, in need for protector and in constant danger of being assaulted - that is a woman. Constructed as such, as vulnerable but potentially dangerous, the woman needs to be both protected and controlled. Brownmiller[22] has claims that rapes are ultimate means of controlling women, and ultimate source of women's need for male protection. Through rape "*all men keep all women in a state of fear*". Niarchos[23] endorses that point: "all women know a great deal about rape, whether or not we have been its direct victims. Rape haunts the lives of women on daily basis". And while these statements clearly point out gender relations and hierarchies as organizing principles of every-day life, they also underwrite the inevitability of female victimisation. That inevitability has consequences: sexual violence against women has different meaning than sexual violence against men. Unlike men, women are already defined as rapable. Thus, the rape does not de-feminizes women. In a most cynical way it actually confirms their place as women, it confirms female powerlessness and male power.

Rape is about power. Many languages acknowledge it, even when the laws do not. In Dutch, as well as in Serbo-Croatian, the word rape has its root in the word power: *verkraching* is derived from *krach* (power); *silovanje* is derived from *sila* (power). But that knowledge embedded in language has it source in our social and cultural knowledge and practice - such as being a rapable woman and being an unrapable-man, a man-rapist. The legal knowledge springs from the same source. Hence, while there is a wonder that international legal institutions never acknowledged male victims of sexual violence, there was no wonder, until very recently, that the female victim of sexual violence was hardly ever a subject of international legal concerns. Association of femininity and victimisation is so natural - wars or no wars - that few laws had anything to say about it.

Nevertheless, things are different when and if the woman is defined within the products of male

22 Brownmiller, S. (1986) *Against Our Will - Men, Women and Rape*, New York: Bantam Books, p.5

23 Niarchos, C.N., p.650

powers: of a nation, state, race, or an ethnic group. As such woman has always been protected by law. But, even then, only when and if she belonged to those of men who defined the law. Black woman was never protected the same way the white woman was, in the white man's law. Colonized women always had different legal position - if they had it at all - from European women. Thus, not all women are equally rapable, neither before the law, nor before the eyes of the world. The different positions of women in social-cultural as well as political configurations of power make difference in their vulnerability to rape, as well as in the possible protection from rape. In that context rape is not only an assertion of masculine power over feminine vulnerability. It is also a competition between two specific masculinities: that of the rapist and that of the raped woman's menfolk. As such, rape is "a message passed between men - vivid proof of victory for one and loss and defeat for the other"[24].

International legal context has changed and women's human rights are beginning to be recognized. But, paradoxically many of the efforts which brought that about have only further enforced the greatest of all gender distinctions, assuming, once again, the omnipotent power of men and the absolute powerlessness of - some - women.

On Power of the Victim

The consequences of the Rape Victim Identity as an exclusive preserve of Muslim women are impossible to comprehend without understanding the underpinning notions of femininity and masculinity. But these in themselves are not enough. For the question remains: why some women are seen as victims, while others are not?

In his analysis of the position of refugee women Thomas Spijkerboer[25] emphasizes that the idea of women as absolute victims of male oppression "perpetuates the supposedly essential nature of the powerlessness of (non-white) women" [brackets in the original] and in effect "reproduces the depolitization of their situation". This analysis is particularly relevant for the situation of raped women in Bosnia. For, while the rapes are highly politicized, women's own acts - from giving and collecting testimonies, to forming self-help groups and organizing nationally and internationally - are hardly ever recognized or mentioned. In the case of Muslim women there is a particular history to consider in searching for reasons: the European Orientalist politics. Tone Bringa points out how Orientalism affects the capacity of European ethnographers to deal with European-ness of European Muslims. She notes that Bosnian Muslims were defined either as not European, or as European but not really Muslim[26]. The production of 'grater-then-usual degree of shame' and the 'fears of rejection and ostracism' of the Muslim women rape victims is a re-creation of an Orientalist myth about Muslim community: conservative, rigid, and most of all, cruel to its own women.[27] The Orientalist subject is, hence, re-created, and the Muslim Woman Rape Victim is its symbol. Thus, the Rape Victim Identity has a direct bearing on preserving the patterns of exclusion which have shaped European politics, and which have already been implicated in the war in former Yugoslavia. For one of the most often cited causes of the war was exactly the clash of civilizations - democratic and modern West versus tyrannic and traditional, Orientalized, East[28].

It may seam that the Rape Victim Identity had a temporary positive effect. In a way, the establishment of the International War Crime Tribunal and the acknowledgement of women's human rights may be seen as an outcome of the world's bewilderment before the cruelty that Muslim women of Bosnia endured. Nevertheless, in the process of politicizing the plight of all women, the raped Muslim women of Bosnia were de-legitimized as political subject. The Rape Victim Identity constructs the need for the protector, and many have volunteered becoming legitimate political subjects instead of the women on whose behalf they acted. Some of these protectors simply acted on their own behalf, pursuing their own agendas. One of the most blatant examples that feminists are not innocent in the process is famous American feminist Catherina MacKinnon who leads the campaign against pornography in the States using

24 Brownmiller, S. (1986), p.31

25 Spijkerboer,T.(1994) *Women and Refugee Status*,The Hague: Emancipation Council.

26 Bringa,T.(1995) *Being Muslim the Bosnian Way*, Princeton/New Jersey: Princeton University Press, p.7

27 Reacting to such statements, Bernard (1994, p. 43, note 19) writes that while working with Muslim women rape victims she and her team "found no evidence to support the idea that Bosnian victims or families reacted differently from any other European victims and families. Most Bosnian communities and families have been highly supportive."

28 Žarkov, D. (1995) "Gender, Orientalism and the History of Ethnic Hatred in the Former Yugoslavia" in H. Lutz i N.Yuval-Davis (eds) *Crossfires - nationalism, racism and Gender in Europe*, p. 105-121.

the rapes in Bosnia as her weapon. During 1993 and 1994 she published three texts in five slightly changed versions, where she related women's human rights, pornography and rapes in Bosnia. Two of these texts were published in Stiglmayer (1993). One of the unsubstantiated claims repeated in these texts is that the rapes of Muslim and Croat women were regularly filmed and sold as pornography, or used as war propaganda. Another is that there have been over 30.000 rape pregnancies among Muslim and Croat women from Bosnia alone[29]. MacKinnon states that Serb men are rapists because Yugoslavia was saturated with pornography, displaying a plain ignorance about social, cultural and political situation in former Yugoslavia. Her hidden agenda is that what was happening in Yugoslavia yesterday may happen tomorrow anywhere, unless pornography is eradicated. While MacKinnon's position on pornography may be debated, her use of war rapes in Bosnia to pursue that position is beyond contempt.[30] With such a powerful ventriloquist, Muslim women from Bosnia would have to struggle hard to re-claim their own political voice.

De-politization of the rape victims through the construction of an exclusive Rape Victim Identity has far reaching consequences for yet another reason. It is often forgotten that the Victim Identity is an essential element of nationalism in former Yugoslavia. It has been so in many other cases, too. Bernard draws two parallels between rapes during World War I and in Bosnia:

In both cases, the rapes were apparently deliberately intended to demoralize and disgrace the opponent, but in both cases, the victimized side chose to go on the propaganda offensive, itself publicizing the high incidence of rape in order to discredit the enemy before the world public opinion[31].

Brownmiller writes: The plight of raped women as casualties of war is given credence only at the emotional moment when the side in danger of annihilation cries out for world attention. When the military histories are written, when the glorious battles for independence become legend, the stories are glossed over, discounted as exaggeration, deemed not serious enough for including in scholarly works.[32]

While the International War Crime Tribunal should make sure that, this time, stories about rape are not glossed over, it is, nevertheless, necessary to note one thing: however paradoxical it may seem, the Identity of the Victim is not without the power. In my research on women, war and nationalism in former Yugoslavia I have concluded that, long before and during the war, the construction of an ultimate Victim has been inseparable from the construction of ethnic Self and ethnic enemy. I have also realized that, although gender forms the base of these construct, there are still considerable differences between the Identities, in different parts of former Yugoslavia. In Serbia, the Victim is collective: the Serbs. That collective identity of the Victim allows for no other legitimate victim, and certainly precludes the discussion on specific crimes committed against women, albeit Serb women.[33] In Croatia, the Victim is also collective, but it is Croatia, not Croats. For the Bosnian government, the Victim is the Muslim Raped Woman. But, these Victims have nothing to do with the plight of Serbs, with destruction of Croatia, nor with the rape of Muslim women in Bosnia. They exist to further the aims of the nationalists in the respective states and all those who endorse them.

Furthermore, the Rape Victim Identity erases the specificity of the meanings that rape and sexual assault have for each targeted group - men and women, children and adults - let alone for the concrete people who lived through them or died of them. Rape remains only a metaphor, used by nationalist to express their grievances about the treatment of their states, histories of traditions. However powerful that metaphor might be, nobody will be brought to trial for raping Serbian history or for raping Bosnia.

Another consequence of the Rape Victim Identity, as an exclusive preserve of Muslim women, is

29 MacKinnon, C, (1993) "Comment: "Theory is not Luxury", *The American Society of International Law*, p. 85

30 Critical reactions on one of her texts published in Ms were either severed or ignored, but some reactions have been published elsewhere. See especially Munk, E. (1994) "What's wrong with this Picture", *The Women's Review of Books*, 11/6, p.5-6

31 Bernard, C., p.30

32 Brownmiller, S. (1993), p.192

33 The government of FR Yugoslavia and the authorities of Serbian Republic of Bosnia have systematically declined the calls from the War Crime Tribunal to collaborate. Many Serb women and men were, consequently, denied the right to be witnesses and help prosecute perpetrators. The current government of FR Yugoslavia - in whose Parliament some of the seats are held by war criminals - obviously cannot afford an investigation which could prove its involvement in preparing or executing war, together with its crimes. Instead, they use the defensive discourse 'everybody hate Serbs' to affirm that the trial would not be fair anyway. MacKinnon's demonization of each and every Serb is of unmeasurable assistance to government of FR Yugoslavia in maintaining that argument.

that it de-legitimizes all other victims of rape and sexual assault. Its exclusive claim on rape defines everybody else as unrapable. Croat women raped in the war are largely concealed by Croatian press and public, although in international publications they are regularly mentioned. Serb women rape victims, never mentioned anywhere - from press to academic texts, in Serbia or internationally - share the place of unrapability with men.[34] Men who survived sexual assault are all but invisible. And while these victims and their respective communities - be it support groups or ethnic and religious groups - are coping with the consequences of rapes, the public discourse largely denies them. So does the academic discourse.

The power of the Rape Victim Identity, at the end, makes all other victims trivial. Those who buried their loved ones, those who buried their past and future, those who cannot find the way home in their dreams. One refugee woman told me: "Nothing really happened to me. Nobody raped me. I was lucky". She lost whatever was there to lose, but her experience seemed so small to her, before the enormity of the Rape Victim. Her words did sound so familiar, so universally female, and so totally feminizing: the woman who has never been raped should always consider herself lucky. Regardless everything.

The Power of Prosecution?

The war crimes in former Yugoslavia have many dimensions, and gender is a significant one. Specific meanings of these crimes cannot be understood without knowing how they are shaped by notions of femininity and masculinity. Bernard[35] points out that certain groups - and she names children, women, old people - are specifically targeted precisely because of their symbolic value for the community. The same is relevant for the male victims. Husbands and fathers are targeted because - in the masculine order - they are supposed to be protectors. Thus, meaning of assault is relevant for both the recipient of violence and the community, as much as it is presumed in the very act of violence.

In former Yugoslavia, the community is still largely defined as an exclusively ethnic and ethnically exclusive. These ethnic definitions, together with the definitions of gender - unchallenged and un-examined - have produced the Rape Victim Identity. As an exclusive preserve of Muslim women, that Identity re-produces ethnicity as the ultimate divide, as the only legitimate base of victimisation and only possible claim for vindication. At the same time, that Identity is the most powerful justification of nationalist practices. As such, it denies the specificities of the crimes committed, and consequently, it harbours the perpetrators. The protection of perpetrators was certainly not an intended outcome, but it is nevertheless, there. For the abstract crime, however horrific, may have only an abstract villain. The demonic Serb from MecKinnon's texts is no less abstract for his viciousness, for if he is any and every Serb, no prosecution is possible.

The villains from Bosnia and Croatia are not abstract. Thanks to their very victims, they are named, they are known. But still, they have guards and seats in the Parliaments, they run businesses and local municipalities. They do not fear the power of prosecution. There are too many politicians and academics on their side. ❑

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34 Serb victims in general gave very few testimonies about the crimes committed against them. Among 223 refugees interviewed by the UN Commission in Slovenia and Croatia, there were very few Serbs. Of 146 interviewees from Bosnia, 100 were Muslim, 43 Croat, and one Serb. Of 77 interviewees from Croatia, 26 were women and all were Croats (UN Annex IX.A:5). One of the reasons certainly may be that majority of Serbs did not flee to Croatia or Slovenia, but to Serbia, from where they cannot testify.

35 Bernard, C., p.39

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The Protection of War Rape Victim Before International Criminal Tribunal for the Former Yugoslavia

Introduction

During the war in the former Yugoslavia many efforts were made to make the victimization of women by rape visible and stress its seriousness. However, a big media campaign and increased interest of academics to deal with war rape contributed more to the use of war rape as a tool of propaganda than to develop real support and protection of victimized women. Although it is often stressed that Statute of International Criminal Tribunal for the former Yugoslavia should be considered as positive step forward in terms of the protection of women's human rights, it still neither treats war rape as a gender specific crime nor provides victim/witness of war rape with comprehensive and feasible protection before, during and after the trial.

The main aim of this paper is to analyze the provisions of the Statute and Rules of Procedure and Evidence as well as the practice of ICTY in order to stress their shortcomings and the way in which these influence reports and the establishment of the truth about war rape. I will limit my analyses to those shortcomings which are related to the protection of war rape victims as witnesses and to their consequences.

Provisions of the Statute and Rules of Procedure and Evidence and protection of war rape victims

Article 20 of the Statute of International Criminal Tribunal provides in paragraph (1) that the Trial Chamber shall ensure that a trial is fair and expeditious, in accordance with procedure and evidence rules, with full respects of rights of the accused and "due regard for the protection of victims and witnesses." This general obligation for the protection of victims is of significant importance for the interpretation of other provisions of both the Statute and Rules. Moreover, this provision is important also because it is unique within international law: neither Article 14 of the International Convention of Civil and Political Rights nor Article 6 of the European Convention of Human Rights, which concerns the right to a fair trial, list the protection of victims and witnesses as one of its primary considerations.[2]

More precisely the Statute deals with the protection of victims and witnesses in Article 22 which reads: "The International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of *in camera* proceedings and the protection of the victim's identity." Also, Article 34 provides for the creation of a Victims and Witnesses Unit. The main duties of Victims and Witnesses Unit are to recommend protection measures for victims and witnesses in accordance with the Statute and to provide counseling and support to victims and witnesses.It is especially important to notice that it is specially stressed that the Victims and Witnesses Unit provides counselling and support "especially in the cases of rape and sexual assaults" as well as that the unit is to give consideration to the appointment of qualified women. As it is well noted by Niarchos, "although no specific provision is made, the same considerations prompting the creation of the Victims and Witnesses Unit suggest that the prosecutor should also create a special unit, to be staffed primarily by women, for the prosecution of cases of rape and sexual assaults." She also points out that the advantages of such a unit have been demonstrated in a domestic context[3].

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2 Decision on the prosecutor's motion requesting protective measures for victims and witnesses in Tadić case, p. 10.

3 Niarchos, C.N. (1995) "Women, War, and Rape: Challenges Facing The suffering or International Tribunal for the Former Yugoslavia", *Human Rights Quarterly,* 4, p. 688-689

The Rules of Procedure and Evidence also contain provisions on the protection of victims and witnesses within which provisions of Rule 75 are especially important. This Rule, *Measures for the Protection of Victims and Witnesses*, provides that "a Judge or a Chamber may, *proprio motu* or at the request of either party, or of the Victim and Witnesses Unit, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused." Several protective measures are available and they are intended either to protect privacy, i.e. to prevent disclosure to the public or to the media, the identity and other details about the victim, a witness or related persons to her/him. These measures include the following: removing names and identifying information from the Chamber's public record; non-disclosure to the public of any records identifying the victim; giving of testimony through image or voice altering devices or closed circuit television and the assignment of a pseudonym; closed sessions during all of the trial or during some part of it and appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television. In all these cases the protection of privacy is related to the non-disclosure of information about the victim and witnesses to the public and in the media but not to the accused. As an exemption, Rule 69 provides the possibility to order measures which guarantee full anonymity (including non-disclosure of information to the accused) of the victim or witnesses before the trial. This measure may be ordered in exceptional circumstances if the victim or the witness are in danger during the period before the trial. In this case, the identity of the victim or witness will be released to the defence within enough time before the trial in order to allow the defence to be prepared. This is the only measure which protects victim before the trial. However, the decision in Čelebići case of November 29, 1996, based on the interpretation of the Rule 75, ordered the measure of protection of the privacy (not including anonymity to the accused) to potential witnesses, i.e. before the trial, which is limited to non-disclosure of their identity to the public and media. This means that, in pre-trial stage, it is possible (although as an exception) for victims and witnesses to be protected either from disclosure of their identity to the public and to the media or to the public, media and the accused as well.

All protective measures listed above may be arranged in three categories: measures intended to protect privacy of victims and witnesses (confidentiality), measures for protection of victims and witnesses from secondary victimization related to confrontation with the defendant/s and measures which guarantee victims and witnesses non-disclosure of their identity to the defendant/s (anonymity). Measures which are intended to protect the privacy of victims and witnesses as well as those which guarantee their anonymity in relation to the accused are of major importance for alleviating victims' and witnesses' fear from revenge and, consequently, for increasing their readiness to testify. It is especially worth emphasizing the importance of the possibility to enforce these measures in the period before the trial. This possibility is especially significant when victims and witnesses who still live on the territory of the former Yugoslavia (or have relatives who live there) are in question since they are more vulnerable to revenge in relation to their decision to testify before the Tribunal. Measures for the protection of victims and witnesses are important also because the very act of testifying about the rape, especially when it is done in public, is traumatic for the victim. Testimony given by a rape victim may lead to stigmatization and, consequently, to the rejection of the victim by her husband, family and community. The protection of the victim from meeting the accused during the trial is also important, since any new confrontation with the rapist is a potential source of retraumatization. Rule 75 (C) also provides that the Chamber shall, whenever necessary, control the manner of questioning to avoid any harassment or intimidation. This provision is of special importance for victims of rape and other sexual offenses since they are, as before national courts, vulnerable to secondary victimization as a consequence of inappropriate questioning, in the first place by the representatives of the defence. In relation to that, even more important is the provision of Rule 96, intended specifically to protect women victims of sexual offenses from inappropriate questioning by the representatives of the defence.[4] Rule 96 provides that corroboration of the victim's testimony is not required and consent is not allowed as a defence if the victim has been subject to physical or psychological constraints. Also, it is especially important that the victim's prior sexual conduct is inadmissible.

The International Tribunal must interpret its provisions within its own legal context and not rely

4 Decision on the prosecutor's motion requesting protective measures for victims and witnesses in Tadić case, p. 10.

in its application on interpretations made by other judicial bodies. As unique international body, the International Tribunal has little precedent to guide it (the international tribunals at Nuremberg and Tokyo had only rudimentary rules of procedure).[5] The International Tribunal is unique also because it relies on an innovative amalgam of common law and civil law systems. In other words, it means that the Tribunal relies in significant measure on its own practice as a source of law. It is especially evident when the protection of victim and witnesses is in question, having in mind that practice of other international bodies in this respect has only limited importance for the Tribunal (having in mind the lack of special provisions in the above mentioned international documents). As such the Tribunal must determine where the balance lies between the accused's right to a fair and public trial and the protection of victims and witnesses within its unique legal framework.[6] This of course is not easy even if one has in mind that many contemporary national legislatures have established detailed measures and programs for the protection of victims and witnesses. Moreover, these measures and programs are in some way used as models for the creation of provisions of the Statute and Rules related to the protection of victims and witnesses. Unfortunately, protective measures provided in national laws are of limited importance as a model for creation of measures for protection of war crime victims since, with rare exceptions, they are limited to protection during the trial. In other words, before, and, especially, after the trial, victims and witnesses are not guaranteed any protection.[7] The lack of long term programs of victim/witness protection is justified by the fact that the Tribunal has neither its own police force nor the funds for creation and realization of such programs.[8] Due to this, persons who decide to testify are put in a difficult situation especially if, after leaving the Tribunal, they should return to the former Yugoslavia and risk meeting the family and acquaintances of the accused. This is intensified by the basic weakness of the concept of protection of victims before the Tribunal: even if the strongest protective measures are adopted, the identity of the witness will be known to the defendant[9].

The lack of appropriate protection of witnesses before the trial put the witnesses in a difficult situation especially in the period between questioning by the investigator of the Tribunal and the trial itself. Also, the lack of appropriate protection of victims and witnesses before and after the trial discourages potential witnesses who are about to decide whether to testify before the Tribunal or not.

The protection of witnesses and practice of International Tribunal for the former Yugoslavia

Having in mind the above review of the provisions of the Statute and Rules of Procedure and Evidence, one can get the impression that, at least when the period before the trial is in question,the protection of victims and witnesses of war rape is satisfactory. However, if we look more closely to the practice of the Tribunal, it seems that in reality, the victims of war rape who decide to testify before the Tribunal are confronted with many problems.

The lack of appropriate support and help, before as well as during the trial, i.e. during the period when they are under the protection of the Tribunal, makes testifying a difficult psychological experience for victims. For a better understanding of the delicate situation of rape victims, it is worth remembering that, five years after a big media campaign and an alleged general interest in the destiny of rape victims, these same victims, with only rare exceptions, are deprived of any support and help. They are forgotten and left at the mercy of the authorities of receiving countries (if they are refugees) or to their rapists (if they stayed, decided or were forced to return to places where they were living before). Insecure refugee status and, consequently, unsolved existential problems, prevent victims from psychological and physical recovery and, as a rule, traumatize them further. The slow and traumatizing procedure for obtaining refugee status as well as the uncertainty of their residency in asylum countries, prolong their own feeling of uncertainty and decreases the readiness of women to testify. Because of oppressive asylum

5 Decision on the prosecutor's motion requesting protective measures for victims and witnesses in Tadić case, p.11

6 Ibid

7 One of important exceptions and potential models which may be applied to witnesses of the Tribunal is the model of protection of victims of trafficking in women who decided to testify. For example, 1995 in Belgium the safe house for victims of trafficking in women was established. The safe house provide social, medical, legal and psychological support and help victims to get permanent residency ("Trafficking Women from the Former Soviet Union", *The Forced Migration Monitor,* New York, Open Society Institute, September 1997, p.7)

8 Decision on the prosecutor's motion requesting protective measures for victims and witnesses in Tadić case, p.19

9 Niarchos, C.N., p. 689

policies, most European countries, as stated by Schiestl[10], "are in effect culpable of suppressing evidence, especially evidence from women." It happens that women who have spoken out about their trauma during asylum proceedings and even repeated their statements in front of investigators of the Tribunal still fail to receive a response to their asylum applications or even are denied asylum. In spite of the fact that they are witnesses of the Tribunal, they may be deported to their countries, i.e to the site of the crime. In this way, as Schiestl sarcastically puts "they are officially delivered over to the perpetrators"[11]. In this way, the most important forms of victim protection - secure immigrant status and defence against deportation in the hands of perpetrators - do not exist.

Apart from insecurity of status and existential problems, rape victims also face lack of enough appropriate counselling and therapeutic services. In that sense, what is especially difficult is the situation of victims of war rape who found refuge in countries of the former Yugoslavia who are faced with a difficult economic situation. Moreover, the special position of rape victims as well as other refugees who are settled on the territory of Federal Republic of Yugoslavia is especially ignored.[12] Apart from total insecurity and the risk of forced return on the site of the crime, rape victims are, as refugees in FRY, faced also with inappropriate acceptance by the local people as well as with complete lack of organized and comprehensive support from both government and non-government organizations. This latter was influenced by a particular approach to the problem of war rape during the war. This approach included the abuse of the real suffering of raped women for political and military aims, i.e. the creation of the identity of rape victim which was reserved almost exclusively for raped Muslim women. Unfortunately, this approach was accepted by some non-governmental (including women's groups) organizations from FRY as well.

Finally, in the worst position and with small chances to be empowered and deciding to testify before the Tribunal are those victims of war rape who stayed or returned on the territory where they were originally victimized. They are faced, not only with general political and economic insecurity, but also with real fear that, if they decide to testify, they would expose themselves to threats and revenge by perpetrators and/or persons close to them. As it is well noticed by Schiestl, it will take a lot of time until the majority of victims are in a "physical, emotional and material position that would enable them to speak. If the Tribunal does not become a permanent one, then many human rights violations, particularly against women and children, will never come to light and the peace-securing aspects of its mandate will never be realized.[13]

However, the appropriate support to raped women is missing when they arrive at the Hague as witnesses before the Tribunal.[14] The Victim and Witnesses Unit comprises five persons who mainly take care of organizational and administrative issues. The method of Unit's work is not completely clear so that women do not know what they can expect from it as well as how does it operates. The Unit's staff do not have enough sensitivity to cultural, gender, educational and class differences as well as to specific mentality of victims from the former Yugoslavia.[15] The Rules of Procedure and Evidence do not guarantee the confidentiality of the information obtained by Victim and Witnesses Unit. Also, the Unit's staff do not establish contact with victims before they come to the Tribunal. Thus they meet the victim/witness for the first time at the Tribunal which results in their inability to approach them properly. As a result, it is not possible for those responsible to take care of victims to establish trustful relationships with them. As pointed out by Schiestl, although a doctor is available in case of illness as well as a number of tranquilizers for anxiety, sleep and psychomatic disorders, no therapist or other expert trained in psychology is continually present to assist witnesses for the prosecution. It additionally aggravates the position of rape victims/witnesses having in mind that their trauma resulting from the rape is intensified by the very fact that they are expected to speak about what they survived. The waiting period for giving testimony which last for hours and sometimes as long as two days puts an immense psychological burden on the witnesses since "the

10 Schiestl, B. (1997) "Why Don't Women Speak Out? On the Situation of Women in Asylum Countries" in E. Richter-Lyonette (ed.) *In the Aftermath of Rape: Women's Rights, War Crimes and Genocide*, The Coordination of Women's Advocacy, Givrius, p.136

11 Schiestl, p. 136

12 More about that see in Stevanović, I. (1997) "Women's Rights and Refuge" in V.Nikolić-Ristanović (ed.) *Women's Rights and Social Transition in FRY*, Beograd: Centar za ženske studije i komunikaciju, p.66-77

13 Schiestl, B., p.137

14 Ibidem, p. 137

15 Ibidem, p. 137

present fears mixes uncontrollably with the fear from the past."[16] Fortunately, as pointed out by Zepter, due to the intense and admirable commitment of the two female caregivers, as well as the affection and strength that the witnesses give to one another, ensures this unsatisfactory situation is at least alleviated.[17] However, the obvious need of women to have some person to accompany and support them during their stay in the Hague is not satisfied because of the lack of funds as well as a consequence of the overall concept of meeting the needs of those testifying which do not take enough care of psychological support.[18]

Giving testimony before the Tribunal itself is also traumatic for victim/witness from many reasons. The position of the witness is delicate since the witness is usually afraid of not being able to tell all the important details as well as that she/he will not speak clearly and in a systematic way. When testifying before the Tribunal is in question, this feeling is even intensified by the fact that the testimony is given through the interpreter so that additional fear of being wrongly interpreted is present as well. Moreover, the victim of war rape is faced with some additional fears and frustrations: fear of being rejected by persons close to her, shame and anxiety how people who know her would react when they learn about her having being raped as well as the trauma of seeing the rapist again and surviving again all horrifying details of the rape. Victims of war rape are additionally handicapped by the complete uncertainty of their status as well as by other traumas they survived during the war.[19] For many women, the distinction between the UN Commission of Experts and the Tribunal was unclear so that they do not understand why they had to give their statements a second time.[20] Moreover, the fact that they already spoke about their rape experience to journalists and activists of different fact-finding organizations, without having their situation getting any better and without being spared of repeating their statements before the Tribunal, makes them more vulnerable. Thus it is not surprising that until now only a few war rape victims decided to testify before the Tribunal.

The analyses of the Statute and Rules given in the previous chapter shows that on the normative level significant efforts were made to enable the protection of victims/witnesses. However, paradoxically, war rape victims hardly used the protection measures provided in normative acts of the Tribunal. Suada Ramić, a Muslim woman and a victim of war rape in the Serbian camp Omarska, for instance, testified in Tadić case under her full name and in open session.[21] Fortunately, Suada was accompanied by Maria Zepter, the therapist who provided her with psycho social counselling during her stay as a refugee in Germany as well as in the Hague. Moreover, the prosecution's representative, an American, Brenda Hollis, led her through the proceedings with great sensitivity and without insisting on details of her victimization. Also, the Defence did not ask her for cross-examination. However, even under these conditions the testimony was a very stressful experience for Suada and the fact that she gave her statement publicly contributed that fear of its consequences is added to the trauma of the testimony itself. This is how Zepter described Suada after testifying: "I repeat her name, Suada, Suada.. Now, at last she has heard me. Slowly her crying changes. Relief mixes with the sobs. Her body relaxes. 'Where are we, Suada?" I ask the old familiar question. 'Here!" she says, nods, gazes briefly into my eyes and then buries her head on my shoulder. After some minutes comes the second wave of fear, which again possesses her whole body. She holds her hands in front of her face as if she wants to hide and squeezes her body together. 'What will my people say now they've heard that I've been raped?"[22]

Another example of war rape victims testifying without the protection of their identity is the case of two victims of Serbian nationality, Grozdana Ćećez and Milojka Antić, who testified in Čelebići case. However, it is interesting that those vic-

16 Zepter, M. (1997) "Suada. R., Witness for the Prosecution" u E.Richter-Lyonette (ed.) *In the Aftermath of Rape: Women's Rights, War Crimes and Genocide*, The Coordination of Women's Advocacy, Givrius, p.139

17 Ibidem

18 Ibidem, p.140

19 Many women lost their beloved in the war, they have husbands or children invalids, they lost their homes and had many other horrible experiences in the war - this is more or less hidden side of victimization of women in the war which, although sometimes more traumatic than the rape itself, stayed overshadowed behind systematically created identity of war rape victim.

20 Schiestl, B., p.137

21 Although the representatives of prosecution asked for protection measures to be ordered and their request was accepted by the Chamber, Suada testified without her identity being protected from disclosure to the public. Although I did not manage to find out the reason, I can assume that this may be due to the defence's concern about the violations of the rights of the accused.

22 Zepter, M., p.143

tims/witnesses refused protective measures and decided to testify publicly, i.e. under their full names. In some way their decision was influenced by their fear of the lack of the trust toward raped Serbian women, having in mind the identity of war rape victim created during the war by both media and academics.[23] Also, they had the full support and understanding of their families which helped them to overcome the fear of possible consequences of testifying publicly.

However, during their examination, contrary to above mentioned case, the prosecution's representative, although it was not necessary, insisted on details of the victimization. Moreover, during the cross-examination done by some of the Defence's representatives the provisions of Rule 96 concerning the inadmissibility of interrogation about victim's prior sexual conduct were violated. Namely, during the cross-examination of Grozdana Ćećez, the Defence representative of accused Hasim Delić, Thomas Moran, insisted on, for the determination of the facts, irrelevant details concerning her use of contraceptive pills before and during the war and the abortion she had had performed. Moran especially insisted on the statement of her doctor who revealed details from her medical documentation as well as on the fact that the doctor suggested her not to use contraceptive pills because of her age so that she got pregnant and had an abortion performed.[24] Although the prosecutor's representative made an objection, the judge Karibi Whyte did not prevent the continuation of cross-examination on that topic. In the case of the examination of Milojka Antić, a brutal cross-examination about her previous sexual life provoked the reaction of the judge Whyte, who warned the Defence representatives that with such an examination they raped the witness for a second time.[25]

The examples given above show clearly that protective measures do not have greater significance for the protection of war rape victims, although, it is widely acknowledged that they belong to the most vulnerable category of victim/witnesses.

Conclusion

The protection of war rape victims before the International Tribunal for the former Yugoslavia is in some way shaped by the manner in which the media and academics were dealing with problem of raped women during the war in the former Yugoslavia. Nowadays it is completely clear that strong media attention and the way in which journalists and various fact-finders approached victims brought more damage than help to raped women. Abuse and instrumentalization of women's sufferings were hidden (on both national and international levels) behind the alleged worry about violations of their rights. The result was the absence of organized help and support. However, they are presently expected to testify before the International Tribunal although those who worry whether and how they are able to struggle against psychological, existential and status problems are quite rare. The Tribunal is not able to guarantee them protection neither before nor after the trial so that in such a situation it is not realistic to expect that many women would be ready to risk what left to them just to struggle for justice. If the lack of appropriate help and support at the Tribunal itself is added, together with the risk of secondary victimization because of the inconsistent implementation of Rules of Procedure and Evidence, one can conclude that the whole situation is such that it discourages potential witnesses more than encouraging them to report the rapes and to testify before the Tribunal.

If the international community really wants the truth about war crimes to be established as well as ensuring that the perpetrators are adequately punished it is necessary that witnesses of the Tribunal are in the first place guaranteed secure immigrant status[26] and defended against deportation in the country of origin. Also, in the meantime, until a permanent International Criminal Court is established, it is necessary to provide sufficient financial resources for the normal functioning of all Tribunal's services and more guarantees for the consistent implementation of the Rules of Procedure and Evidence, which are relevant for the protection of victims of rape. One of the important elements of that implementation is almost certainly the organization of Victim's and Witnesses Unit in a way which would guarantee psychological sup-

23 See Nikolić-Ristanović, V., "From sisterhood to unrecognition..."

24 See transcript from the trial in Čelebići case, ICTY website on the Internet.

25 Jovanović, B. (1997), "International Tribunal in the Hague and Rapes of Serbian women" in V.Nikolić-Ristanović (ed.) *Women's Rights and Social Transition in FRY*, Beograd: Centar za ženske studije, istraživanja i komunikaciju. p. 64

26 In that sense, recent offer of Canada to guarantee immigrant status to witnesses of the Tribunal, may be considered as important step forward.

port and an intensification of feeling of security and confidence of victims. Also, the cooperation with governmental and non-governmental organizations located in all countries in which potential witnesses are settled as well as directing funds toward those non-governmental organizations who are ready to offer support to victims/potential witnesses, should be one of imperatives in the present situation. Special attention should be paid to the cooperation with non-governmental organizations in FRY[27] who are willing to cooperate with the Tribunal, having in mind the invisibility of problems of raped Serbian women which is also one of consequences of the creation of a black and white picture about the war in the former Yugoslavia. In this way, the consequences of inadequate dealing with the problems of women raped in the war, which led further to the ignorance of their interests as well as to worsening of the consequences of their victimization, would be at least partially alleviated. ❑

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27 One of such organizations is of course Victimology Society of Serbia.

MILAN ŠKULIĆ*

Protection of the Constitutional Right of Freedom and Police Detention

Introductory notes on the criminal procedural protection of rights and freedoms

Civilized society has a multitude of more or less complex social mechanisms for the protection of specific social values, as well as for mutual regulation of interpersonal relations in various social spheres. Those values, regarding which, due to their significance and general social importance, a consensus of the dominant social structures exists, i.e. of the vast majority of societies' members (primarily citizens), in a harmonically organized and civilized social system are protected and energetically defended by the Criminal Law. While substantive Criminal Law realizes its protective role in respect of vital social values through statutory provisions that determine which behaviors are criminal acts and what conditions are necessary for establishing criminal liability, along with establishing a system of criminal sanctions, criminal procedure law establishes strict rules to enable full realization of all aims of substantive criminal law. The first Article of our Criminal Procedure Act, in the form of a legal-ethical maxim, states the essence of that very important part of every democratic State's legislation - criminal procedure regulated by statute: "This Act ascertains rules which are to ensure that no innocent person will be condemned, and that the culprit will be sentenced under conditions provided for by the Criminal Code and based on a legally conducted procedure."

Criminal law (substantive and procedural), dealing with criminality as a very sensitive social phenomenon, seeks to achieve two basic objectives. One objective is directed towards more efficient suppression of criminality and manifests itself through construction of legal mechanisms, designed to detect the crime and its perpetrators. For this reason, many acts are undertaken which violate Constitutional rights and freedoms of citizens. But these restrictions of rights and freedoms in democratic states are reduced to the minimum necessary to ensure protection against criminality. The second objective manifests itself in the possibility that legally prescribed repression toward criminals is directed against people whose guilt is not proven, and sometimes against innocent persons. This objective is always a possibility, and therefore liberal criminal procedures do not recognize the principle that "the end justifies the means"; and the actions of all official criminal procedure participants in democratic states are governed by one illustrative ethical rule, according to which it is always "*better that a hundred criminals go free, than one innocent persons be imprisoned*".

A *sui generis* antagonism, expressed on the one hand in the tendency to act efficiently in suppressing criminality, and on the other hand in efforts that "the sword" of Criminal Law repression does not affect the innocent, leads to establishing a number of necessary limitations in proceedings of the competent criminal procedure bodies and criminal repression in general. Among such fundamental supports in protection of rights and freedoms, and construction of *sui generis* "normative barriers" against self-will and arbitrage in criminal prosecution, there are many significant principles such as: principle that nobody can be punished for an act that, before perpetration, was not prescribed by Law as a criminal act (*nullum crimen, nulla poena sine lege*); presumption of innocence (or presumption of non guilt)[1] according to which no one can be

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1 T. Vasiljević and M. Grubač, (Commentary of the Criminal Procedure Act, Belgrade 1982, pp. 7 - 8) allege that Article 3 of the Criminal Procedure Act does not contain a presumption of innocence, but only a presumption of non-guilt, as the wording of the law does not say "is considered innocent", but says "is not considered guilty". Although the arguments purported by the quoted authors are wholly reasonable, our opinion is that this question from the viewpoint of protection of rights and freedoms is not very important. However, it is important that the citizen against whom the criminal procedure is conducted cannot be treated as the perpetrator of the criminal act, all until this is not confirmed by a *final condemnatory judgment (res iudicata)*.

considered guilty for the crime unless it is established by a final judgement; principle of truth; right to defence in criminal procedure; principle of restricted preventive detention; principle of loss recovery to wrongly condemned persons and to the wrongly detained persons, etc.

For the purpose of fulfilling basic goals of criminal procedure, it is necessary that "the accused in criminal procedure can not be afforded all rights and freedoms which citizens out of a criminal procedure are entitled to"[2]. Constitution itself provides for certain restrictions in realization of certain rights and freedoms of persons against whom the criminal procedure is conducted. These restrictions as a mater of fact are not excessively numerous and relate to: restrictions of freedom of movement (detention, custody, restriction of movement), freedom of written communication and inviolability of flat.[3] However, all those restrictions of guaranteed rights and freedoms, for realization of the criminal procedure purpose, are necessarily accompanied by establishing mandatory rules for all criminal procedure officials, strictly to obey the integrity of the accused in a physical, psychological and moral respect.

Criminal legislature (substantive and formal) represents a very reliable indicator of relations between a society and a legal system that is being entrenched within it, toward citizens and respect of their personality and dignity. Particularly the Criminal Procedure Act, with its normative and procedural solutions, presents maybe the most obvious confirmation or negation of the constitutionally and by other highest legal-political legislation, guaranteed rights and freedoms. This legislative field is always in the focal interest of both the professional public and a great part of the society. Also, at an international scale, the degree of realization of proclaimed democratic principles and humanitarian achievements within a particular legal system to a great extend is assessed bearing in mind just the solutions which are projected and applied within criminal procedure.

An ethically extremely valuable thought that criminal legislature in its two aspects - substantive criminal law and criminal procedure, present two *"cheeks" of one state*[4], necessarily targets an utmost respect for all criminal legislature principles on the part of the subjects which are called to apply those rules. In this respect, concrete actions of competent bodies are very important, and must always strictly be within the legal limits. Therefore the principle of legality is dominant for general regulation of all rules of criminal investigation procedure, whereby a realistic contents fills up the form created by the Criminal Procedure Act provisions. Therefore, in civilized societies and democratic legal systems it is never the act to be judged, rather it is its perpetrator, so that a humane criminal procedure, although utmostly truth-oriented and creating therefore a series of principles for its efficient attainment, does not consider truth such an imperative and inviolable value to justify the applications of all means for its realization. For this reason, torture, drug-analyses and similar inhuman (dehumanized) methods are expelled from the criminal proceeding systems, as well as from usage of criminal procedure officials in democratic states. Therefore in such criminal procedure systems not even confession of the accused may *per se* be an absolutely sufficient bases for rendering a condemnatory judgement. In other words, achieving complete truth in a criminal procedure represents its ultimate imperative, but it cannot be attained at any price, rather only with consequent and strict respect for constitutionally proclaimed rights and freedoms.

Rights and freedoms of citizens may be violated in the most obvious manner by unjustified detention. Therefore substantive criminal law provides as a criminal act *unlawful detention*[5], and to this end democratic criminal procedures prescribe very strict legal rules which are to enable deprivation and restriction of freedom of persons against whom the criminal procedure is conducted.[6]

2 M. Grubač, (1979) "Protection of Human Rights in Yugoslav Criminal Procedure, JRKK No.1, Belgrade , p.123.

3 Z. Jekić,(1994) »The Criminal Procedure Act and Freedoms and Rights of Citizens", *Zbornik Udruženja za krivično pravo i kriminologiju Jugoslavije*, Belgrade , p.15.

4 We may emphasize by paraphrasing *Marko Miljanov* that the criminal legislature (substantive and procedural), should at the same time show *heroism* - by protecting citizens from those assaulting their vital values (*"by protecting oneself / and citizens which it normatively represents / from others"*), but *humanism* as well - by protecting persons against whom reasonable doubt exists that they have committed a criminal act, from possible mistakes in criminal procedure (*"protecting others from oneself"*), whereas one should never neglect the victims' interests and especially victims of criminal acts, which is especially insisted upon by the *science of victimology*. See more on victimologycal aspects in criminal procedure: V. Nikolić-Ristanović, (1984) *The influence of the victim on the appearance of criminality,* Belgrade, pp. 24-25.

5 Art.63, Criminal Code of Serbia

6 See more: Đ. Lazin, (1997) »Habeas Corpus (The Most Important Guarantee for Freedom)," *Balkans Law Review*, Vol.1, 1, Balkan Association of Criminal Law, Athens, Sofia, Temisoara and Belgrade.

Reasons for imposing detention by the police

Under Article 196 detention may *exceptionally*[7] be ordered even by the police providing following reasons are met: 1) Need for establishing identity of a particular person, 2) Checking its alibi, or 3) If for other reasons it is required to collect necessary information against a particular person, and there exists one of the legally prescribed reasons for detention in the investigatory procedure - Criminal Procedure Act Art.191. Paragraph 1. and 2. Point 1 and 3; and in the case from the Criminal Procedure Act Art.191. Paragraph 2. Point 2 - only if there is reasonable danger that this person will destroy traces of the criminal act. From the quoted provisions of the Criminal Procedure Act these explanations follow: Reasons for *police detention* are defined in the Act in two ways: first, *independently,* by prescribing a possibility of detention in case when there is a need to establish the identity of a particular person with another person, or his own identity, or to check his alibi, and second, *in an instructive way,* by requiring to collect necessary information against particular person, and at the same time, i.e. *cumulatively*, there exists another of specifically enumerated reasons for detention in criminal procedure. A common condition for all reasons for detention is the existence of founded doubt that a particular person has committed a criminal act, and the reasons themselves can relate to *mandatory detention*, when a criminal act is in question for which the law prescribes capital punishment (in this case the Criminal Procedure Act refers only to *commission* of such an act, and not to other possible criminal acts); or to *facultative detention*, which, when police determined detention is in question, may be ordered if it is need of establishing identity, checking of alibi, or need for gathering necessary information against a particular person as well as one of the *alternatively* alleged reasons for determining detention in criminal procedure (*directive provision*): 1) If a person is hiding or is impossible to make certain his identity, or if there are other circumstances which indicate a danger of escape; 2) If there is founded danger that this person will destroy traces of a criminal act; 3.) If specific circumstances justify the doubt that a person will repeat a criminal act or complete an attempted criminal act, or that a person will commit a crime he threats with. In other words, in pre-criminal procedure detention can be imposed against the perpetrator found at the spot where a criminal act is committed[8], as well as in other cases, and this measure represent *a specific aspect of deprivation of freedom*, for which general reasons for detention in the course of investigation are required (except when specific circumstances indicating that the perpetrator of a criminal act[9] will disturb investigation by influencing witnesses, accomplices or fences - Criminal Procedure Act Art.196. paragraph 1 related to Art.191. paragraph 2 point 2), as well as prescribed and special reasons.[10]

It remains unclear why the legislator speaks parallely of the need to establish identity of a specific person, as of an independent reason for police detention, and at the same time this same reason additionally alleges, within the instructive part of the provision, when this ground for detention in investigation (Art.191. paragraph 2 point 1) can be treated as a reason for police detention, if a common condition is met (as for other reasons contained in the instructive provision), expressed as the existence of one of the *special - alternatively formulated reasons* for police detention. It is obvious that this is a *legal-technical* legislator's mistake, which probably represents a product of certain "style clumsiness", because no other ratio legis for such parallel determination of the reasons for detention can be spotted. From the standpoint of police activities in pre-criminal procedure, one might expect that the need for establishing *alibi*, is the most important reason for imposing police detention[11]. However, practice proves that police order detention more frequently for other reasons, applying relatively *wide provisionally possibilities* established by a wide range of possible reasons for imposing detention. Prescribing a special condition for ordaining police detention in a *very*

7 Detention is anyway an exceptional means, which is enforced only when no other tool can ensure presence of the culprit, or in other procedural situations strictly prescribed by the law; and when talking of detention in pre-criminal procedure, its exceptional character on a normative level is even more emphasized, although the Criminal Proceeding Act does not provide for an explicit parameter for assessing whether the condition are met.

8 Those are so called flagrant criminal acts.

9 Strictly speaking in this case it is not right to talk of a perpetrator, but exclusively of a culprit, i.e. about a person who is a reasonable suspect for committing a criminal act, as perpetrator is a *substantive criminal law* notion; and in criminal procedure, all until a final sentence is passed a presumption of innocence or presumption of non guilt exists.

10 Z. Jekić, (1994) Law of Criminal Procedure, Belgrade, p.231.

11 See more on criminal procedure and criminal investigation significance of alibi - Ž. Aleksić, (1987) *Criminal Investigation*, Belgrade, pp.210-211 (alibi- "*exceptio alibi seu diversae ubicationis*").

extensive fashion ("... or for other reasons necessary for gathering necessary information for instituting proceedings... ") is an inferior solution, as it enables detrimental and unnecessary police *arbitrage* regarding detention, as such a "widely drafted provisional condition" leaves space for entirely "non-critical" ordaining of police detention, which in turn leaves a *serious possibility for the offence of rights and freedoms of citizens*. The risk of self-will here is even more emphasized as the decision on detention is in competence of the police, not the court, and the police due to its role in criminal procedure[12] (detection of criminal acts), cannot be objective to a degree required for rendering decisions on detention[13]. The police also disposes with a procedural possibility of ordering detention in the case when the judge charged with investigating a case, pursuant to Criminal Procedure Act Art.162. Paragraph 4[14], entrusted the police performance of certain investigatory activities, and then the police detention can be imposed for all reasons for which detention can be ordained in criminal procedure, i.e. in the investigation procedure (Criminal Procedure Act Art.191);

Police deprivation of freedom is nothing unusual *per se* even in countries, which are traditionally assumed to be legally settled, and whose criminal-procedural legislature may be denoted with the attribute "democratic". However in those countries, as a rule, only deprivation of freedom is possible, i.e. police arrest in legally prescribed situations, but not detention as a measure for ensuring presence of the accused in criminal procedure, which by analogy (and together with a possibility of police detention) exists in our criminal procedure, when persons caught in the act of criminal offence that is to be prosecuted ex officio are in question, and who may be arrested not only by the police, but by any citizen. This arrest, however, imposes certain duties to subjects performing it: 1) the citizen is obliged to hand over the arrested person immediately to the magistrate in charge or to the police, and if this cannot be performed, one of these bodies has to be informed immediately (Criminal Procedure Act, Art. 191 paragraph 4); 2) The police is obliged without delay to pass the arrested person to the competent judge charged with investigating a case, or to the judge of a court in whose area of competence the criminal offence is performed - if the seat of that court is easier accessible. At the same time they have an obligation to inform the judge charged with investigating a case about reasons and time of deprivation of freedom (Criminal Procedure Act, Art.195 paragraph 1). The used *time terms* in the cited legal provisions - "immediately" and "without delay" are *legal standards* which indicate the *duty of prompt acting* for the purpose of reducing detention to a minimum duration in a situation when no *formal legal condition* in form of *court decision* exists. A similar legal solution when flagrant criminal offences are in question exist also in the English criminal procedure, where also under certain conditions such perpetrators of criminal offences can be detained by every citizen (Arrest by private citizens), or by the police (Arrest by police constables).[15]

Among reasons for police detention formulated in our Criminal Procedure Act, the possibility of *protective detention of violators* is not provided for as an *independent reasons*, which is a mistake, i.e. an important legislator's omission. Namely, when reasons for police detention are more closely scrutinized, one may spot that these reasons represent some sort of *procedural substitutes* in pre-criminal procedure, in relation to reasons for detention ordained by courts (in various functional forms, depending on the phases and type of criminal procedure - judge charged with investigating a case, judicial board, juvenile judge, etc.), in criminal procedure, whereby same formal reasons are alleged

12 Police performs its prevailing role in pre-criminal procedure and through operative activities, and rarely participates in criminal procedure or performs criminal procedure acts, save for a few such as requisition of objects and house and people search, as well as inquiry on the spot, unless the judge charged with investigating a case cannot be at the spot immediately. Police may perform certain *formal investigation activities* before investigation as well, when entitled thereto pursuant with Criminal Procedure Act Art. 154.

13 Đ. Lazin, (1995) »Detention in Yugoslav Criminal Procedure and International Human Rights Standards," *Bulletin of Serbian Criminal Law Association*, Kopaonik , p.161.

14 Such entrusting of investigation activities (save for house and people search, or temporary requisition of objects, which can always be entrusted to police) is possible only in rare situations, under the following *cumulative substantive conditions:* I) One of the *alternatively* prescribed conditions must be met: a) that investigation is conducted against criminal acts against the constitutional order, or b) for criminal acts whose perpetrators are connected with abroad, or c) for other criminal acts committed by a group or organization, whereas II) Such entrusting is, due to increased social peril of the act, necessary for conducting the investigation (condition of estimation). The formal condition manifests in the need of the public prosecutor to entrust these investigative activities to the police, or that such a decision is brought by the extra-controversial board of judges (which decides in cases when the judge charged with investigating a case does not agree with public prosecutor's proposals, and has a duty to decide within 24 hours).

15 C. Hampton, (1982) *Criminal Procedure*, Third Edition, London, Sweet & Maxwell, pp.80-81.

which are same for court detention, which in hand for legal technical reasons is not justifiable, and in final instance (what will be explained later) is not in compliance with a Constitution. Essentially, reasons for police detention do not have their independence, as they are strictly tied to a future (potential) criminal procedure, because they are strictly related to reasons connected with the need of gathering certain information in relation to the person for which there exists reasonable doubt of committing a criminal act, and for which it is likely to become accused subsequently, although in practice it occurs relatively often that against those in police detention indictment is never raised. This is how some kind of parallel possibility to impose detention has been set up, as by the police so by the magistrate charged with investigating a case if police officers hand him over the detained, which is not justifiable, and at the same time it is not possible to ordain police detention completely independently when cases of domestic violence are in question. In some countries (e.g. in many states of USA), the possibility of such mandatory custody showed very good results regarding violators, who jeopardize the physical and mental integrity of their dwellers - primarily women and children, or elderly persons.[16] Mandatory detention in cases of domestic violence represents in these countries a possibility for the police officer lawfully to arrest without warrant - *mandatory arrest* (which is otherwise generally possible only when the police officer is present during the perpetration of the criminal act or infraction); whereby he is actually obliged to act so when there is a *primary perpetrator of physical aggression*. It is spotted in practice that arresting and internment of violators primarily decrease the number of domestic violence and homicide cases.[17] We believe that introducing *mandatory detention* for the violators could significantly reduce family, or so called domestic, violence in our country as well, whereas such a question requires very serious previous research of the essence of violence itself and its causes, along with parallel action on other levels such as better social protection of vulnerable categories of citizens and better victimologycal education of the police, as well as all other officials in pre-criminal and criminal procedure.

16 Z. Mršević (»Right of Protection of Female Life From Violence" *Pravni Život* No.9, Vol.1, Belgrade, 1997, p.252.) alleges some shocking data revealed by research in America: "1. More than 25% of American married couples experienced one or more acts of domestic violence; 2. Repeated, serious violence occurs in every 14th marriage; 3. There is a 13-times greater possibility that women and not men become victims of assault by the other spouse. Of all officially reported acts of violence between spouses registered by the National Investigation of Criminality, 91% were victimized women by their husband of former husband; 4. Every year an average number of two million American women are seriously injured by their male partners." etc. Many verified data, such as experience of volunteers on SOS hotline for women and children victims of violence, as well as our general social climate, clearly indicate that the level of jeopardy by domestic violence is certainly very high in our country as well, which requires urgent action, both in the sphere of legislation and in the field of material acts of all subjects in charge.

17 Z. Mršević, *op.cit.*, pp.258-259.

Duration of the police detention

The detention that is ordained by the police may last not longer then 3 days, and if the detained person after the expiration of the term is not set free, the police has equal duties to those when a person is arrested (instructive rule of Criminal Procedure Act). They are obliged to pass the arrested person to the judge charged with investigating a case or to the judge charged with investigating a case in the inferior court, in the area where criminal offence is committed, without delay within 24 hours after expiration of 3 days period,[18] and thereto are specifically obliged to justify every delay (Art.196. paragraph 5 related to Art.195.), although the Criminal Procedure Act does not provide for any special *procedural sanctions* for the police body which does not fulfil this duty. On ordaining detention the police is obliged immediately to inform public prosecutor, and if some investigation tasks are entrusted (Criminal Procedure Act Art. 162. Paragraph 4) police is obliged to promptly inform judge charged with investigating a case, who in turn may require that the police immediately passes the detained person to him.[19] The time of detention ordained by the police counts in for the maximum permitted duration of detention provided for an article Criminal Procedure Act Art.197.[20] Irrespective what of the bases

18 Š. Vuković (*Criminal Procedure Act with explanations and court practice*, Belgrade 1985, p.153.) says that if a judge charged with investigating a case finds that there is legal basis to keep in detention the detained person passed to him pursuant with Criminal Procedure Act Art.196. paragraph 5, he will issue a decision on ordaining detention and not a decision on its extension. This is logical because only detention imposed by a court in some functional form may be extended by court decision as well, irrespective whether another functional form is in question, and such a possibility does not exist if the decision on detention is brought by police, as a body (service) not being part of the judiciary.

19 The term "immediately" should be construed as a *legal standard*, which indicates acting without delay.

20 T. Vasiljević and M. Grubač, (1982) *Commentary on Criminal Procedure Act*, Belgrade, p.345.

for ordaining detention, the police is obliged to issue a written and justified decision on ordaining detention, and such a decision must have both the form and the content of the decision for ordaining detention by the magistrate in charge of investigation.[21] Of course, the question of content of that decision refers to the *legally prescribed mandatory* elements in a general sense, while every concrete decision, logically, has its own concrete content, depending on the important circumstances of the case. The written decision on ordaining detention is handed to the detained person in a manner and at a time as prescribed by Criminal Procedure Act Art.192, paragraph 3, and no verbal notice can replace the decision of detention.[22]

Appeal against the decision on detention rendered by the police

The detained person may appeal against the decision on police detention to the competent court board of judges,[23] not later than 24 hours after the moment of receipt of the decision, and the board of judges is obliged to render a decision within 48 hours from receipt of an appeal, whereas the appeal does not have suspensive effect (it does not delay the execution of the decision). It is noticed in practice that detained persons very rarely use the right, in other words procedural possibility of filling an appeal, which under the law they *decoratively dispose of.* We use the attribute declaratively as it appears that the right of appeal against the decision on detention rendered by the police, due to a number of arguments may be denoted by a Roman Law phrase - it is the so called "*nude right*", which in this case formally (normatively) exists, but *practically is not realized*, in other words it can very hardly be materialized. Namely, as the maximum duration police detention is three days, and that the cumulative term for filing an appeal against a decision on detention (24 hours after receipt of a decision) and the term for deciding an appeal (48 hours from receipt of an appeal) is 72 hours, or three days - it is completely clear that the detained person in most cases would "await" the decision on appeal when it anyway would have to be either released or referred to the magistrate charged with investigating a case.

The police are obliged to ensure professional aid for filing an appeal to the detained person (Criminal Procedure Act Art. 196, paragraph 3). In context of our previous explanations on the right of appeal as a specific "*nude right*", where effective realization as a rule does not lead to the desired ends, this "additional right", which should make easier the use of the right of appeal, appears to be entirely cynical, especially when it is known that it logically (as the appeal itself is very rarely filed), in practice virtually is never used. Apart from this, from a theoretical viewpoint, a question could be posed on the (un)clarity and (in)precision of the quoted Criminal Procedure Act provision, wherein no closer or more concrete explanation is given on what kind of professional aid is in question, which person is called to render this aid, and which procedural sanctions are prescribed if the police does not fulfil this obligation. Of course, this impreciseness has no greater practical consequence, as the complete right of appeal practically is not used[24], in other words its use, as we have previously explained, practically has no point. Anyway, theory has alleged that in practice a question appeared on the status of the person rendering aid for filing an appeal in favor of a detained person, and the authors conclude that no definitive answer has been given, and that this person should not be treated as a counsel for the defence (which means that he should not be afforded contact with the detained and right of examining the documentation), as "introducing of a counsel for the defence, even to a limited extend, in the pre-criminal procedure would require changes in the ways the police works, and this would deprive police work of its rationale and purpose.[25] Other authors claim that for drafting an appeal, an attorney or other person must be available, which according to the assessment of the police is sufficiently qualified for rendering this kind of professional aid, but this person cannot be fully employed within police.[26] In our opinion it is more then clear that this person cannot have the procedural capacity of counsel for the defence, as according to our positive criminal procedure law, counsel for the defence exists only in criminal procedure (not in pre-criminal procedure), and besides this, for the appearance of counsel for the defence

21 S. Bejatović, (1995) *Law of Criminal Procedure - The Course of Regular Criminal Procedure*, Belgrade, p.38.

22 B. Petrić, *Comentary on the Criminal Procedure Act*, 1st book, p.390.

23 The Extra-controversial board of judges, provided for in Art.23. paragraph 6.

24 In this case the right is *original,* while the right of professional aid provision logically is *derivative by nature*, as it derives from the right of appeal.

25 J. Pavlica and M. Lutovac, (1985) *Criminal Procedure Act in Practice*, Belgrade, pp.397-398.

26 O. Cvijović and D. Popović, (1981) *Criminal Procedure Act with Comments, Explanations and Instructions for Practical Use*, Belgrade, p.169.

the existence of a specific procedural legal basis is required - 1.) power of attorney for an elected counsel for the defence, or 2.) decision regarding counsel for the defence who is appointed by the court (apparently not by the police). However, irrespective of the fact that this person does not have the procedural capacity of counsel for the defence, he certainly has to be professional, in other words legally qualified for rendering aid in drafting of appeals, and therefore, such a person should primarily be an attorney at law. Apart from this, the attitude purporting the impossibility of this professional person to contact with the detained person and have access to the documentation is absolutely absurd, as without full and unrestrained realization of this requirements it would be impossible to compose the appeal in an elementary correct fashion, which means that in our opinion, contact with the detained person and examination of existing documentation are a specific *conditio sine qua non* for the professional drafting of an appeal. We agree with the attitude that this person may not be in permanent (as well as in temporary) employment in the police, neither may it have other professional relations with the police, because in an opposite scenario there would be a big and very realistic danger of partiality, as well as of an objective *conflict of interests*.

Police detention and international standards of human rights

The most important international legal documents which consider some vital rights and significant freedoms of people guarantee in regard of detention in criminal procedure[27] several very important human rights[28]: 1.) prohibition of self-will arresting; 2.) the right of the detained that the court decides upon the legality of his arrest ("*habeas corpus*"); 3.) the right to reasonable duration of detention until the beginning of principal process and 4.) the right to human treatment at arrest.[29]

The risk of self-will is especially emphasized when the decision on arrest is not brought by the court, but by some other state body (police, public prosecutor, and the like), as the court due to its position in criminal procedure (resolving disputes between parties), is the most objective body[30], (compared with other state bodies), which abstractly renders the highest guarantees that the restriction of such an important right as the right of freedom will be decided upon objectively and impartially.[31]

Apparently the "*habeas corpus*" proposition is not completely fulfilled when police detention is in question, as for previously explained reasons, the right of appeal, which, as a "procedural transmission" would enable the courts to decide upon the legality and justifiability of detention ordained by the police, cannot be effectively used, which is why in the vast majority of cases such appeals are not filed at all, and even when they are by exception filed, nothing important is achieved therefrom, which explains why we already denoted them as a *nude right*. Therefore the not-usage of the *declaratory right of appeal* by the persons kept in police detention can never a priori be treated as their acceptance of the position which they found themselves in, as something justified, rather as an abstinence from acting which can never bear fruit, so that in this situation the antic rule - "*Qui non appellat, approbare vedetur sententiam*" - "Who does not file an appeal, is considered to accept the decision"- does not apply.

Duration of detention until the beginning of the principal process, is directly conditioned upon the duration of detention in the procedural stage of investigation, so that this question is not really connected with police detention, although the police detention (in maximum duration of 3 days) counts into the total maximum permitted duration of detention. The right to human treatment at arrest is certainly one of the essential rights of detained people, which, at the same time, represents a ultimate duty for a state pleading to be a legal state (having the rule of law), and for a legal system aspiring to the attribute "democratic"; but this right, for obvious reasons is much more connected to concrete behaviors of certain "official process participants" (in this case members of the police), than it is connected to the normative regulation of human treatment - in

27 It is entirely clear that those guarantees are related to pre-criminal procedure as well as to criminal procedure in a broader sense, because if conversely understood they would amount to a "*list of nice wishes*" and a "*dead letter on paper*".

28 Among such documents inter alia are: The International Bill of Human Rights, and the body of human rights in the field of judiciary (*Convention against Torture and Other Cruel, Inhuman of Degrading Treatment or Punishment, Code of Conduct for Law Enforcement Officials, Basic Principles on the Independence of the Judiciary, Standard Minimum Rules for the Treatment of Prisoners)*, and well as some regional documents on human rights (*European Convention of Human Rights; American Convention on Human Rights, and African Charter on The Rights of Man and People*)

29 Đ. Lazin, op.cit., p.160.

30 S. Perović ("Natural Law and The Court", *Pravni život* No.9, Belgrade 1995, p.XXIX) says: "*Going to the judge means going to justice*", so that these few words contain the whole legal and juridical civilization.

31 Đ. Lazin, op.cit., p.161.

other words, it is a question of the relationship between fact and legal rule.

Conclusions

As detention represents one of the legally prescribed departures from the constitutionally guaranteed right of freedom, it is necessary to deal with the *ratio* in a general sense which justifies the restriction of this vital right to certain persons, in legally prescribed situations. Many academics consider freedom as such a precious value and so great an idea that they deemed ethical to risk ones life for it, and life has sometimes in an effort for procuring freedom been sacrificed. Life itself - we all are aware - does not bear its full value and rationale unless led in freedom. Freedom, being magnificent and precious as it is, can hardly be defined, so that few thinkers dared to render a more comprehensive definition of freedom. However there virtually is no simple man who does not feel the true meaning of freedom and its true purpose - where its essence lies. In a civilized society freedom is primarily treated as a constitutional and legal category guaranteed to every person living in it. But, this "big talk" about freedom has the other side of the coin. Namely, most of us, talking of rights and freedoms of people in a society, when sometimes metaphorically representing the grouping of freedoms and rights as a kind of a monument - a granite monument, we sometimes forget that this grandiose monument in glory of human freedom, at the same time stretches its long shadow. This shadow shows in the simultaneous existence of numerous obligations and duties. Each freedom, simultaneously and parallely includes a necessity for respect of some duties, which in essence means, that every person in a society in which it has unharmed freedom, must always, to a highest possible degree, respect the freedoms and rights of others. As none of us can get rid of ones own shadow, so no one can enjoy his freedom in full and unharmed form, unless he simultaneously respects freedoms and rights of others. Here a basic link between criminal law (substantive and procedural) and freedoms and rights guaranteed in a society comes to attention.[32] Namely, criminal law exists in its basic form, for a full-scale protection of the most vital social values, so that it penalizes those individuals, which dare to assault freedoms and rights of others, thus simultaneously exposing themselves to legitimate deprivation or restrictions of certain freedoms and rights.[33] Here lays the fundamental rational for determining detention, as a form of deprivation of freedom, which may be realized only under strict normative conditions. Within this school of thought we could paraphrase the previously highlighted idea ("It is better if a hundred criminals go free, than if one innocent person is imprisoned") - It is better when a hundred of those regarding which reasons for detention exist remain free, than if only one considering whom a detention is illegitimate and unfounded is detained.

After all alleged comments in respect of a series of regulatory solutions regarding police detention, we emphasize "*the crown argument*" purporting for the need of definitive reconsidering of the procedural possibility for detention by police in pre-criminal procedure (even in criminal procedure when police acts pursuant to the Criminal Procedure Act Art. 162. paragraph 4.). It is not only material reasons, expressed through the need for full protection of rights and freedoms of citizens requires the abolition of police detention (which is drafted in an excessively *arbitrary fashion*, which "open gates" to potential self-will) but this directly follows from *formal reasons* - fundamental needs that all laws (and the Criminal Procedure Act, as an extremely important peace of legislature which resolves many fundamental human rights and freedoms questions) are finally harmonized with Constitutions, i.e. the supreme legal-political documents of the Federal state and Republics - members of the Federation. Namely under Article 23 of the Constitution of Federal Republic of Yugoslavia, as well as pursuant to Article 15 of the Constitution of Republic of Serbia, it is provided that detention may be ordained only by courts (exclusive court competence, and various functional forms of courts are took into consideration through procedural rules). Based on this, Criminal Procedure Act Art. 196 is not in compliance with the Constitution, thus has to be abolished as soon as possible. If after adequate Constitutional amendments, which in this case are *conditio sine qua non*, as the Constitution is the supreme legal document and statutes may not be drafted *contra constitutionem*, a normative possibility of police detention would remain, it should be applied in a very restrictive fashion and never mechanically and under inertia, and we believe that such detention would essentially be best justified in cases of *domestic violence*, primarily when victims of violence are women and children.[34] ❑

32 In this fashion law and justice intertwine symbiotically, and since the antique a sententia is famous saying that: "law is vigilant over equity" - *Ius respicit aequitatem.*

33 In an illuminated fashion, as an eternal truth, the famous Roman jurist and philosopher Cicero expressed: "We all have to be servants of law in order to be truly free."

34 Compare: Z. Mršević, *op. cit.*, pp.258- 261.

SLOBODANKA KONSTANTINOVIĆ - VILIĆ
NEVENA PETRUŠIĆ[1]

Prevention of Male Economic Violence Against Women and Children

A large number of papers in feminist literature deal with violence against women and children. Definitions of violence are derived from women's personal experience and way of life. The distinctive forms of violence are physical, mental, sexual and economic violence. When violence takes place inside the family, it has specific features and it is then that we talk of domestic violence. All the above mentioned forms of violence are present both in wartime and in peace and the perpetrators are maily men.

Economic violence has been the least explored form of violence, in spite of the fact that it is often at the root of all other forms of violence. This form of violence has remained on the margins of interest in feminist litetature because, unlike other forms of violence, it is less obvious. The women themselves, who are shedding their patriarchal notions with great difficulty, do not recognize this type of violence in men's behaviour. Therefore, the social transparency of economic violence is still insuficient.

There are various forms of economic violence. It can be manifested as divesting women of their money or valuable possessions, controlling their salaries and earnings, putting common property in the husband's name only, maintaining the family exclusively from the wife's earnings (whereas the husband spends his money on entertainment, drinking and other things), depriving the woman of her right to participate in decisions regarding their common earnings with the explanation that she is irresponsible concerning expenses, etc. The consequences are all the more difficult in cases where the woman is either unable or incapacitated to work and have her own earnings. In these drastic manifestations of economic violence, the very existence of the woman and her children is at stake. The woman depends on her husband or partner for her basic means of existence. In such cases, the women's and children essential human right – the right to life – becomes the exclusive privilege of a man – the husband's or father's. That is why economic violence in a patriarchal environment is a manifestation of the authority, power and rule of men.

The need for research in the field of economic violence is particularly present in underdeveloped and developing countries where, due to the general poverty of the population, the economic preconditions for effective social protection are virtually nil. In these countries, women are particularly affected by violence, because they are largely unemployed. Statistical data indicate that the ratio of employed men and women in Yugoslavia over the period 1980–1990 was 1:3.[2]

In the Family Code of Serbia, the legal right to alimony is provided for in the Law on marriage and family relations of Serbia from 1980 (which will further be referred to as ZBPOS)[3], which lays down the conditions under which one spouse can require alimony from the other, the conditions under which one common law spouse can require alimony from the other, and also the regulations concerning the support of children.

During legal or common-law marriage, the right to alimony is usually not brought to court, even when it is not effectuated over a long period. In spite of the fact that women often live in very poor conditions, they do not seek their right to alimony in court, because they think that any legal intervention would lead to a marital conflict which would only increase the economic violence they are already exposed to. That is the reason why women and children usually appeal for legal protection of their right to alimony only when living in

1 Slobodanka Konstantinović- Vilić and Nevena Petrušić are professors at Law Faculty in Niš.

2 See *Statistički bilten* SRJ, Beograd, 1995.

3 Službeni glasnik RS 22/80. This law has been altered and amended several times (Službeni glasnik 24/84, 22/93, 25/93, 35/94).

common is discontinued, usually during divorce procedings.

According to the provisions of article 288 of ZBPOS, the spouse who does not have sufficient means of support, who is incapable to work or unable to find employment is entitled to obtain alimony form his/ her former spouse according to their financial possibilities. The spouse realises this right in a proceding which is simultaneous with the divorce procedings. Only in special cases can the spouse seek alimony in a separate lawsuit, within two years following the divorce. For such a request to be fulfilled, it is neccessary that the preconditions for alimony arise prior to the divorce and last uninterruptedly until the court decision on alimony, or that the spouse become incapacitated for work in the course of this period as a consequence of injury or impared health prior to the divorce.

Article 287, par. 2 of ZBPOS provides that "the court is entitled to reject the alimony claim in case it is put forward by a spouse who behaved rudely or indecently during the marriage or if his/her claim would present a blatant injustice for the other spouse (underlined by the authors). This regulation is dubious because of the formulation which gives rise to controversy concerning the authority of the court. First, it is uncertain whether the court is entitled to investigate whether the spouse who seeks alomony behaved in a way which can be considered rude or indecent. Besides, the criteria according to which the court decides on alimony claims are absolutely arbitrary and undefined, inasmuch as the terms "rude" and "undecent" behavior are completely undefined and liable to subjective evaluation. The court which is to apply this regulation is given extensive discretion rights, which can become a source of legal insecurity. Bearing in mind that there are no adequate mechanisms for maintaining the standards of legal practice in matters dealing with alimony on the state level, it is quite clear that a legal regulation containing so loosely set standards represents an endless source of legal inequality for women.

Alimony is granted for an indefinite period of time, the court being entitled to decide to limit that period if it establishes the fact that the claimant has the possibility to secure means of existence in another way in the foreseeable future. If the marriage lasted for a short time, the court may also limit the duration of the alimony obligation or reject the claim for alimony, in case that the claimant is not in custody of their mutual child. In justifiable cases, the alimony obligation can be extended, which is extremely rare in practice. In practice, men label any temporary relationship of their wives with other men as common-law marriage and, invoking the law, stop paying alimony.

The common law spouse enjoys the same rights to alimony as the legitimate spouse; however, the alimony claim can be brought forward only after the termination of the common-law marriage.

According to the law, parents are obliged to pay alimony for their children, in an amount which is proportional to their means, and within the limits of the child's needs (article 298 par,1 of ZBPOS). In the course of defining the amount of money which the parent who is granted custody over the child is to receive as alimony, his/her contribution to the child's upbringing in the form of everyday engagement and caring for the child are taken into consideration. The amount is set as a percentage of the parent's earnings and the court decision is mandatory.

Although the law provides for the possibility to insure continuity of alimony by means of issuing a provisional measure, the courts often reject such claims with the explanation that the requirements are not met.[4] The year-long experience acquired over an extended period of application of the existing regulations in the field of nuptial and family relations shows that the pronouncement and implementation of sanctions according to the Civil Code and Penal Code, in the manner they are effectuated in practice, do not bring about the desired results, nor can they reduce this form of economic violence. First of all, proceedings during which the woman and her children seek to obtain alimony are among the most ineffective ones. They usually last over a year[5], and throughout this period the woman and her children may be in a state of utter poverty, unable to care even for their basic needs like food. By resorting to various tricks and cunning tactics during the proceedings, by taking advantage of "legal gaps", invoking unjustifiable legal remedies, men succeed in protracting alimony proceedings so that they occasionally last over three years. Their "mastery" in concealing their real earnings and revenues is amazing. Quite often, they seek by illegal means to diminish the amount of their earnings and thus decrease

4 For details, see: Petrušić, N. (1996) "Privremene mere u parničnim porodičnopravnim stvarima", *Zbornik Reforma porodičnog zakonodavstva*, Beograd, p.441.

5 A pilot research, which was conducted on a sample of 50 alimony proceedings in the District Court of Niš during 1991, where the women and children were plaintiffs, shows that 70% of the proceedings lasted over a year.

the sum they have to pay for alimony. Particularly, they do not declare earnings from supplementary work, and when they are engaged by private employers, they frequently declare false figures as their earnings. Unfortunately, they are often assisted by unscrupulous male lawyers, who view their assistence to their client to avoid or slash his alimony obligation as professional success.[6] Besides, in the course of alimony procedings, the woman and children are more affected economically, because the woman is forced to spend her meagre resouces on legal expences – taxes and lawyer's fees. This image becomes even gloomier in view of the fact that the procedure for mandatory execution of an effective court decision which binds the husband or father to pay a certain percentage of his salary as alimony is also, according to the existing regulations, extremely inefficient. This happens despite the existing regulations, according to which the procedures are started officially. Furthermore, the economic situation of the woman after divorce is particularly difficult because the man is normally filed as the proprietor of the real estate acquired during marriage and therefore it is the woman who initiates the procedure for the division of common property, which implies covering all the legal fees in advance. Besides, throughout the proceedigs, the woman cannot dispose ofcommonly acquired property, neither real estate nor movable property, even of personal possessions and other objects which, according to the regime of special property belong exclusively to the woman. [7]

According to the Penal Code of Serbia, (article 119), avoiding payment of alimony is a criminal offence which incurs a prison sentence or a fine. For such an offence to be established, two conditions must be met: that the obligation to provide alimony be set by the law and that thre has to be an executive court decision or settlement , whereas the concept of avoiding alimony is not defined clearly enough, so that it is restrictively interpreted in practice. That is the reason why it is difficult to prove the existence of a criminal offence and why repressive measures against the perpetrators are not achieving the desired effects. The practice where the public prosecutor discontinues criminal proceedings in situations where the accused settles his debts after indictment or during the process of collecting evidence, is particularly alarming, because there are no legal grounds for such decisions.[8] Such behaviour rarely entails sanctionig of the criminal offence of failure to pay alimony, although it is a widespread phenomenon in practice. On the other hand, it is to be noted that the legal protection itself does not serve the necessary ends – in spite of sanctioning, the woman and the children do not effectuate their right to alimony.

Legal intervention, undertaken by state authorities in cases of economic violence of men against women and children, represents an oppressive form of legal protection. Both in the field of civil and criminal legislation, legal protection is extended only when economic violence is manifested in the most drastic form, when it has reached such proportions that the very existence of the women and their children is at stake. With regard to the existing legislation and practices of civil and criminal courts, it is obvious that solutions must be sought on a broader social plan, by providing suitable forms of preventive legal protection which would prevent economic violence and guarantee social security.[9]

One of the possible courses of action for the community in the broader sense could be to establish alimony funds for specific purposes in the

6 This conclusion derives from all the interviews that the volunteers of the Niš S.O.S. Association for women and children victims of violence conducted with women victims of economic violence.

7 For details on problems related to the division of the spouses' mutual property and reasons of inefficiency of the procedure for the effectuation of this division, see Stjepanovic, S. (1988) "Sistem diobe imovine bracnih drugova," Beograd. A number of problems arise during extra-judicial and executive proceedings for the division of real estate and movable property, which are conducted following the proceedings for the division of the spouses' mutual property, with the aim to factually divide property by means of physical or civilian division. (For details: Petrušić, N. (1997) *Vanparnični postupak za deobu*, Beograd: Zadužbina "Andrejevic", biblioteka "Disertario".)

8 For example, in the area of District Prosecutor's office in Vranje, (only) 12 criminal charges were submitted. Following indictment, the proceedings were discontinued in 11 cases because the public prosecutor dropped charges because the accused ha settled their overdue alimony debt. (See: Panović-Đurić, S. (1996) "Krivično delo izbegavanja davanja izdržavanja -krivični osvrt", *Zbornik radova Reforma porodičnog zakonodavstva*, Beograd, p.381.)

9 The Law on marriage and family relations of Serbia (article 24) provides for the possibility of starting specific funds for alimony on the community level, which would ensure the payment of legally determined alimony. Due to the concept of this foundation, which is based on the long-forlorn principles of social consent and self-managing agreement, it has not been significantly implemented in practice. (See more on this subject in (Đordević, M. i Todorović, L. (1988) "Pravna priroda alimentacionih sredstava", *Socijalno pravo*, 9-10.)

state budget. These funds would ensure effective interim social security in cases where legally determined alimony is not provided, whereas the state would cash the paid amounts from the person who was supposed to pay them. In this way, economic violence could be prevented and such conditions would be established where the women's and children's basic needs would be satisfied. The burden of mandatory effectuation of payment, which has so far weighed upon victims of economic violence, would be transferred to the state, which would, in turn, provide more effective payment and sanctioning of irresponsible behavior of those who avoid paying alimony. The means for alimony funds could also be collected from fines imposed upon perpetrators of the criminal offence of failure to pay alimony. Also, solutions should be sought in suitable legal amendments which would provide for the possibility of a marriage contract, according to which the future spouses could arrange their financial relations.

The experience of women victims of economic violence, with whom we have spoken as members of the S.O.S. Association for women and children victims of violence, as well as the available legal practice, have shown that existing legal solutions are inadequate and that there is an urgent need to find more effective measures for the struggle against economic violence of men against women and children. ❑

MARIJA LUKIĆ*

Childbearing – a Right or a Duty

A woman's right to decide on childbearing is one of the intricate and controversial legal issues where diverse and antagonistic arguments are often mingled, coming from lawyers, politicians, doctors, clerics, sociologists, social workers... There is practically no profession, especially in the sphere of social sciences, which is not confronted with the dilemma: for or against abortion. No optimal legal or political solution to this problem, which is invariably accompanied by an emotional charge and branded by individuals' value systems, has been found so far.

On the legal level, the controversy over abortion rights arises not only from the dilemma whose interests, i.e. rights, ought to be given priority - those of the mother or those of the fetus – but also from the anterior question, whether or not the fetus is a human being.[1] Simplified, the problem can be reduced to the question: which is to be given priority, the fetus's right to life or the (mother's) freedom of choice whether or not to have a child. The main argument against abortion is that a human being is a legal subject from the very beginning. Those who are in favor of giving the woman freedom of choice argue that only a newborn child can be considered a human being, whereas until that moment, it is only part of the mother's body.

From the political point of view, this is a particularly important issue, because it has a direct bearing on demographic policy, namely, on stimulating the growth and development of the population in a desired course. The issue of determining the measures and methods aiming at increasing or decreasing the number of inhabitants in the territory of a country is undoubtedly defined by the nature of relations of a state towards individuals, i.e., by the degree to which their private rights are respected; in this case, their freedom of choice concerning parenthood.

It is equally difficult to separate the legal debate about a woman's right to abortion from the value system of each individual who takes part in such a discussion; therefore, it is impossible to separate the legislator's logic from the political arguments that conditioned the adoption of laws in this sphere.

Although many of Serbian authors agree that the political discussion that preceded the adoption of the present Abortion Law (SL.Glasnik 15/95) considerably influenced the acceptance of some of the new regulations, they are absolutely polarized regarding their value judgement. On one side, there are those who consider that the adopted law is anti-demographic and too liberal,[2] and on the other, arguments that emphasize considerable restrictions imposed on the woman who wishes to terminate her pregnancy after ten, and before twenty weeks of gestation.[3]

The absence of social grounds for allowing abortion in the period between ten and twenty weeks of gestation, the fact that decision-makers consist almost exclusively of doctors and, in exceptional cases, lawyers on the Ethics Committee, and particularly, the unclear and incomplete regulations regarding the procedure for requesting and deciding upon a request for abortion after ten weeks of gestation are justifiable reasons for serious criticism and revision of the existing Law.

Legal solutions

The post-war[4] history of civil rights and freedoms in the area of the former SFR of Yugoslavia has been characterized by versatile trends and sometimes-controversial directions of develop-

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1 Panović-Djurić, S. (1997): "Pravo na prekid trudnoće – problem konflikta interesa", *Pravni život*, vol. 1, issue 9, 28 pages.

2 Ponjavić, Z. (1995): "Pravo na prekid trudnoće", *Pravni život,* issue 9. pp.111-113 and Mladenović, M. (1996): "Biološko odumiranje srpskog naroda i populaciona politika", *Collectted papers "Reforma porodičnog zakonodavstva"*, Beograd: The Law Department of Belgrade University and the Association of Legal Experts on Social Law in Serbia, pp.29-30.

3 Konstantinović-Vilić, S. and Petrušić, N. (1997) "Pravo na abortus – zakonodavstvo i praksa", *Ženska prava i društvena tranzicija*, Belgrade, Center for Women's Studies and Communication, pp.24-27.

4 Here, we have in mind the period after the end of the Second World War.

ment. Qualitatively different social, economic and political relations determined different approaches to the formulation of abortion rights.

Abortion was legalized in 1952, when the Regulations concerning the performance of permissible abortion were adopted. The new regulations, i.e., the 1960 Decree and the Law on the conditions and practices for performing abortion from 1977, widened the range of situations where abortion was allowed.[5] According to the Regulations from 1952, for example, abortion was allowed if the pregnancy impaired the woman's health because of extremely difficult financial, personal or family circumstances if childbearing should occur. This vague formulation was applied in practice as a social reason for abortion. The 1960 Decree explicitly stipulates the social conditions, i.e., difficult personal, family or financial conditions that would affect the woman if she had the child. It also provides for two types of procedure.

This trend was changed in the existing Law on abortion procedures in a health institution, which was adopted in May 1995. Its restrictive regulations mark the beginning of a new, conservative demographic policy. According to this law, abortion can be performed until ten weeks of gestation with no particular legal restrictions (exceptionally, in case the woman's life is endangered or if the pregnancy poses a threat to her health). After this term, until twenty weeks of gestation, the pregnancy can be terminated if a doctor's consultation establishes the presence of legal preconditions, i.e. certain medical or criminal reasons.[6] The Ethics Committee determines whether the conditions for an abortion after twenty weeks of gestation are fulfilled. It is allowed only when one or more of the medical reasons are present.

Two main features are prominent here:

- the absence of social reasons for abortion between ten and twenty weeks of gestation. (The two previous laws allowed a direct or indirect possibility for the woman to invoke difficult social circumstances or personal reasons, whereas the existing Law excludes them completely).

- The abolition of a two-tiered procedure, which jeopardizes the constitutional guarantee that each individual has the right of appeal against a decision made by state organs, concerning his/her right or interest (Constitution of Serbia, art.22).

The legislators' logic and intentions in favor of childbirth are completely clear, in view of the fact who makes the decision whether abortion is to be performed or not. Namely, a consultation consisting of three doctors is competent in cases of pregnancies between ten and twenty weeks of gestation, and the Ethics Committee in cases of pregnancies older than twenty weeks of gestation. The choice of members on this team is particularly interesting. It consists of a gynecologist, a pediatrician, a psychiatrist, an internist and a lawyer. Each of them has to hold the position of university professor at the Medical or Law department, or to be a Doctor of Science or Ph.D. in Law.[7] As a matter of comparison, the Law from 1977 provided for a Board consisting of a psychologist and a social worker, who decided on abortion after ten weeks of gestation.

In case none of the legal conditions are fulfilled, the woman who wishes to terminate a pregnancy after ten weeks of gestation faces one of the following choices: to forge the reasons or certificates for requesting an abortion, have an illegal abortion or bear an unwanted child.

The practice in countries which have opted for restrictive abortion laws shows that they do not diminish the frequency of abortions, but increase the mortality and health problems of women as a consequence of unsafe abortion practices.[8] Between 20% and 50% of mortality, which is related to or caused by pregnancy, can be avoided by allowing contraception and abortion.[9] The legalization of abortion decreases the number of complications, which most often result in permanent sterility of women.

Leaving aside the analysis of the criminal act of illegal abortion, and related to it, the criminal political justification of the absence of punishment for the pregnant woman for its performance, it is our opinion that even when these radical "solutions" are not applied, it is obvious that any decision in such a situation is extorted. It also usually jeopar-

5 Konstantinović-Vilić, and Petrušić. op.cit. pp.20-24.

6 The Abortion law, Art.7, p.2.:
Exceptionally, abortion can be performed after ten weeks of gestation:
1. When the woman's life cannot be saved, nor severe consequences to her health prevented, in a different way.
2. When, according to medical findings, the birth of a child with severe physical or mental defects can be expected.
3. When the conception was a consequence of a criminal act (rape, intercourse with a helpless person, or a minor, or by misuse of position, seduction or incest).

7 Art. 2, par 2 of the Set of Rules regarding the number, contents and practices of the Ethic Committee in a health institution.

8 Mršević, Z. (1995): "Pravo planiranja porodice i inkriminisanje pobačaja", *Pravni život*, vol. I, issue 9, p.559.

9 Panović-Djurić, S. op.cit. p.31.

dizes the woman's personal and financial security and disturbs the entire family.

Social conditions at the time of the adoption of The Abortion Law of 1995

In spite of the vigorous campaign that was mounted against the adoption of such legal solutions, especially by numerous women's groups and organizations in Serbia, the conservative forces prevailed. In an environment of growing nationalism, an enormous number of casualties and the economic hardship of the majority of the population, the pro-life policy easily gained support in practically all segments of society. Ever since Patriarch Pavle issued his Christmas epistle in 1995, the right to abortion and the rights of the unborn child to life have been crucial matters, considered to be of major importance for the survival of the Serbian people.

Many professors and academicians supported such opinions. Mladenović predicts the following : "The situation (in Serbia) is really tragic: in a quarter of a century or so, the rate of mortality will be twice as high as the birth rate, fewer and fewer babies will be born, funerals will be all the more frequent and pensioners and invalids will be walking the streets of the cities in Serbia. The Serbs will have become a minority in Serbia. In eighty or one hundred years, Belgrade will be the capital of another Great Dzamahiria."[10]

The pretext for this catastrophic outlook are the facts that have been a source of serious concern in our society for a considerable period of time. The data gathered from all the territory of Yugoslavia indicate that the ratio between the birth rate and mortality rate is still positive, but the disproportion of the natural growth of the population in different areas is obvious: in the region of Kosovo it is around 16.7%, compared to -3% in Vojvodina.

The measures proposed by this expert in family law and family sociology, as well as the analysis of the causes of the present situation, are no less a cause for concern: "The climax of every cycle of civilization is marked by two features: by a high level of emancipation of women and a low birth-rate, which is a direct consequence of this emancipation of women."[11] In the author's opinion, the complete equalizing of men's and women's social roles caused the downfall of all ancient civilizations (underlined by M.L.) That point is at the same time the climax and the end of the cycle.[12] A way out of this crisis is, of course, biological hyper-production. [13]

Such opinions did not lack support. Some authors directly link their views to the standard patriarchal model of behavior. Ponjavic says: "Our legal system has departed from the orthodox tradition and, for a long time, the concepts of rights and personal freedoms were rooted exclusively in the ideological foundation of Marxist – Leninist ideology. Founded on the collective model, for a long time and in many of its segments, it meant the denial of personal rights, even the right to life"[14]. Therefore, abortion must not be regarded as a woman's right, as an expression of some kind of absolute power of rule over one's physical integrity and one's power of procreation, let alone as a means of family planning.[15] In the same text, the author goes on to say the following: "By achieving legal equality with the man, the woman can impose abortion upon her husband by refusing to have the child. In fact, she has been empowered to have a child when she wishes to, to have "a programmed child"[16]

Ever since the last century, feminist authors have supported the argument that abortion is a woman's exclusive right, which is today upheld by some contemporary legal systems. The Supreme Court of the USA has proclaimed as unconstitutional those laws that prevent or unjustifiably limit women in their free choice regarding abortion. It is considered that such laws infringe upon women's rights to privacy, which is guaranteed by the Bill of Rights, which protects freedom through acknowledging the freedom of choice as a prerogative of the individual's autonomy or self-determination. [17] The feminist position is that a woman has the exclusive right to decide whether to have a child or not, because it is part or her body, and also

10 Mladenović, M. op.cit. p. 28.

11 Mladenović, M. op.cit. p.29.

12 Mladenović, op.cit. p.29

13 Mladenović, M., op.cit. p.31 "We need a biological revolution instead of a sexual revolution... Numerous women ought to be given the opportunity to become mothers. Motherhood should be raised to a cult level. That is the most beautiful vocation in the world. Successful women do not have to have children. But, there are many that would gladly have even five children, if society made it possible for them. However, the successful women do not have to deprive themselves of posterity, either. Clever children, born by clever mothers, are necessary."

14 Ponjavić, op.cit. p.112.

15 Ponjavić. Z. op.cit. p.112.

16 Ponjavić, Z. op.cit. p.107.

17 Panović-Djurić, op.cit. p. 35.

because the primary responsibility for the child's upbringing and development lies with the woman, once it is born.[18]

The social climate at the time the Law on abortion was adopted was not favorable for increasing women's rights to free and independent decision-making regarding the issue of motherhood. The argument about free parenthood and family planning was completely ignored. Criticism against women who chose not to have children was very sharp at times. Markovic believes that the Serbian people must be made aware of the fact that the demographic situation is alarming and that the white plague, as a consequence of aspirations toward an easy and comfortable life without children, can win in the area where the world superpowers were never able to do so."[19]

Motherhood nowadays – research findings

The results of research, which was carried out by the Institute for Sociology of the Philosophy Department of Belgrade University, show that the selection and assessment of the reasons why women in Serbia decide against bearing and rearing children are completely wrong. The research was conducted on a sample of 800 women, mothers of young children, in 1995.

The research led to the conclusion that, within the Yugoslav model of "liberal communism", the woman was allowed some space for personal empowerment, consciousness-raising and independence, however limited that range might have been. But still, the family remained the focus of her activities and wishes. During that period, a new type of family was formed and the woman completely devoted herself to it. The role and the importance of parenthood became, for both men and women, the essence of family life.[20]

In this area, the 1990's were marked by crucial political and social changes, which were accompanied by the disintegration of numerous social structures. The modified family model performs very reduced functions, the most important of which is the survival and upbringing of children. Sacrifice is accepted as normal, expected behavior when the preservation of the family is concerned, especially the interests of the children. Therefore, the fact that 3/4 of the respondents declared that "Parents ought to do everything for their children, even when that entails self-sacrifice", is not surprising.[21]

This research also shows that 2/5 of the respondents wish to have another child, explaining that they wish to do so because they love children. Those who do not wish to have any more children say that the only reason is the financial difficulties they are facing. If they had ideal conditions, 47% of the respondents would like to have three children.

From the results mentioned above it can be concluded that women in Serbia wish to bear children, and that caring for the family remains their personal priority to this day, even when it involves self-sacrifice. Considering the difficult economic situation that has existed in Yugoslavia for quite a long period of time, it can be inferred that the decision to prevent or terminate pregnancy is usually conditioned by financial limitations. The right to life, understood as a right to a certain quality of life, is emphasized as a justification for abortion, particularly in cases where the continuation of pregnancy can pose a threat to the life or health of the children the woman already has.[22]

It seems that self-sacrifice for the family has already reached its ultimate limits, and that we ought to look elsewhere for the reasons of the low birth rate, as well as for the solution to this problem. The modern state is no longer expected only to uphold the proclaimed principles, freedoms and rights, but also to take an active part in the realization of conditions under which they can be exercised. In the same way, reproductive rights comprise not only the state banning and refraining from the implementation of restrictive abortion laws, demographic policies and traditional customs[23] but also the upgrading of the general level of knowledge about contraception, family planning, economic availability of contraceptive devices on all social levels, improvement of the standard of living, etc.

Nevertheless, the strongest argument for the promotion of rights on abortion still remains the requirement that the state refrain from setting limitations of this kind for its citizens. "It is a human right to freely decide on childbearing", reads article 27 of the Constitution. The reproductive rights

18 Mršević, Z. op.cit. p. 554.

19 Marković, M. (1996): "Načela srpske nacionalne politike", Compilation of papers "*Srpsko pitanje danas*", Beograd, SANU, p.91.

20 Blagojević, M. (1996): "Motherhood in Serbia: Self Sacrificing Paradox", *Sociologija*, 4, pp. 630-631.

21 Blagojević, M. op.cit. 631-632.

22 Panović-Djurić, op.cit. 31-32.

23 Mršević, Z. op.cit. p. 547.

must be respected regardless of women's motives and interests when they opt for abortion or for a life without children in general.

Instead of a conclusion

The governing Abortion Law and its restrictive regulations, compared to the laws that preceded it, is closely connected with the political and general social climate and circumstances at the time it was adopted. Nationalism and the all-out crisis of Yugoslav society had a strong impact on conservative trends in demographic policy, restricting women's freedom of choice in childbearing.

Nevertheless, after a thorough analysis of all the legal regulations, ranging from the Constitution, penal laws and regulations pertaining to abortion rights, it can be inferred that our legislation still primarily aims at protecting the life and the body of the woman. For example, the Constitution of Serbia defines freedom of decision on childbearing as a human right (par.27). Further on, the law punishes illegal abortion (art.52 of the Criminal Code of Serbia) and at the same time provides legal protection for the pregnant woman and her fetus. According to some authors here, this provision represents a formal and legal confirmation of the unborn child's right to life. Still, the legislation gives priority to the mother's life over the life of her fetus. It is indisputable that by treating this act as a criminal offence, protection is also provided for the fetus, in an indirect way – by protecting the mother's life. Namely, the law incriminates as a committed act the very attempt of an illegal abortion (in addition to performance and assisting the performance of an illegal abortion, with the consent of the pregnant woman). As a consequence of such a definition of the basic form of this criminal offence, it arises that any act which is aimed at terminating the pregnancy, and which is contrary to the positive legal regulations concerning abortion, even when it does not result in hurting or destroying the fetus, is to be considered as a fait accompli. This means that the life of the fetus does not necessarily have to be endangered or jeopardized. The fact that the fetus was destroyed is to be taken into consideration when defining the penalty, but not when the offence is being assessed or qualified. What is more, such offences are qualified as acts against life and body. The law does not state the earliest stage of gestation as the lowest limit protected by the law. The majority of authors infer that both the mother and the fetus are protected from the first days of pregnancy. Nevertheless, in those first weeks, the embryo cannot be acknowledged as a formed human being. The Law itself grants the woman the right to decide freely and independently whether she wants to have the child or not within the first ten weeks of pregnancy. This means that during the first weeks of pregnancy, it is primarily the mother who has to be protected against unwanted and illegal abortion practices.

Under the conditions of economic crisis, which have been present in FR Yugoslavia for quite a long time, the elimination of social reasons for the termination of pregnancy, which is past ten weeks of gestation, is unjustifiable and inexcusable. One of the consequences of this situation is the different attitude of the officials who decide in cases of pregnancies older than ten weeks. The psychologist and social worker are no longer in any of these teams of experts, so the issues concerning the mental and physical health of the woman remain unattended. Bearing in mind that restrictive abortions ultimately lead to a higher mortality rate of women, damage to their health and increased infertility, it is clear that it is necessary to amend this law in the sense of broadening the grounds for the termination of pregnancy and modifying the attitude of the teams who decide in such cases.

Having compared the existing legislation in this sphere in European countries, we have concluded that only the countries of the former Yugoslavia and Turkey have limited the period in which abortion can be performed at the pregnant woman's request to ten weeks of pregnancy. In all other countries, this limit is 12 or 15 weeks. Extending that period would be important for the promotion of reproductive rights, particularly in the present situation, where the procedure of deciding upon a request for terminating a pregnancy after ten weeks is not clearly determined. This can lead to arbitrary decisions in practice. The need for a more comprehensive and more adequate approach to this procedure remains, regardless of a possible extension of this period to 12 or 15 weeks.

Finally, it has to be stressed that, in the course of adopting legal regulations which are in between the spheres of public interest and individual rights, or even encroach upon the private sphere, the primary subjects of these rights and interests must be taken into consideration.[24] This is the only way to avoid the bad consequences that derive from non-adherence to or circumventing the implementation of inadequate or unrealistic legal solutions and requirements. ❑

24 Panović-Djurić. op.cit. p.38

The seminar "The Problems of Victimisation in the Balkan Region Countries"

TSIGOV CHARK, BULGARIA, 19 – 22 FEBRUARY 1998.

The seminar entitled "The Problems of Victimisation in the Balkan Region Countries" was held in Tsigov Chark in Bulgaria from 19 to 22 February, 1998. It was organised by the Public Prosecutor's Office of the Republic of Bulgaria, The Committee for Criminology Studies of that country and the United Nations Interregional Crime and Justice Institute (UNICRI) from Rome. The Seminar was attended by criminologists and victimologists from Macedonia, Bulgaria, Romania, Albania and Yugoslavia. The participants from Yugoslavia were Vesna Nikolić – Ristanović, a senior researcher at the Institute of Criminological and Sociological Research in Belgrade and the president of the Victimology Society of Serbia, and Ivana Stevanović, a researcher in the Institute of Criminological and Sociological Research in Belgrade and the vice-president of the Victimology Society of Serbia.

Vesna Nikolić – Ristanović submitted the report on the results of the first international survey on victimisation – International (Crime) Victim Survey carried out in Belgrade in 1996, as well as on the overall crime and victimisation situation in the FRY. The Macedonian report was submitted by Violeta Caceva, Bulgarian – by Boyan Stankov, Albanian – by Vasilika Hysi, and the Romanian report was presented by Horia Vasilescu.

All the reports clearly show that crime is a major problem in all the countries represented at the seminar and that the pubic is strongly dissatisfied with the police and their resolution of criminal cases. A special emphasis was laid on the problem of organised crime, in particular – trafficking in women and children. The participants also pointed out the deficiencies of the victim protection system, including inadequate legal solutions, inadequately trained and incompetent staff of the legal institutions and lack of services for victim support and guidance.

Based upon the reports submitted by the participants of the represented countries, the UNICRI will issue a publication which will be presented in the media and forwarded to the proper state institutions of the participating countries. This publication will be available to both professionals and the wider public, and the seminar report will also be presented at the international conference "Surveying Crime: A Global Perspective" which is to be held in Rome in November of this year.

The following recommendations for the attending countries were adopted at the seminar:

- To promote victimological research on the national and international level including the participation of the attending countries in the fourth international survey on victimisation which will be carried out in the year 2000;
- To improve the rights of victims / witnesses in criminal proceedings with a special emphasis on the rights of women and children;
- To improve collaboration among the Balkan countries in order to determine a general strategy of action against organised cross-national crime;
- To improve technical collaboration and exchange of information among these countries;
- To improve the level of co-operation among crime research institutes of the Balkan countries, including the exchange of professional literature;
- To improve the method of compensation of victims through the legal system
- To investigate the rules and gather basic information on experts who would be most suitable for training police, judges, prosecutors and attorneys in order to improve the protection of the rights of victims during the criminal proceedings
- To establish a steady co-operation among the Balkan countries i.e. their crime institutes on one side and the UNICRI and HEUNI (European Institute for Crime Prevention and Control, affiliated to the UN) on the other. ❑

Ivana Stevanović

The Round Table "The New Law on Implementation of Criminal Penalties and the Future of Women's Prisons"

*BELGRADE, MARCH 24, 1998**

In the organisation of the Victimology Society of Serbia and the Group for Women's Rights of the European Movement in Serbia and in co-operation with the Institute for Criminological and Sociological Research, the first issue of Temide was presented and a Round Table about the new Law on Implementation of Criminal Penalties and the future of women's prisons was held in Belgrade on March 24, 1998. The following experts took part in the discussion: Professor Dobrivoje Radovanović, head of the Institute for Criminological and Sociological Research, Zoran Stevanović, the vice-minister of justice in charge of implementation of criminal penalties, Slobodanka Konstantinović – Vilić, professor at the Law Faculty of the University of Niš, Gorica Pajić, governor of the Women's Prison in Požarevac, Dragana Petrović, psychologist in the Women's Prison in Požarevac, Slavica Stojičević, social worker and counsellor in the Women's Prison in Požarevac, Vesna Nikolić – Ristanović, senior researcher at the Institute of Criminological and Sociological Research in Belgrade and president of the Victimology Society of Serbia and coordinator of the Group for Women's Rights, Ivana Stevanović, assistant researcher in the Institute for Criminological and Sociological Research in Belgrade, vice-president of the Victimology Society of Serbia and secretary to the Group for Women's Rights, and Branislava Knežić, researcher in the Institute for Criminological and Sociological Research and a member of the Group for Women's Rights.

The Session of the Round Table commenced with the introductory speech of Vesna Nikolić – Ristanović. She spoke about the changes in the Law on Implementation of Criminal Penalties, which concern women's prisons. She also pointed out the main problems in implementing of these penalties against women, which the members of the Group for Women's Rights and assistants in the Institute of Criminological and Sociological Research had identified by researching conditions in the Penal Institution in Pozarevac. In their opinion, the resolution of these problems should be a priority when implementation of the new Law is considered.

The new Law on Implementation of Criminal Penalties establishes, among other things, two significant innovations regarding the women's prison: the women's prison is an autonomous institution – meaning a separate, independent organisation in relation to the men's prison; and, the woman's prison is a medium-security penal institution. Nikolić – Ristanović stated that the independence of the women's prison renders a better opportunity for attending to the specific problems and needs of women-prisoners and the fact that it has become the institution of the combined security type creates a possibility for the correct categorising of women-inmates which has not been possible so far. The basic prerequisite for implementing these provisions of the new Law is renovation of the prison grounds or moving into another premises either newly constructed or appropriately renovated ones. According to Nikolić – Ristanović, this would improve the overall living conditions in the prison and, more specifically, the conditions for practising good hygiene which, as the results of the research have shown, are unsatisfactory at present.

Apart from the problems concerning accommodation, the most urgent issues are organising the inmates' time, especially the complete lack of any form of education or training, the difficulties of finding employment for them, and the problem of organising their free time. The irregularity of the contact with their families, children in particular, pose another serious problem as well as the inadequate health care since the prison does not have a full-time medical service, and, due to the bad economic situation, cannot provide the sufficient quantity of medications. At the end of her address, Nikolić – Ristanović compared the conditions of imprisonment in the National Prison for Women in Kalosca, Hungary, since, being a country of similar geographic and socio-economic features; some of their experiences can be valuable to FRY. It is obvious that, as Nikolić – Ristanović points out, much has been done to improve the living conditions in that prison in recent years: among other things, the introduction of an external telephone line which enables the prisoners to contact their families, a considerable improvement in access to information, organisation of free time, organisation of education and training, conditions for practising good hygiene as well as introduction of a specific programme for prisoners who have served long-term sentences to adapt gradually to the outside world. Along with these, there

* The organisation of the Round Table was supported by The Friedrich Ebert Foundation, The Embassy of the Netherlands in Belgrade and Institute for Criminological and Sociological Research.

is an apparent tendency (of the officials) to allocate more substantial amounts from the budget to prisons, to accept donation from humanitarian organisations and to co-operate with private companies with regard to organising work for prisoners. It might be interesting to mention that they have chosen to employ their own pedagogues in the prison primary school rather than to engage teachers from regular schools, since they are more familiar with the prison environment, find it easier to work with prisoners and it is less expensive. The women-prisoners in that prison can choose among various classes: gardening, soft-toy making, leather works, sewing, embroidery, computers or English. According to the prison staff, the wide choice of classes motivates the prisoners to finish primary school.

In his address, professor Dobrivoje Radovanović first talked about the characteristics of criminality in women emphasising that it comprises a very small part of the overall crime thus posing a lesser social threat compared to criminality in men. Generally speaking, women tend to commit minor property offences and murders in a fit of passion, but, in the last few years, there has also been an increase in the number of women who commit more serious offences such as robbery. Professor Radovanović informed the participants that he had been engaged in drafting the new Law on Implementation of Criminal Penalties and advocated that women's prisons should be minimum-security institutions, since, in his opinion, such establishments reflect the real extent of social threat of women-perpetrators who are sent to prison. Women-prisoners have specific problems and needs which are impossible to meet in a satisfactory way if a women's prison is only a part of a men's prison, since male-prisoners comprise the majority of the prison population and their needs are always a priority. Both during the Law drafting and during the Session, Professor Radovanović argued that the treatment of prisoners should not be confined to schooling and training but should include a complete correction. He pointed out that the new Law presents a huge step forward only if it includes the concept of rehabilitation rather than re-education. Therefore, the term re-education should be replaced with the more adequate and more widely accepted term of rehabilitation. He also stressed that an imprisoned person should be treated in accordance with his / her age and not as a convict. Professor Radovanović mentioned as well that there had been a dilemma in the course of drafting the Law as to what is the age limit for a child who must be separated from its mother when a woman-prisoner delivers a baby while in prison. They considered the age of three but, in the end, the opinion that a child should not remain in a prison environment after the age of one prevailed.

Professor Radovanović emphasised the bad conditions for women prisoners on remand, especially in Belgrade District Prison. According to him, the conditions there are abominably poor. He also pointed out the unsatisfactory solutions in the new Law in connection to the implementation of sentence and corrective measures for under-age girls. Namely, the Law provides that both under-age girls and adult women should serve sentences in the same prison but in separate departments. An even worse solution is that under-age girls should be put in the same reformatories with young men where they are constantly exploited by the young men. At the end of his exposition, Professor Radovanović questioned the competency of the commission in charge of drafting the new Law on Implementation of Criminal Penalties, saying that the majority of members were experts in criminal proceedings and that most of them "had not carried out any research"; he also expressed certain doubts as to the future implementation of the Law by the Ministry of Justice.

In his address, Zoran Stevanović said that the Government had drafted an Act on Instituting the Correctional House of Detention for Women and that it was expected to be adopted soon. It also represents the first step forward towards implementation of the legal provision on the independent women's prison. Stevanović said that resources had been allotted for new prisons including a prison for women, and that they were to be invested into the renovation of the prison grounds in accordance with the new provisions concerning the categorisation of prisoners and the amelioration of the conditions for receiving visitors such as husbands, children, etc. However, building a new prison for women is out of question since it would require 10 to 15 million DM, a sum that the Ministry simply does not have. They will strive to improve the existing conditions; it is also possible that women's prisons will be established in other towns and perhaps another independent institution for women. A better strategy would be to establish a number of smaller institutions and to develop a more comprehensive system for the implementation of penalties.

According to Stevanović, about 50% of prisoners' marriages are broken due to the irregularity of contacts with their spouses while serving sentences and, therefore the amelioration of the conditions for visits should be a priority. The Ministry intends to work on the improvement of the medical service in the women's prison but it should be made clear that, at present, nobody is motivated to work in a prison. For instance, not one doctor or lawyer wants to work there.

Gorica Pajić, the governor of Women's Prison in Pozarevac, stated that she expected the co-operation of an expert team, which would include the researchers of the Institute and members of the Group for Women's Rights, in finding the most appropriate solutions for the women's prison. She also pointed out that expert assistance would be specially needed in drafting house rules, which would be suitable for women. She said she wished that, when the decision on the institution of the women's prison was made, the organisers would form an expert team, which would include the prison staff as well. In her opinion, the subordinate act on house rules should cover all the details of life and work, from entering prison to completion of sentence of all the prison population as regulated by the Law. Pajić emphasised that she is in favour of putting to use the results of research in order to conceive a set of rules, which would be truly applicable. As far as women are concerned, she considers that the set of house rules should differ from the one made for men's penal institutions. The set of house rules is very important since the staff invokes it in dealing with everything that is done in the prison. For example, the new Law strictly regulates the circumstances under which the measure of solitary confinement is pronounced. However, it is not completely clear how this room should be furnished. Contrary to the previous version of the Law, solitaries are now equipped with a bed and other fittings which means that the discipline measures is restricted to isolation. This brings about a contradictory situation since, according to the former house rules, the prisoners were not allowed to lie down during the day; however, according to the new Law, the prisoner who is confined to a solitary cell is allowed to do so, which paradoxically puts her into a privileged position.

The prisoners who are now in the open and semi-open wards are kept inside walls which is inhumane and should be changed in accordance with the new Law. Gorica Pajić also talked about the serious problems of finding employment for prisoners or organising courses, which would enable them to work when they are released. She pointed out that there is no telephone that prisoners can now use in the prison and that they have resolved that problem by either taking them to town or by arranging an appointment in the prison. Prison authorities are now working on the introducing a separate telephone line for them.

Slobodanka Konstantinović – Vilić began her address by saying that, having heard from the vice-minister of Justice that there was no hope for building a new prison for women, she felt strong doubts about improvement of the present situation. She also said that the new Law on Implementation of Criminal Penalties had, for the first time, provided an opportunity to institute a separate prison for women and to ameliorate the conditions for serving sentences in a women's prison. She emphasised the significance of the results of field research carried out by the members of the Group for Women's Rights, as well as of the information on the implementation of penalties on women in other countries, as the guidelines for making the conditions of serving sentences in women's prisons in our country more humane. While outlining a concept of a new prison, Konstantinović – Vilić laid special emphasis on bringing the standards of practising good hygiene (hot and cold water in every room, bathrooms with showers per every 10 prisoners) to the contemporary level, telephones which would be used at appropriate times and which would be placed in common rooms as well as on arranging separate rooms for family gatherings and spousal visits. Also, special attention should be paid to the structure of the formal system of the penal institution for women: in addition to being highly qualified, the staff in charge of the re-education of women should have considerable experience in working with women and should be trained in applying contemporary methods of dealing with women prisoners as well as to collaborate to the greatest possible extent with groups for women issues which provide support and guidance for women and which analyse problems specific to women.

Dragana Petrović, head of the reception department of the Women's Prison in Požarevac, talked first about the present situation in the prison. Having summarised the structure of the prisoners she went on to explain that the staff, in dealing with the prisoners, chooses permissive methods rather than repressive disciplinary, measures although sometimes the latter cannot be avoided. In such cases, they are much more in favour of reprimands and conditional solitary confinement than of unconditional solitary confinement. In their experience, the positive motivational strategy has better effects and nearly always results in either a total absence of or infrequent abuse of trust. Petrović argued that there is a deficiency in the new Law on Implementation of Criminal Penalties with regard to the Centre for the Estimation of Personality since it does not require that women should be examined there. She also pointed out that she had certain doubts as to the improvement of the present categorisation of the women prisoners. According to her, over 50% of women prisoners serve short-term sentences. There are many women prisoners who have been charged with misdemeanours but the staff has not received any instructions either about them or about foreigners and that creates numerous problems.

Slavica Stojičević, a social worker and counsellor at the Women's Prison in Požarevac, talked about a number of very important issues and problems concerning the work in the women's prison. First she said that we cannot expect that prisoners will change their attitude unless they are encouraged and given a choice. Limited financial resources limit the realisation of some prisoners' rights such as the right to contact with their families. Most families can not afford to visit the prisoners and the Centres for Social Work do not have enough money to bring children for a visit. Ivana Stevanović commented on the last remark saying that, as far as the Centres for Social Work are concerned, this problem is mainly brought about by their inactivity. To illustrate this, she mentioned an example when the means had been provided for a child to visit its mother but the Centre had not brought the child. Stojičević replied that such cases occur but that they are a result of the poor economic situation since social workers are paid very little to bring children for a visit. In connection with this, she pointed out that the Ministry of Family Affairs should provide financial aid for prisoners' children.

Stojičević also warned that both the introduction of a pay phone with tokens being bought in the prison and the fact that prisoners were to be permitted to wear their own clothes could lead to an increase of social stratification in the prison. Then she reminded the participants that many women prisoners have serious family problems, which led them to commit a crime. According to her, such family problems ought to be identified and worked on in order to prevent a possible recurrence. Stojičević also stated that the post-penal supervision does not function and that this frequently invalidates what has been accomplished in the prison, since once they have been released from prison the former prisoners are uncared-for.

Finally, Stojičević brought up a very important question of the specialised training for prison staff, since many employees arrive with a general knowledge, which is inadequate for working with the prison population. She pointed out that the counsellors are frequently reminded of the importance of teamwork, but that they actually have not been trained for it. Stojičević suggested that the associates of the Institute, in co-operation with the Ministry of Justice, should organise a training course for the staff of the women's prison, and she emphasised the need for co-ordination among the Ministries of Justice, Family Affairs and Work, Health and Social Policy with regard to this issue.

Branislava Knežić talked about the problems concerning the implementation of the legal regulations on education. Although the Law prescribes the possibility of an informal education, prison authorities do not make much use of it. According to Knežić, due to a number of social and economic circumstances which have prevailed in this country for the past ten years, penal institutions ought to have made better use of courses, training and lectures since they are less time-consuming and less expensive to organise than regular formal education. These forms of education could be organised by various schools, workers' and open universities, but also by other social and professional groups such as the Group for Women's Rights or The Counselling Centre for the Victims of Domestic Violence.

Knežić also pointed out that if these educational problems are to be solved, attention ought to be paid to changing present practice with a careful analysis of the causes and consequences. Education should be regarded as a means of resocialisation and not as a compulsory part of re-education.

In her address, Ivana Stevanović stated that good general conditions for serving a sentence are undoubtedly a significant precondition for making the implementation of criminal penalties more humane. This certainly necessitates the construction of a new women's prison which would equal the demands of the contemporary penitentiary system. In the meanwhile there are many other things that could be done. Stevanović thinks that it could be worthwhile to consider the promotion of low-budget projects, such as enabling prisoners to have better contacts with their families, especially children, or inducing prison staff to have a more compassionate attitude to prisoners. The Yugoslav Centre for Children's Rights and the organisation Save the Children are interested in assisting in the realisation of these projects. These organisations are willing to assist in creating the content of gatherings between prisoners and their families, and prison psychologists, pedagogues and counsellors are to be engaged in this project. Besides, a more humane relationship between prison staff and prisoners does not require money and this is the most prominent feature of, for example, Scandinavian penitentiary systems which are admittedly the most equitable and humane in this sphere. Stevanović visited Finland and had an opportunity to see how their system functions. According to her, Finland has a much higher standard than Yugoslavia, but it is not the physical conditions what they most insist upon in Finnish prisons. Prisoners, both male and female, are regarded as people who must be helped to leave penal institutions, enabled to start a new, different and better life and, while in prison, to maintain contact with their families, especially children. Therefore, in Finnish prisons, women are with their children until they are three years of age. This period can be longer

if prisoners can be transferred from the regular prison to an open prison or to a penal colony. They also strive to keep families closer together, so they insist on frequent family gatherings; once a month, families have an opportunity to spend a week together (The Open Colony Vanaya).

Finland has taken further steps towards making life in prison more like life outside. They insist that male and female prisoners work and study together. They organise dancing classes, not to teach them dance but to teach them how to communicate. Finnish governors knock before they enter a prisoner's rooms. Generally speaking, prison authorities make an effort to show the prisoners that they are worthy of respect should they choose to obey the rules of the institution they are in.

Stevanović concluded her address by saying that she considered the new Law on Implementation of Criminal Penalties a step forward in this sphere. Agreeing with the previous speakers who talked about the necessity of drafting a new set of house rules for the women's prison, which would meet their demands, she suggested that some solutions applied in Finland could be put to use here, as well.

Vesna Stanojević from The Counselling Centre for the Victims of Domestic Violence talked about the significance of family problems that prisoners have and pointed out that they are the primary interest of the Counselling Centre in giving assistance to these women. She went on to talk about the project of the Counselling Centre and the Group for Women's Rights which is concerned with organising a hairstyling course for prisoners. The course would be organised in collaboration with the Workers' University "Djuro Salaj". Stanojević explained why they had chosen hairstyling: this prisoners' preference (according to the results of the survey conducted in the Women's Ward of the Penal Institution in Pozarevac) and good job opportunities upon completion of the course.

Professor Radovanović replied to the speakers who had emphasised financial problems as an obstacle to successful service of sentence. He argued that this might be relevant to some extent but that much could be done regardless of money. Although he could not assert that such an idea could work here, he said that there was a concept, which had proved functional in other countries – the concept of self-support of penal institutions. Professor Radovanović pointed out that he had visited a number of prisons including a women's prison where he had seen the work unit operating as a splendid little factory which produced excellent shirts and which made such a profit that it could support one more detention centre. "When we supported the idea of categorisation," he said, "we deliberately conceived district prisons as open institutions. Actually, the idea was to organise small enterprises in these prisons which would produce profitable goods and in which prisoners of both sexes would work along with other people who lived in that area. Such institutions are intended for prisoners who have committed involuntary murder or minor offences, who do not have a criminal mind and who do not need any special treatment. According to the theory of differential association, the contact with non-criminals would be sufficient to bring about changes in the system of values in contacts with ordinary people. In these circumstances, such an institution can make a sufficient profit to maintain itself and contribute financially to other penal institutions." This could be carried out in larger detention centres on condition that they are well organised and that some legal obstacles are overcome. According to professor Radovanović, the present legal solution of work units in prisons is a bundle of completely inapplicable regulations: it is not clear whether a work unit is an enterprise or not, whether it functions as part of the overall treatment or not. Naturally, first we must eliminate the widespread prejudice that work can change personality. If we eliminate this prejudice and realise that work in prison decreases monotony and prevents subculture, which are facts, we can make such work productive and not subjugated to re-education. But even if this notion proves unworkable, professor Radovanović pointed out, the state must provide resources for the people it has punished. A person is not obliged to pay for his / her own punishment. If a state deprives a person of his / her freedom it has no right to deprive him / her of anything else. Even when financial resources are scarce, there are things that could be done towards re-education or towards amelioration of living conditions in prisons. For instance, a more humane attitude towards prisoners requires no money. Nonsensical regulations such as jumping to one's feet, taking off one's hat to prison staff, saluting, frequent haircutting, flee-powdering or lining-up are among those regulations of any totalitarian institution which take away people's dignity and which lead to an extremely dangerous personality deterioration causing the occurrence of subculture phenomena. As an opposite example, professor Radovanović mentioned the governor of the prison in Šabac who addresses the prisoners with "you, sir". "This does not require money. A prisoner is a gentleman who has lost only his freedom. There is an enormous difference between such an attitude and the approach when you show a prisoner that he /she is worthless and less than human." Post-penal supervision presents a significant problem. According to professor Radovanović, the penal institutions in Serbia

generate 50% – 60% recidivism. We cannot tell whether such a high rate of recidivism is a consequence of the lack of post-penal supervision, of a generally poor penalty implementation system or, perhaps, it is due to an inadequate treatment of prisoners. It would be difficult to design a research model, which would make this distinction. The state does not allow experimenting in this field which is also irrational. However, it is very probable that the main cause of recidivism is unemployment. If a person can not support himself / herself, he / she steals. But this is not within the scope of sentence implementation. Prison staff must perform their duty properly while they are in charge of a convicted person. "We made an attempt," professor Radovanović pointed out, "to combine penalty implementation with social protection, but not one official from the Ministry of Work, Health and Social Policy was willing to participate in the work of the Commission, even when under-age girls were in question." After that, professor Radovanović said that education is in a similar position: something ought to be done. His idea (which was not accepted and included in the Law draft) was to establish a reformatory, which would comprise a proper school where all convicted persons, especially younger ones, would be educated and which would have a department for women. It would be more reasonable to educate them in one place, with the regular education process and with regular teachers, than to bring teachers from other schools to every penal institution, to pay them and then to chase the prisoners round the premises and bring them to classrooms to attend classes. There was a proposal to organise such a school in Valjevo. In addition to this various courses could be organised (as is done in Finland), such as a course for non-violent resolution of conflicts. This would not require much money. Various expert teams could visit penal institutions and organise it. However, according to Professor Radovanović, the main problem is that officials influential in this field of work do nothing except compare new trends to old law books whilst most of them have never visited a single prison.

Nevena Petrusic, a senior lecturer at the Law Faculty in Nis, also took part in the discussion. She suggested that, when the papers from this Session were completed, a distinction should be made between the proposals on changes in the legislation and those, which could be carried out immediately without any legal changes. In her opinion, some project could be launched without delay, for instance, the hairstyling course, the co-operation with private companies in organising work for prisoners, etc.

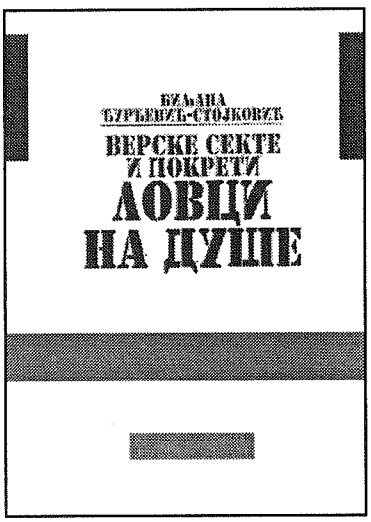
At the end of the Session of the Round Table the participants agreed that the present conditions of imprisonment in the women's prison are not satisfactory and that much should be done to improve them; efforts should be directed either towards those changes which do not require any financial resources or towards those for which the necessary resources have already been allotted or could be allotted. The participants also agreed about the necessity for co-operation between the Ministry of Justice, other ministries in charge of penal institutions and penal institution staff on one side, and researchers, women's organisations, other humanitarian organisations interested in the welfare of imprisoned women, private companies willing to employ prisoners or to organise work in the prison, on the other. Finally the participants accepted the proposal that the summary and conclusions of the Round Table Session are submitted to the staff of the women's prison for suggestions and then, together with the suggestions, to the Ministry of Justice – the Department of Implementation of Criminal Penalties. ❑

BILJANA DJURDJEVIĆ-STOJKOVIĆ,

Religious Sects and Movements – Soul Hunters

Published by: Biljana Đurđević-Stojković, Belgrade, 189 pages.

The book *Religious sects and movements – soul hunters* by Biljana Đurđević-Stojković represents one of the few scientific approaches to the origins, development and practices of religious sects and movements. Although it is common knowledge that religious sects, movements, clandestine organizations and secret societies have been burgeoning over the recent years in Yugoslavia (in mid-1996 the number of officially registered religious communities read 64, and about 250 more were conducting clandestine activities), very little has been written about their destructive and totalitarian activities, primarily toward the young. That is why this book, written by Biljana Đurđević-Stojković, editor of the foreign policy section in the magazine *Vojska (The Army)*, which contains rich resource material on religious sects and movements, deserves due attention and analysis.



Apart from the preface and introduction, The book *Religious sects and movements – soul hunters* consists of seven parts, a survey on prevention and protection, an afterword and bibliography.

In the first part of the book, "The concept of faith, religion, magic, ritual and cult", the origin of the word "sect" is explained, sects are classified according to different criteria and individual motives for belonging to various sects are given. The author emphasizes that there are various definitions of the concept of sects, but that the most adequate way of defining a sect is as "a form of religious community whose doctrine, way of organizing its religious followers and the treatment they receive by society greatly differ from the existing religions. The essence of their doctrine is to oppose, partly or completely, the ruling theological, ideological and ethical social standards."

In the second part, "Christian reformists or renegades", the origins, specific features and practices of a large number of various movements against the supremacy of the Catholic Church are described. Thirty-three movements are described, those being as follows: the Bogomils, Kathars (Albinians), Husites, Protestants, Mennonites, Quakers, Lutherans, The Slovak Evangelistic Church, The Word of Life", "New Life", Calvinists, Nazarenes, The Methodist Church, The Baptist Church, God's Church, The Free Church, The People's Temple, Christ's Children, Christ's Spiritual Church – The Pentecostals, Christ's Church of Small Baptism, Christ's Church (unlike the others, it was created in an attempt to unify the Catholic, Orthodox and Protestant churches), Christ's Church of Evangelistic Brethren, the New Apostles' Church , The Mormons, The Old Catholic Church, The White Brotherhood, Adventists, "The Reformist Movement", The Reformist Adventist Movement of the Seventh Day, Jehovah's Witnesses, David's Adventists of the Seventh Day and the Proto-Christian Community "Universal Life".

On the territory of FRY, out of the above mentioned "Christian reformists or renegades", the most numerous are the Baptist Church (about 2, 000 followers who are grouped in two associations -the Association of Baptist churches in the republic of Serbia and the Association of the Evangelical Baptist Christians in FR Yugoslavia), Christ's Spiritual Church - the Pentecostals (around 3, 000 followers , 400 of whom are in Belgrade), the Western-Orthodox Church (around 1.500 followers), the Christian Adventist Church - the Sabbatians (around 80, 000 followers in Yugoslavia, 6,000 of whom live in Belgrade where the seat of the Main Board of the Church is located), the Reformist Adventist Movement of the seventh day (around 6, 000 followers). It is interesting to mention the Church of Jesus Christ of the Saints of the Last Day (the Mormons), which, according to the book, has a small number of followers in FR Yugoslavia (only around 100 members, 30 in Belgrade and 20 in Novi Sad), but nevertheless has two branches in Belgrade which own religious facilities and 14 missionaries from USA in Belgrade and 6 missionaries in Novi Sad.

The author's observations on "the influence on human souls" exerted by Jehovah's Witnesses are

another interesting feature. One of the publications of Jehovah's Witnesses "The Guards' Tower" is printed in 100 million copies in 75 world languages. In FRY, this paper has a circulation of 14, 000 copies in Latin and 8, 000 copies in Cyrillic alphabet and 14, 000 copies in the Slovak language. In view of the fact that the total number of members of Jehovah's Witnesses in Yugoslavia is only 2, 000, it is clear that three quarters of the total circulation for the Serbian area is intended for those who are not members of this sect and who should be "persuaded" by the members of this sect to take it. Besides, Jehovah's Witnesses are forbidden "army service", "eye-flirting", abortion, receiving and giving blood transfusion, carrying firearms, consuming alcoholic drinks smoking, etc. The members of this sect are required to propagate permanently and without remuneration in order to acquire new followers, and to use the same methods as traveling agents - to visit the same apartments several times and to offer books free of charge, or sell them, try to establish verbal contact with people always with a smile, regardless of the resistance or negative attitude they might show, "the ruder their parties are, the more persistent and kinder they should be".

The third part of the book, "Sects under Allah's Blessing", is devoted to sects within the framework of the youngest world religion – Islam. It contains a factual description of eleven different sects. Emphasizing that religious wars among the Muslims have never been a rare phenomenon (for example, the war between Iraq and Iran broke out in September 1980, where the Shiite followers of Iranian religious leader Khomeini and the Sunni Muslims from neighboring Iraq fought against each other; or in May 1988 in Lebanon, when pro-Iranian Shiites attacked pro-Syrian Shiites using tanks and other weapons, hundreds of dead Muslims "remained lying in the streets of Beirut"). However, the author emphasizes the solidarity of the Shiites and the Sunnis in the area of the former Yugoslavia. That solidarity was manifested in the form of sending "holy warriors"; numerous Muslim militant organizations as of the beginning of 1992, in order to contribute to the victory of Islam in Bosnia. The abuse of religion for political ends has also been noted among the Tarrikates. Under the slogan "In favor of the rights of Albanians in Kosovo", as followers of the Community of the Dervish Order of Alia (ZIDRA), supported by their numerous members (in the area of FRY there are about 50, 000 Dervish, including 5, 000 women), they launched a most extremist "Iranization" of Kosmet.

In the third part of the book, various Muslim rites and Dervish rituals are also described. We bring attention to "the torture ritual" which was performed within the Tarrikate sect on the occasion of the death of Imam Hussein. During the ritual, the most extreme believers pierce their cheeks and necks next to the throat with a sword. They do not feel the pain because the perforations are conducted after a long period of hooting and bowing during prayer, which brings the believers in a state of collective trans.

The fourth part of the book is devoted to various Eastern movements and sects, such as The Society for the Conservation of the ancient tradition of Tibet, Hare Krishna, The Association for Transcendental Meditation Serbia, The Unification Church, Satanya Sai Baba, The Sai Center for Universal |Spiritual development and Education, The Association for the Study and Application of Complete Spiritual Self-Realization according to the system of the "practice of persistent prayer", the Scientological Church ("visions" related to "the broadening of thought on the universe") and the Sylva method. This part of the book on Eastern movements and sects will probably provoke polemics and controversy among the readers regarding the qualification of some of the trends in Eastern religion as sects, particularly the Biharian school, transcendental meditation (TM) and the Sylva method. In that case, the author might have justified her views with additional arguments.

The basic characteristic of all Eastern sects is, according to the author, the belief that meditation, based on the knowledge of transcendence, can quench all materialistic desires, and, if a person is relieved from all desires, "an overture appears on his parietal bone (as it happens at the moment of death) and his soul unites with the Sublime". It has been established that the greatest number of followers in Yugoslavia are in the sects of Hare Krishna (around 200 followers and several thousand supporters), The Association for transcendental meditation of Serbia, Moon's Unification Church and the Sylva method. The sect Hare Krishna attracts great attention of the young with annual concerts of the group "Nitjanda" (which are organized in large halls under the name of "Indian Music and Dances"). By listening to the music and repeating the mantra, the monotonous steps, clapping and singing, the public reaches a state of collective trans. The book particularly stresses that the reiteration of the mantra, "the magic word", by which a sound vibration is achieved, several hundred or thousand times during one session of meditation, "results in suffocation of the functions of logical reasoning and therefore awareness of reality. This method of 'cleansing the Mind from Reason' i.e. suppressing the functions of the left brain hemisphere at the advantage of the right, as well as other methods, for example separation of the spirit from the body, can be very danger-

ous for amateurs, who usually end up in psychiatric clinics."

The popularity of the Association for Transcendental meditation (TM), which is registered as a humanitarian-social organization in most countries and which gathers together over four million people in more than 130 countries in the world, as well as of the Sylva method, is based on the promotion of developing various capacities, such as, for example: the sharpening of senses and perception, voluntary departure from the body, relieving from stress, controlling hunger and thirst, etc. Apart from emphasizing the popularity of TM and Sylva method, the destructive activities of the Unifying Church were also stressed. A section of around forty well-known university professors and scientists (The Yugoslav section of the Professors' Academy promotes this sect, founded by San Mjang Moon, for Peace). The destructive activities of this sect are reflected, among other things, in the fact that the members of the sect are strictly forbidden to leave the sect. A special "protection" therapy is organized, which aims at "deleting" from the believer's emotional code all feelings related family members or friends, and "inserting" love toward the leader and sect members instead. Throughout this time "any communication between the members of the sect and outsiders is strictly controlled and sanctioned if necessary".

In the fifth part of the book ,"Fraternities for better or for worse", detailed information is given about secret fraternities: the templers, "Rosencroisers", the order of "the solar temple", the illuminates, the theosophical society, the anthroposophs, the masons, and the Sion priorate. Most details are given on the masons and freemasons, as the most numerous "fraternity" in the world, with about five million members in America, over 700, 000 in Great Britain and another million throughout the world. "Secret Masonic practices" are part of their creed, symbols and rites. The intricacy and overlapping of some countries' political interests with the organization of "freemasons"and the Sion priorate during the war in the former Yugoslavia is especially emphasized.

In the sixth part of the book, "Paramasonic organizations", the activities of the Council for Foreign Relations (CFR), the Bilderberg Club, the Club of Rome (COR), The Trilateral Commission and of The New Age Religion are described. Citing the names of well-known politicians, who are at the same time members of the Council for Foreign Relations, the author emphasizes that the aim of this organization is to form professional cadres within the New World order, whose predictions could exert an influence on politicians. She also points to the influence of the members of the Trilateral Commission on the disintegration of the former Yugoslavia. The author claims that the Trilateral Commission was formed with the aim "to achieve the concept of a world government by means of encouraging the economic interdependence of superpowers, as well as of the regionally divided parts of the world."

The last, seventh part of the book, "Demonic cosmogony", is devoted to the description of the origins, basic characteristics and practices of Satanist sects: the Pagans' Movement ("the white witches"), "International Witches", "Golden Dawn", The Order of the Eastern Temple" or The Order of Oriental Templers - O.T.O., The Path of Gnostic Luminance, The White Gnostic Church - E.G.A., Satan's Church, The Order of the Mystic Rose - O.R.M., "The Black Rose" or "The Black Scorpio" and "The Fire of Hell". In the light of the features and practices of these sects, as they are described in the book, it is clear that they are the most destructive ones and that they are the most dangerous in a society. Regarding their destructive role, the following sects can be set apart: "The White Witches, The Order of Oriental Templers, Satan's Church, "the Black Rose" or "The Black Scorpio" (depending on the sex of the disciple) and "The Fire of Hell".

"The White Witches" use magic, witchcraft, and real "magic concoctions" for poisoning certain people. . The book contains the fact that it was officially requested in the Parliament of Great Britain that "The White Witches" be banned because of reasonable doubt that in the course of their rites they even sacrificed children. "The International Witches" became a real fashion hit in the 1990-ies in the USA and also in Yugoslavia over the past few years. The tokens of this sect are a white pigeon and a spiral, and their ritual knife bears a death's head on its point. Their practices are associated with listening to techno music and the consumption of the drug called ecstasy, while the members of the sect and their enemies are often victims of the witch ritual.

Along with the description of another sect which is very popular among the young, The Order of Eastern Templers – O.T.O., whose spiritual leader is Alister Crouly, the author mentions the camps within the Yugoslav branch (Vršac, Trstenik, Niš, Beograd, Novi Beograd, Šabac, Zrenjanin, Priština, Ub) and the names of their leaders. The description of the "purifying" rite for the newly adopted members, which was conducted in the camps in New Belgrade and Bačka Palanka. Naked girls were bound to an inverse cross and then raped by several members of the sect, or, as they would put it, "purified". The most numerous camp was in Trstenik (containing also the highest number of registered drug-addicts), with 300 members. The destructiveness of the implementation of the doctrine

and practice of the O.T.O. sect, the open call for criminal behavior and the serious threat in case of disobedience derive from their basic principles contained in "The Book of Laws": "Do whatever you wish and let it be your only governing law"; "Adore Satan with Fire and Blood, Swords and Spears, teach them to bring offerings for that"; "Tear your mother out of your heart and spit in your father's face... let your foot stamp your wife's belly and let the baby upon her breast become pray to the dogs and vultures... Because if you do not do it out of your own wish, we shall do it is spite of your wish". Similar orders are contained in the Rules of the civilian association "The Holy Grail", which exists in Yugoslavia as part of the sect The Order of Eastern Templers.

The Satanic Church advocates killing, massacre, and sacrifice. The book cites the fact that in the USA alone 50, 000 persons a year die because of their membership in a Satanic sect or because their are victimized in a rite of sacrifice. The Satanists have been mentioned in many criminal cases of drug dealing and trafficking, robbery, plundering and trafficking in human organs. The texts of some rock songs performed by popular pop groups represent a specific incentive for the supporters of this sect when they advocate Satanism, for example "I must live for Satan", "Kill", "Smoke marihuana" etc.

The seat of the sect "The Black Rose" and "The Black Scorpio" in our country is Subotica. The book informs us that during the sessions, all its members indulge in drugs and under the supervision of the leader, fall into a trans. The one who is the first to do so is considered to be "chosen" and he/she is brought to the center of a diagram drawn on a grave, which replaces the altar. It is then that the leader of the sect determines the date for his suicide, in the period between one week and one year. He inscribes it on the left hand between the thumb and the pointer in a tattoo. The pressure coming from the group on the person to commit suicide is so great that there is no alternative. He or she even receives a warning letter on the eve of the set date. Several cases of criminal activity of the sect members have been recorded in our country in the past few years. One of them happened on 3rd June 1993 in the barracks of Vranje, when Jožef Mendel killed six soldiers, one sergeant and finally committed suicide. It was established that the murderer had the date 3.6.1993. tattooed on his left forearm. The second case happened a few days later in Vranje, when soldier Nandor Kiš killed another soldier and a corporal, seriously wounded several people who were present and then committed suicide. The purpose of this crime was to "augment the power of Satan" by sacrificing members of the sect and as many lives as possible, although, according to the author, political ends are not excluded.

The sect "Fire of Hell" is a branch of the Satanic Church in the area of the former Yugoslavia. In the FRY there are sections of this sect in Smederevo, Požarevac and Belgrade, which have between 30 and 60 members on the average. The destructive and criminal activities of this sect are described in the book in the following way: "The full-fledged members of the sect, unlike the observers (those who recruit them) are obliged to submit a report to the Black Magus after the consumption of drugs about the "deeds" they have committed on behalf of the sect in the previous month. This report sometimes refers to fights, battering of the old and helpless, rapes, looting and other forms of violence and also a list of murders. The Black Magus evaluates the results of the "deeds", counseling them how to behave even more atrociously in the future. He insists that the victims have to be members of the family, relatives or friends of the members of the sect. It is important to commit as many murders as possible in a spectacular way, so that the sect would get public attention.

In the addendum, entitled "Prevention and protection", the author concludes that "there are no reference books which could offer scientific explanation, let alone ready-made recipes for the prevention and uprooting of the spiritual plague of the twentieth century". Therefore, there exist an urgent need for swift interdisciplinary action, which would involve theologians, psychiatrists, psychologists, sociologists, lawyers, criminologists, representatives of the competent state institutions and citizens' associations. The author's appeal should be understood as an incentive for further research of religious sects and movements as sociological phenomena, and also as an appeal finding adequate legislation within the existing regulations, especially in the domain of penal law, and an urge to bring a law on religious sects. It also must be said that the author's provocative and argumentative qualifications of some movements as religious sects, particularly some Eastern movements, is likely to give rise to controversy and debate.

The book *Religious sects and movements – soul hunters* is both interesting and absorbing. It does not leave its readers indifferent, nor is it only informative. In addition to information about religious sects, it contains the author's explicit views on the destructive practices of religious sects, provoking the reader's concern and anxiety. Written in a clear and intelligible style, supported by a great number of facts, which have so far been unknown to the broad population of readers, this book is primarily of educative importance and especially recommended to the young generation. ❑

Slobodanka Konstantinović – Vilić

ZORICA MRŠEVIĆ,

Incest between Myth and Reality

The Institute for Criminological and Sociological Research and The Yugoslav Center for Children's Rights, Belgrade, 1997, 209 pages

In 1997, The Institute for Criminological and Sociological Research and the Yugoslav Center for Children's Rights published the book *Incest between Myth and Reality* by Zorica Mršević. This book represents not only one of the first, but also a very successful attempt in our criminology studies, which concentrates on the issue of sexual abuse of children. It is a phenomenon that is present in our surroundings, but is still screened behind a veil of disbelief and obscurity.

The book focuses on the victim of incest; in most cases it is a woman who was victim of incest as a child, and her personal experience. Therefore, the basic methodological approach in obtaining material for this study was conducting interviews with mature women who had experienced incest in their childhood. The author points out that she personally contacted many of them, who were either foreign feminist activists visiting Belgrade women's groups, or women from our country. The author achieved personal communication with women – incest victims in the period 1993 – 1995, while she was working on the SOS hotline in Belgrade and was also one of the coordinators of the Autonomous Women's Center against Sexual Violence. In this way, coupled with studies of cases that were gathered by other volunteers, a sample of 72 incest cases was gathered. In addition to these cases, during her academic study at Iowa University in 1996/97, the author indirectly communicated by e-mail with another 17 women –incest victims. These 17 cases, together with the already mentioned 72, make up the final sample, which was used in this book.

We can therefore infer that on this occasion, the author was using a guided sample, so that we do not get a complete reflection of the distribution of incest victims of both sexes. However, this does not impair the value of this study; on the contrary, it opens up a whole new field of potential future research.

The book itself, although it came out in 1997, has been presents in expert circles since 1993, when the author began publishing papers on the same subject. In this sense, the book is the result of five years of work. It is divided into six chapters.

The first chapter begins with the author's attempt to answer the question what incest is and her criticism, in this respect, of the attitude which dates back from Freud, that women who talk about their childhood experiences of sexual violence inflicted on them by close relatives actually fantasizing.

In the next chapter, the author emphasizes the idea that incest takes place when love and trust are violated in a relationship, i.e. it is the consequence of imbalance of power on the social level. Zorica Mršević introduces a broader definition of incest, than one that exists in the Penal Code of Serbia. That broader definition of incest as a trauma experienced by a child, who is exposed to abuse by those he/she trusted and loved, is supported by factual cases of various forms of incest committed by fathers, mothers, brothers, grandfathers and other close relatives. In this chapter, the author points out the fact that the incest situation that the victim is facing is seldom contained in a single event. Also, she uncovers a regular pattern of incest going down from generation to generation in some families, where this pathological phenomenon is always sealed with silence.

In the third chapter, we find out a lot about the psychology of incest victims and about the post-incest syndrome. The author also dwells on the fact that there will always be some situations in their lives which will trigger back memories and revive the initial situation. That is the reason why the author emphasizes that the consequences of incest are permanent: many incest victims have attempted suicide, or else, they are in psychiatric clinics, because they never managed to flee from hell their lives have turned into. NGO 's have also tried to organize group therapy and workshops in order to help incest victim. We learn that in the fifth chapter of the book. But at the same time, we are informed that expert help is of crucial importance: any other form of help in this field can represent a giant step backward for the victim and can lead to a tragic outcome.

Otherwise, the fifth chapter of the book *Incest between Myth and Reality* deals with penal regulations in the sphere of sexual abuse in the Penal Code

of Serbia. In this chapter also summarizes the English legal practice in this field, and the author tackles the issue of "voluntary incest among adults".

The sixth chapter bears the title: What can be said about incest without spoiling what was said at the beginning and in the middle". This chapter and the book itself end with a rejection of social and family plots of silence about incest. As the author puts it: this is not the end of the story about incest; on the contrary, it is only the beginning.

However, it is perhaps best to finish this review by quoting the words of one of the women who suffered at the hands of those they trusted most.

"Sometimes I feel as a pebble, and sometimes as a fishpond. A pebble is unimportant and anyone will kick it if it is in his or her way, and it cannot fight back. Anyone who wishes to do so will throw it into water and it will sink there and stay forever in the cold and dark water, with no possibility to emerge again and return to the shore or to some other place. The fishpond would like to remain undisturbed with its placid water, but anyone can chose to throw a bigger or smaller pebble into it and there is nothing it can do to defend itself from the unwanted object, or to fight back the offender. Just as the pebble is doomed to fall into the water according to the will of the person whose hand threw it in, the fishpond is doomed to endure forever that pebble in the fragile bosom of its waters, with only a brief mute protest in the form of concentric circles on the surface. But they vanish soon, as if nothing had happened, and nobody is disturbed, nobody notices anything, nothing will be said, nobody will help the pebble come out of the water or the fishpond to get rid of the intruder. And the world continues to go round in spite of ever-present grief and injustice. Sometimes I am the fishpond and sometimes I am the pebble", says a woman called Alexandra. ❑

Ivana Stevanović

Call for papers:

Temida is the journal on victimization, human rights and gender, which is published as a quartely in Serbian and English. *Temida* publishes academic and professional articles, which can also be understood by a wider public and which use gender language.

Relevant topics are: problems of victims of crime, war and human rights violations with particular emphasis on problems of women, children, minority groups, disabled persons and other vulnerable catigories; fear of crime; human rights violations in prisons and during criminal procedures; prevention of victimization, etc. Each issue features a specific theme, but articles on other topics will also be published. Reviews of new books, conferences, case studies, information, etc. are welcome too.

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