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EDITOR'S NOTE

It is my great pleasure to introduce the English edition of *Temida* – the Serbian first and only journal on victimisation, human rights and gender.

Temida has been published regularly as a quarterly since 1998. Every issue is organized around specific theme. So far *Temida* dealt with more then 30 various topics related to victimology research and victim's rights.

However, only at the beginning, in the first year, we published both Serbian and English edition of all four issues. Later on, due to both financial restrictions and our focus primarily oriented toward generation of victimology knowledge and capacity building in Serbia itself, *Temida* was published only in Serbian.

In meantime *Temida* was growing into an academic journal recognized as such by Serbian Ministry of science. At the same time, the interest for *Temida*, as a source of knowledge and possibility for publication of academic and professional articles, is growing as well. This interest is not, however, limited to Serbia and not even to the territory of the former Yugoslavia.

The number of articles written by foreign authors

that are published in *Temida* increased significantly over last couple of years. Although the majority of these articles are published upon invitation sent to the authors, the number of those sent to us for consideration by authors directly is growing as well. Also, there is an increasing interest of our English speaking colleagues abroad to get access to papers published in *Temida* - particularly to those papers that deal with the situation in Serbia itself. This is exactly why we decided to publish the selection of papers published in *Temida* in 2006, and why we chose to publish those papers that are primarily dealing with the situation in Serbia.

I hope that this issue will contribute toward increasing visibility of Serbian victimology and related academic disciplines abroad, as well as toward further development of academic and professional cooperation between Serbia and other countries world wide.

This issue is available both in printed and electronic form. Electronic form can be accessed on line on the Victimology Society of Serbia web site: www.vds.org.yu

Vesna Nikolić-Ristanović

Alternative sanctions and new legislation of the Republic of Serbia

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In the paper, particular attention is given to the novelties in the Law on the execution of criminal sanctions which aims to enable the execution of community service and the conditional sentences with protective surveillance, with its critical reassessment. Also, the author states that the earlier changes in the Criminal Procedure Code with which the principle of opportunity was introduced when starting criminal prosecution, enabled the interests of a victim to be taken into account to a greater extent, when beginning a criminal procedure, in relation to the redress. However, the possibility that the redress can be used for the purpose of removing criminal procedure has still not been purposefully used in practice. The main obstacle in implementing the existing solutions and problems, due to which new solutions which were made legal, could remain «a dead letter on paper» may be seen in an unchanged, old-fashioned, ideological concept in relation to penalty and sanctions' system, into which all the modern solutions should fit, which are an outcome of an entirely different ideological concept.

Key words: community service, redress, alternative sanctions, criminal legislation, Serbia

Introduction

In our environment, the experience in implementing the measures with which an imprisonment penalty or the practice of imprisonment is substituted is not extensive. The crisis which the country found itself in, in the last few decades, has also somehow affected the area of criminal legislation, where criminal legislation established in the seventies was still in power, and was later often changed. Already surpassed by its solutions, but still valid,

criminal legislation has been the most important formal obstacle in implementing the so-called alternative sanctions.¹ Such situation has existed despite the fact that theoreticians advocated for changes in legislation for a number of years, maintaining, among other, a great share of short-term imprisonment penalties in the overall number of imprisonment penalties. Thus, the practice, in the absence of any alternatives, uncritically implements so-called substitutes for imprisonment penalty (such as a conditional sentence).² Therefore it is no wonder that exactly such innovation in the sanctions system, which was resorted to in the structure of the new Criminal code of the Republic of Serbia,³ may be considered the most significant progressive novelty which brings criminal legislation to the same level as that of other European countries.

For a successful application of alternatives to imprisonment, in the future, it is important that they should represent new, non-penal measures which are unique to one special ideological concept – the concept of restorative justice. Only in that ideological framework, the alternatives to closure could achieve true effects. For now, alternatives to imprisonment fit in the existing criminal legislation which has its roots in earlier penal-political choices, founded on the idea of re-socialisation as the basic purpose of a penalty and on eradicating crime as the basic general goal of the regulation and the application of criminal sanctions.

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1 Alternatives to imprisonment or alternative sanctions are new penal sanctions, stripped of penal characteristics, with which it is possible to replace a short-term prison penalty (up to 6 months, or up to 1 year). More can be found in: Mrvić-Petrović, N., Đorđević, Đ. (1998) *Moć i nemoć kazne (Power and Weakness of Penalty)*. Beograd: VIZ "Vojska" and Institute for criminological and sociological research, p. 97.

2 Mrvić-Petrović, N., Đorđević, Đ. (1998) op. cit., and in: Ignjatović, Đ. (1996) „Savremeni oblici zamene kazne zatvora“ («Contemporary forms of alternatives to imprisonment»), *Pravni život*, no. 9, p. 430.

3 Official gazette no. 85/05.

It is possible that the short period of time between establishing legislation and its taking an effect, will also impede the application of new sanctions and measures. Only time will be able to tell if the application of these new sanctions will be successful. For now, it is only possible to lay out the basic solutions which the new criminal legislation of the Republic of Serbia involves, and to point out the basic difficulties which may emerge in their application. In the paper, we limited ourselves to the problem of new sanctions and the earlier expected sanctions which entail substitutes and the so-called true alternatives to a short-term prison penalty, which are: a community service, a conditional sentence and a conditional sentence with the protective surveillance. Likewise, a settlement between the perpetrator and the victim will be analyzed as a new basis for exemption from the perpetrator's penalty.

New solutions in the criminal legislation of the Republic of Serbia

Like most other European legislations, our legislation has been acquainted with the so-called substitutes to the prison penalty in terms of the sanctions system for adult perpetrators. These are milder penalties or sanctions which the prison penalty may be replaced with, such as: a fine, a conditional sentence and conditional sentence with the protective surveillance. When speaking of alternatives to a prison penalty, we are specifically referring to new sanctions and measures, correctional-educational, medical or therapeutic, which are implemented in the realm of the community with its aim to avoid an unnecessary stigmatization of the sentenced individuals and to improve the process of their reintegration into the society. Changes in the sanctions system are also brought on through the Criminal code.⁴ The most significant changes

relate to the introduction of two new penalties: that of community service and of a driving ban. With the possibility that in the general sphere of institute of true remorse, one is able to set the perpetrator the redress, especially the regulation of a new community service penalty speaks of legislator's decision to introduce the so-called alternatives to imprisonment into the system of criminal sanctions.

Considering that the greatest difficulty is expected in the application of the new penalty – that of community service, one needs to clarify the legal solution accepted in the Criminal code.

Unlike other European legislations, in the Criminal code, community service is foreseen as a penalty. It can be sentenced exclusively as the main penalty, for deeds for which the penalty is 3 years imprisonment or a fine.

Considering that the constructive work of a convicted person represents the basic substance of this sanction, so that the work may not be of a forced character, the law defines community service as any social-service work which does not insult human dignity and is not undertaken with the aim of gaining a profit (art. 52, p. 2 Criminal code).

A way to mete out this penalty has been thought of by looking at other legislations: the court metes out the community service in the number of hours, between 60 and 260, while also defining the period in which the service would be carried out.

Considering that community service should not affect unfavorably the working status and the work commitments of a sentenced individual, but should however, be carried out in one's own spare time, the Code provides that community service may monthly last a maximum of 60 hours, while the court, meting out the penalty, must decide on the period in which the work will be carried out (lasting minimum one month and a maximum of six months). It is obvious that the intended solution, by which a sentenced individual in the duration of thirty days in one month would be working each day an additional maximum of two days, carrying out community service, it does not present a great burden on the convicted person.

The legislation classifies community service as a penalty, but nonetheless the uniqueness of this sanction in relation to other punishments was taken care of. That is why it is regulated that the court, when pronouncing a community service sentence, will take into consideration the nature of the criminal offence, the personality of the perpetrator, as well as the perpetrator's readiness to carry out community service. In addition, community service cannot be sentenced without the consent of the

⁴ System of criminal sanctions is made up of: penalties, security measures, warning measures and educational measures (art. 4 p. 1 KZS). Criminal legislation states sanctions for adults and in particular: four penalties (prison penalty, fine, community service, driving ban), nine security measures (compulsory psychiatric treatment and a stay in a health institution, compulsory psychiatric treatment while free, compulsory drug addiction rehabilitation, a ban on carrying out duties and obligations, a driving ban, seizing objects, extradition, public announcement of a sentence), two warning measures (conditional sentence, with or without the protective surveillance and a judicial warning) and a measure of seizing property benefits. It is necessary to underline that the legislator, while regulating the new solutions in terms of the sanctions system, had in mind the international standards for regulating alternative sanctions, ones brought by the Organisation of the United Nations, and also suitable recommendation from the Council of Europe.

perpetrator (which is the essential mark of this sanction, and enables the desired effect to be realized through work). But, a public debate regarding the Draft of the Criminal code showed that, owing to a minor knowledge about the alternatives to imprisonment, there exists a complete misunderstanding of this regulation: the acceptance of the perpetrator is regarded as an acceptance of the penalty, and not of the work which the judge orders. These perplexities should be overcome through education of the judges regarding the implementation of this sentence, as well as making concrete regulations on executing the sentence through suitable bylaws.

The Criminal code has anticipated the possibility that the court can lessen the length of a community service penalty, as long as the perpetrator dutifully fulfills the commitments regarding this sentence. And conversely, if the sentenced person does not carry out a part or all the hours of a community service penalty, the court will substitute this penalty with an imprisonment sentence, so that for every eight hours of community service, there will be one day of imprisonment.

The community service penalty will be able to be applied as a substitute for other penalties. Although the possibility of substituting a short-term imprisonment sentence is excluded (which is not in accord with the basic function community service), community service may be substituted for an unpaid fine such that a 1000 dinars fine is substituted with 8 hours of community service, which may amount to a maximum of 360 hours.

Apart from that, an unpaid fine will be able to be substituted with a community service penalty. Currently, in such cases a so-called imprisonment is being implemented.

Two other types of warning measures: a judicial warning and a conditional sentence (with or without the protective surveillance) have been present for decades in our system of criminal sanctions. In regard to judicial warnings, in the Criminal code the earlier solutions have been kept: this sanction may only be pronounced if it is concerning a criminal offence for which an imprisonment of up to 1 year or a fine, has been issued, and taking into consideration the nature and the circumstance under which the act was performed, as well as the personality of the perpetrator, it can be justifiably expected that the reproach of the court will affect the person to cease performing criminal offence. As far as the conditional sentence goes, the Criminal code provides for new conditions for its pronouncing. A conditional sentence may only be pro-

nounced for criminal offences for which an imprisonment of up to 2 years or a fine has been established. New, restricting, formal conditions are double-sided: the possibility of determining a conditional sentence for criminal offences for which a 10 years imprisonment or a more severe penalty is excluded, and even in the case of a criminal act for which an imprisonment of up to two years or a fine have been established, a conditional sentence cannot be pronounced if at least five years has not passed since the previous sentence. Apart from the conditional sentence, a conditional sentence with the protective surveillance has been retained in the Criminal code (art. 71 CC). This introduces a problem of practical application of this sanction, which has up until now rarely been pronounced. The most significant obstacles to the effective application of this sanction are: insufficient accuracy of legal provisions passed since 1976 (due to the unification of imprisonment penalty at the time), uncoordinated and unrealistically set penal frameworks and connecting the possibilities of determining this penalty for a pronounced one, rather than a regulated sentence.⁵ These defects would be easily overcome only with suitable legal regulations in the area of the fulfillment of criminal sanctions. It appears that authorizations of a special representative, who according to the Law on the execution of the criminal sanctions, would overlook the carrying out of community service and the conditional sentence with the protective surveillance, would be an adequate solution, favoring a better application of this penalty.⁶ It is a pity, however that the legislator has not, like in the Slovenian example, audited some of the ten commitments cited in the article 73 CC, which the court can set to the perpetrator of a criminal offence with a conditional sentence with the protective surveillance. Namely, some of the commitments are nearly impossible to fulfil in the conditions of a transition period (for example, the acceptance of employment which suits the capabilities of the perpetrator), and some are difficult to follow (for example, restraint from visits to certain places, clubs or shows).

5 Mrvić-Petrović, N., Đorđević, Đ. (1992) «Alternative kazni zatvora» («Alternatives to imprisonment»), *Pravni život*, no. 7-8, p. 1139.

6 On acceptable modalities on the carrying out of alternative criminal sanctions in our conditions see: Mrvić-Petrović, N., Obradović, M., Novaković, N. (2005) «Alternativne krivične sankcije (studija o prihvatljivim modalitetima izvršenja)» («Alternative criminal sanctions: the study on acceptable models of executions»), u: *Alternative zatvorskim kaznama (Alternatives to imprisonment)*, Beograd: Fond za otvoreno društvo, p. 35-86.

The current Criminal procedure code already provides for take care whether the perpetrator has compensated for the damages to the person suffering the loss, when the public prosecutor gives up the accusation act on the principle of opportunity.⁷ The question is about the so-called conditional delay in filing the criminal report. For this possibility to be used more purposefully in practice, it is possible to suggest further additions to the procedural legislation through changes in the Criminal procedure code or by passing a special law which will regulate the conduct of an out-of-court reconciliation and settlement of the victim and the perpetrator.⁸ Such procedures in fact do not represent a novelty in our judicial system, considering that the institute of reconciliation existed until 1985 in a criminal-procedural legislation of the former Yugoslavia (although based on different ideological assumptions) but would, taking into consideration the great danger from selective justice, be necessary to carefully work out the mechanisms of reconciliation so that, on one hand, they offer security to the person suffering the loss that the damages will be compensated and that contemporaneously, will prevent the effort to economically excessively «charge» the redress.⁹

Great difficulties may be expected in relation to the future application of a fine as a typical substitute to an imprisonment. Namely, the Criminal code provides two systems for determining a fine: day-fine penalties (as a priority) and a fixed system (which existed in the past, as secondary).

The fine, determined on the system of day-fine penalty, is a novelty in our sanctions system although it is widely accepted in European legislations. This system of determining is applied as a priority, and therefore it is necessary to explain the characteristics of this system and the conduct of the judge when meting out a penalty.

In this system of determining a fine, the fine that is meted out is expressed in terms of a certain number of days – a fine. Then, the value of the daily

amount of the fine is established, which the court can determine if it defines the difference between the income and the property of the sentenced individual and the total expenditures. Thus, the established amount is divided, according to our Criminal code, by 360, which produces the value of a one day's fine. Only then, the daily amount is multiplied with the number of days which the penalty has ordered.

When meting out a fine according to this system, the judge is bound with double-sided restrictions:

- 1) the daily amount cannot be less than 10 nor bigger than 360,
- 2) the maximum daily amount cannot be less than 500 dinars nor bigger than 50 000 dinars.

In order to enable coordinated proceedings of courts in the process of meting out a fine according to this system, the daily amount is established in the following framework:

- 1) up to 60 daily amounts for criminal offences for which an imprisonment of up to three months may be sentenced,
- 2) between 30 – 120 daily amounts for criminal offences for which an imprisonment of up to six months may be sentenced,
- 3) between 60 – 180 daily amounts for criminal offences for which imprisonment of up to 1 year may be sentenced,
- 4) between 120 – 240 daily amounts for criminal offences for which imprisonment of up to 2 years may be sentenced,
- 5) at least 180 daily amounts for criminal offences for which imprisonment of up to three years may be sentenced,
- 6) in the scope of the regulated daily amounts for criminal offences for which the only issued sentence is a fine.

Regulations of the Criminal code (art. 50) obligate the judge to firstly attempt to mete out the penalty according to the system days-fine penalty, and if that is not possible, the judge will mete out a penalty according to a fixed system (as has been done so far). Thus, the judge would have to try, in every possible way, to establish the information which relates to incomes and expenditures of the perpetrator of a crime. In order to facilitate the process, it has been regulated that the court may ask for certain bank details, and details from other financial institutions, state administrations, companies and others, who cannot deprive one of such, even in the name of business protection or another secret. If the court is not able to establish credible

7 Similar solutions are implemented in the criminal-procedural laws of Croatia and Slovenia.

8 Usually referred to as mediation.

9 For example, German research found that the authority of a governmental agency on the occasion of reaching an agreement between the perpetrator and the victim guarantees that the damage will indeed be compensated, but also it protects the perpetrator of a criminal act, because it disables the person suffering the loss to ask for compensation in a situation when it is not entirely clear if the opposite side has really committed a criminal act which caused a damage (Kondziela, A. (1989) "Täter-Opfer-Ausgleich und Unschuldsvermutung", *Monatsschrift für Kriminologie und Strafrechtreform*, no. 3, p. 177).

information, or if the perpetrator did not achieve any income, but is the owner of a property or bears property rights, the court is authorized to determine and estimate the amount of a one day fine on the basis of the available information. If even this procedure is not possible (and that would be in a situation where the person does not have an income, nor is a property owner, nor carries property rights, that is when such information cannot be established) the judge will, by applying the regulation of the art. 50 mete out a fixed fine.

The use of reconciliation of the perpetrator and the victim suits the general theoretical concept of the so-called diversion or diversification criminal model, with which a criminal procedure may be avoided with the redress, and even eliminate the need for a criminal penalty of a perpetrator, regardless of an obvious existence of a criminal offence.¹⁰ Such conduct is in the framework of the existing criminal procedure used with the purpose of unburdening the criminal administration of justice. During informal conducts of reconciliation through the use of so-called program of reconciliation (*reconciliation programs*) the redress is used as a way of solving the conflict between the perpetrator and the victim by mutual consent. The contact between the victim and the perpetrator after a criminal offence is achieved by voluntary participation of the conflict parties, and with mediation of government officials, mediators or volunteers.

For now, the new resolution in the article 59 of the Criminal code opens the possibility of a settlement between the perpetrator and the person suffering the damages while the penalty is meted out. The fact that the accused fulfilled the commitments of the agreement with the person suffering the loss regarding the redress, or that the accused has shown genuine remorse (removed the consequences of the act or compensated with the redress) are reasons to acquit the defendant of the penalty. Article 59, p. 1. states that the court may acquit the perpetrator of the penalty of a criminal act for which an imprisonment of up to three years or a fine has been foreseen, if the accused has on the basis of the reached agreement with the person suffering the loss fulfilled all the commitments of that agreement. Even regarding serious criminal offences (for which an imprisonment of up to 5 years is foreseen), if the accused has, after a committed criminal offence and before finding out that he/she was discovered, removed the conse-

quences of the act or compensated for the damages caused with the criminal act, the accused may optionally be acquitted of the penalty. For this possibility, suggested by the Criminal code, to be suitably used in practice, it would be necessary to regulate, as soon as possible, the process of achieving a settlement, a method of choosing and the jurisdiction of the mediator, as well as the mediator's authority in relation to the demand that the accused fulfils the commitments taken on in the settlement process.

Conclusion

It may be stated that the solutions of the newly accepted Criminal code and the Law on the execution of the criminal sanctions have brought our criminal legislation closer to the international standards and foreign models. An effort has been expressed for the new sanctions and measures to enrich and humanize the existing sanctions system, so that sentencing through substitutes or alternatives rather than short-term imprisonment may be enabled to a greater extent. In order for these efforts to be achieved in the correct manner, it is important to set conditions in which the courts would accept that instead of an imprisonment mete out fines, conditional sentence, conditional sentence with the protective surveillance and community service, as well as to gradually regulate the possibility of removing criminal proceedings through successful settlement between the offender and the victim.

The most significant obstacles on that road, to a lesser extent will be tied to the need for changes in the legislation and production of accompanying bylaws, and to a greater extent will concern providing adequate organization and source of financing a special office in charge of tracking the carrying out of conditional sentences with the protective surveillance and community service, as well as suitable education of judges carried out timely, and public prosecutors in regard to the application of alternative sanctions. If there are omissions in the provision of the conditions for the application of sanctions there is a risk that, despite the innovations in the legislatures, the intended alternatives will not come to life, or even worse, will not be understood as measures which humanize the existing system of criminal sanctions, but as proceedings which enable selective application of the law.

¹⁰ Mrvić-Petrović, N. (2001) *Naknada štete žrtvi krivičnog dela (Compensation to victims of crime)*, Beograd: Vojnoizdavački zavod i Institut za uporedno pravo, p. 73.

The position of victims in Serbia: criminal procedure and possibilities of restorative justice

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In the paper, the authors deal with the victim's position in the criminal procedure, on the one hand side, and the possibilities of implementing restorative justice and its importance for the improvement of victim's position in Serbia, on the other one. In the first part of the paper, the authors point out victim's position within the criminal procedure and the noticed gaps, which are particularly reflected in insufficient paying attention to the victim and neglecting of his/her rights and needs. This is opposite to the strengthening of the rights of the accused party that characterizes societies, which are, as our society, on the way of democratization and improvement of human rights. In the second part of the paper, the authors analyze some solutions that introduce elements of restorative justice into our system of criminal response to crime, but from the victim's point of view. Finally, the authors also point out some further steps that should be undertaken in order to improve the victim's position, particularly emphasizing the place and role of victim support service, witness service and special facilities in the courts for victims/witnesses, possibilities of using victim-offender mediation before reporting the crime, or starting the prosecution, or as a part of the treatment in the prison etc.

Key words: victim, criminal proceedings, criminal law, restorative justice.

Introduction

In the period after the changes in year 2000, in Serbia, two simultaneous, but mutually opposing processes are noted: an increase in the number of criminal acts, stricter penalties, endeavour for the construction of new prisons and a general strengthening of repressive answers to crime on one hand, and an introduction of new regulations of restorative-legal character on the other. Both processes are simultaneously followed by a trend of gradual improvement of the legal status of a victim, i.e. injured party, and intensifying of the public visibility of the problem of safety from crime and victim's rights. Viewed in a wider social (national and international) context, these contradicting trends are closely related to globalisation and economical, political and generally social transition in post-communist countries, as well as with changes that follow in the scope of crime itself.¹

On one hand there is an expansion of the application of the prison penalty and a privatisation of crime control (e.g. the trend of the privatisation of businesses of security and the prison), while on the other hand there are attempts to put an end to this trend or to at least alleviate its consequences by introducing restorative additions to penalties and other alternative measures. The tension which exists between these two approaches, also illustrates the contradiction which is contained in the criminal law itself as a governmental answer to an interpersonal conflict or a problem.

Efforts towards changing the status of a victim, which have in the last several decades been made world wide, and in the last several years in our

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¹ For more, see Nikolić-Ristanović, V. (2005) "Restorativna pravda, kažnjavanje i žrtve" ("Restorative justice, punishment and victims"), in *Alternative zatvorskim kaznama* (Alternatives to imprisonment) Beograd: Dositej.

country, can only to an extent alleviate the negative consequences and make up for the limitations which the criminal law carries in itself. Precisely those deficiencies and limitations of the traditional criminal reaction to crime, as well as its consequences on the victims, have brought on the development of restorative justice as an approach, with the victim, and not the offender as its central focus, actually the redress and the bettering of relations damaged by a criminal act and not a retaliation and further development of conflicts and the cycle of violence, which is usually an outcome of a penalty. The aim of this paper is to point out the importance of restorative justice from the point of view of enhancing the protective rights of victims of criminal acts in Serbia through an analysis of the status of a victim in criminal proceedings in Serbia, as well as through an analysis of the latest legal solutions which bring new elements of restorative justice into our criminal law.

Punishment and victims

The trend towards expansion of the implementation of prison penalty in Serbia points out the dominant understanding that repression is the most effective way to fight crime. In the general public, in fact, short prison penalties are easily viewed as the cause, or the synonym, of the inefficiency of the governmental fight against crime, and the tightening of the same as a "cure", or the solution, whenever a significant criminal act is made public. An entire chain of "moral panics" exemplified in the reaction of the media and state authorities towards some heavier crimes, whose media coverage is by rule, characterised by extreme stigmatisation and the violation of the human Rights of both the offender and the victim², has increasingly initiated requests which instead of preventing and the sanctions which would endeavour to remove the causes, as a solution have other prison penalties and a complete social rejection of the offender.

The trend of an increased implementation of the prison penalty, not only does not follow the trends

which exist in the international documents adopted by the UN, the EU and the Council of Europe, as well as in the legislations of most European countries, but it may hardly have significant effects in the reduction of crime and victim protection. In addition, the existing system of criminal sanctions, as well as the method of their sentencing, mainly leads to a deterioration of the special as well as the generally-preventive purpose of a prison penalty and other criminal sanctions (which do not include imprisonment), with a simultaneous, complete absence of victim protection.

On the contrary, laymen, but unfortunately experts as well, possess a general broad awareness that the criminal law and the criminal proceedings are the only solutions to the problems victims come across. This was clearly observed in a discussion at the conference on *"Alternative responses to crime and victim's rights"*. Meanwhile, the reality is being ignored, where the sentencing of an offender, combined with the absence of adequate victim protection, has even worse consequences; but the fact that a large number of victims does not dare to report a criminal act or ask for help, is precisely due to the lack of faith in the criminal justice system and its willingness and capability to provide them with adequate protection. That in itself leaves a large number of victims, mainly women and children as victims of sexual crimes or domestic violence, completely out of the protective system so that they are left to deal with the consequences themselves, with the social disassociation and a growing conflict with the offender.

Negative effects of the existing system of criminal sanctions are especially shown in the short-term prison penalties, which in Serbia as well as in other countries, are widely sentenced. The bare repressiveness and the counter productivity of the short-term prison penalties from the point of view of amelioration of the offender are well known. Although they may satisfy a temporary need for revenge, or bring a short-term relief to the victims of continued violence, such as domestic violence, the effect of these penalties usually amounts to the anger of the offender, who often, while still impris-

2 One of the most notable examples is certainly the police operation against organised crime known as "Sabljica", as well as the reaction of the media and the state authorities in Serbia in the cases of violence against children, and from children, or the juvenile offenders. On a global level, the best contemporary example is the "war against terrorism". The moral panic is characterised by an excessive reaction of the media and the state authorities on certain crimes, which is predated by the absence of adequate reaction. A sensational portrayal by the media, who simplify the causes, usually leads to a request for harsher penalties, and in general, repression. After some time, whether the needed reform takes place or not, there is a lull and a loss of public interest

in the problem. At the bases of the moral panic is the short-term involvement in the consequences, while the involvement in the causes and the interest for the long-term involvement with the problem and the true change are absent. For more see: S. Cohen (1994) *Folk Devils and Moral Panics: the Creation of the Mods and Rockers*. Blackwell: Oxford, K. Tompson (2003) *Moralna panika (Moral panics)*, Beograd: Clio and Nikolić-Ristanović, V. (2004) "Organised crime in Serbia – media construction and social reaction", in G. Meško, M. Pagon and B. Dobovšek, eds., *Dilemmas of Contemporary Criminal Justice*, Ljubljana: Criminal Justice Faculty, p. 685-695.

oned, begins to send threats, which are sometimes carried out in a more severe manner than the one that brought him in prison in the first place. Considering that the prison penalty does not contain any activity related to the suppressing of the causes which brought on the criminal act, the conflict between the victim and the offender becomes even greater after the latter leaves prison.

In the absence of the restraining orders, as well as in a situation when no social institution has the commitment to notify the victim of the offenders release from prison, short-term penalties obviously increase the danger of criminal acts occurring, especially the violent ones. The effects of a conditional sentence are similar. The absence of any surveillance over the sentenced, combined with the simultaneous absence of victim protection, puts victims, especially those of violence, in an extremely dangerous and vulnerable position. Absurdity of a conditional sentence as a criminal sanction, in the form in which it is carried out in Serbia, is especially brought to light in art. 67 p. 2 of the Penal Code of the Republic of Serbia, according to which the court may pass another conditional sentence on a conditionally sentenced individual, if for the newly committed criminal offence a prison penalty of less than 2 years or a fine has been established. Having in mind the length of criminal proceedings in our country and the absence of surveillance over the completion of the conditional sentence, it is clear that such conditional sentence does not have a positive effect on neither the offenders, nor the society, and may cause dissatisfaction to a victim and expose the victim to new, possibly even more severe victimisation. All that is left is to hope that the regulations will, according to the Penal Code and the Law on the execution of criminal sanctions from 2005, in a new manner and in more detail, regulate the execution of surveillance over the completion of a conditional sentence with the protective surveillance, and duly apply and contribute to the realisation of the purpose of this criminal sanction, in terms of the offender and in terms of the victim.

Finally, the fine is often of a repressive character and is of no purpose for the victim, or for the redress and the bettering of the relationship between the offender and the victim. On that note, an observation of a Norwegian criminologist Nils Christie should be mentioned. He states that "governments should stop stealing fines but rather enable poor victims to receive their money back".³

3 Christie, N. (1977) "Conflicts as property", *The British Journal of Criminology*, 1, p. 7.

The victim in the criminal proceedings in Serbia

The status of a victim in criminal proceedings is closely connected with the negative effects of penalties towards victims. If the existing situation in Serbia is brought into connection with the demands of the international documents and legislative and practical solutions, which are considered the best practice in the world, it may be observed that the situation has improved to a large extent, in terms of legal solutions, but that it is still unsatisfactory in terms of practical solutions.

Changes which were brought by the Criminal procedure Code in 2002 represented a significant, but a small step, towards the improvement of the status of the injured party, in other words, the victim. Changes were mainly related to the strengthening of the role of the victim, or the injured party, in relation to criminal prosecution. That became especially apparent with the repeated return of the injured party's suggestion as a condition for criminal prosecution, in the expansion of the rights of an injured party to a complaint and in a removal of some limitations of the rights of a private prosecutor.⁴ Also, new regulations have been introduced which, if continuously applied in practice, aim to protect the victims and witnesses from offensive behaviour and intimidation. Thus, it was intended that the court would protect a witness or an injured party from an offence, threat or any other type of attack, and to reprimand or set a fine to the offenders. In cases of violence or a serious threat, the court had to notify the state prosecutor in order to initiate criminal prosecution. Also, at the suggestion of the judge or council president, the president of the court or the state prosecutor were able to demand that internal affairs take the necessary precautions to protect a witness or an injured party, but such that those measures should more closely correspond to those of the internal affairs service.⁵

Apart from that, the legislation intended that while questioning a juvenile, particularly if he/she is injured by the crime, one should act carefully so that the questioning does not affect the psychological state of the juvenile. If necessary, the hearing of a juvenile may be conducted with the help of a pedagogue or any other specialist. The legislation

4 For more see: Grubač, M, Beljanski, S (2002) *Nove ustanove i nova rešenja u Zakoniku o krivičnom postupku SR Jugoslavije (New institutions and solutions in the Criminal Procedure Code of SR Yugoslavia)*, Beograd: Službeni glasnik, p. 30 and 60.

5 Ibidem, p. 37.

intended the possibility of conducting a hearing in a witness' apartment, which due to his/her age, illness or severe bodily disability, was not able to come to court. After that, from the moment of the opening of the session and until the moment of the ending of the main hearing, the council may at any time, according to the legal duty, or at the suggestion of the parties, but always after their hearing, exclude the public for the entire main hearing or a part of it. That is done only if it is necessary to protect secrets, keep the law and order, protect the morals, and protect the interests of an underage person or personal protection or the family life of the offender or the injured party. Apart from the mentioned regulations, it is also worth to mention a regulation towards which the reason for keeping secrets, discovered during investigation, has been expanded to the protection of personal and family life of the injured party.⁶

The latest changes in the criminal procedural legislation are mirrored in the new Criminal Procedure Code which came into force in 2006, but will only be implemented from the 1st of June 2007, except for some regulations, including the ones which deal with victim and witness protection and which were applied from the day the Code came into force.⁷ These represent a good legal basis for offering suitable victim protection in criminal proceedings.

Apart from the above mentioned solutions which are contained in the Criminal Procedure Code, the new Code also brings solutions which are in accordance with the intended international standards. An important novelty is a ban on questioning the injured party or a witness, regarding his/her sexual orientation, political and ideological orientation, racial, national and ethnic origin, moral criteria, and other personal and family circumstances, except if the answers to such questions are directly and obviously connected with the need to clear up significant parts of a criminal offence which is in question.

Apart from that the new Code brings in two new categories of persons who may be given special protection: particularly vulnerable injured parties and witnesses, and a protected witness.

Particularly vulnerable injured party and witness are those persons who are particularly vulnerable in terms of age, life experience, way of life, gender, health, nature or consequences of a criminal offence, or other circumstances surrounding the case. Thus the Code has special rules for their hear-

ing which follow the international standards and the best practice in terms of protection from secondary victimisation. Therefore, for example, there is a possibility of conducting a hearing outside the court buildings, appointing an authorized person, indirect questioning, questioning with the help of a psychologist, social worker or other expert individual, the possibility of a questioning with the use of technical means for conveying picture and sound etc.

One the other hand an individual may be awarded the status of a protected witness if there are circumstances which clearly show that during the witness' hearing and answering to certain questions during the criminal proceedings for a criminal offence for which a prison penalty of ten years or a more severe penalty has been regulated, there was serious threat to him/her and those close to him/her, in terms of life, health, physical integrity, freedom or large assets. The status of a protected witness may exceptionally be awarded in a proceeding for a criminal offence for which a prison penalty of up to four years or a more severe penalty is regulated, if unique circumstances confirm that one of the above mentioned threats may affect the witness or those close to him/her, and if the witness protection is not possible in another way or is made difficult. There are also special rules for conduction the questioning of these individuals, so that for the duration of the proceedings their true identity is not exposed, including exclusion of public, from the main hearing, protection of the identity of a witnesses, hearing/questioning of the witnesses with a pseudonym, concealing of the witness' appearance and testifying via video-link or similar. The legislator intended that these regulations should be applied even in cases where the victim is also a witness in criminal proceedings, but where circumstances indicate a need for the victim to be protected in such a way.

The law on juvenile offenders and the criminal protection of juveniles predicts most of the elements of the best practice in terms of the protection of vulnerable categories of victims from secondary victimisation.⁸ This Law also anticipates for the protection of a juvenile victim when facing the offend-

6 Grubač, M., Beljanski, S., op. cit. p 57.

7 Official Gazette of Serbia No. 46/2006.

8 The best practice includes the following: conducting a hearing in the presence of persons which the child trusts, conducting a hearing in a space in which the child feels comfortable, conducting a hearing via video-link during which the child is in a separate room, use of video footage as evidence in court in order to avoid a multiple giving of statements, and a ban on questions regarding the victim's sexual habits – for more see: Nikolić-Ristanović, V. (2003) "Podrška žrtvama i sekundarna viktimizacija: savremena zakonska rešenja i praksa" ("Victim support and secondary victimization: contemporary legal solutions and practice"), *Temida*, 1, p. 3-12.

er, in terms of his identification, it poses a commitment of placing an authorised person to the underage injured party, starting from the offender's first hearing, as well as special regulations for the questioning of juvenile victims.⁹

New legal solutions, restorative justice and victims

It may be observed that the traditional criminal proceedings or the retributive as well as rehabilitative answer to a committed criminal act is realised in a social context of state power, placing an accent on the offender and the finding of suitable means of reaction to his socially unacceptable, illegal behaviour, or to the finding of suitable means of special prevention.¹⁰ In that way, above all, the interests of the state and the society are protected, and the victim is being removed, ignored and marginalised. Such a criminal proceeding is characterised by formality, rigidity and conformist behaviour, leaving insufficient room for a genuine communication between the victim and the offender, on one hand, and enabling the victim to express his/her feelings, thoughts and needs, on the other. In the last two to three decades, this has precisely brought on the expansion of the social forms of reaction to crime which were rooted in the principles of restorative justice.¹¹ The creation of the models of restorative justice was mainly motivated by the need for a more active inclusion of the victim in the existing criminal system, but also by a more humane conduct with the offender in the sense of the introduction of new, alternative forms of reaction to crime, as well as giving the victim and the social community an opportunity to take part in the process of the rehabilitation of the offender.¹² The essence of the concept of restorative justice is in the process, or in the dynamic structure of the proceedings, and not in its outcome as is the case with the traditional criminal proceedings. The supporters of the

restorative justice consider that this form of reaction to crime, due to its central focus on the bettering of the damage caused to the victim of a criminal act, is more suited to the needs of the victim itself unlike in the case of the traditional criminal system.¹³ Or, as stated in the Statement on the position of the victim within the process of mediation which was adopted in 2005 by the European forum for Victim Services, no program should be labelled as a restorative one unless it is not primarily orientated towards helping the victim recover from the victimisation.¹⁴

The latest reforms of the criminal and the juvenile legislation in Serbia are aiming towards the introduction of certain elements of restorative justice into our, traditionally retributive, criminal system. The following part of the paper will point out some solutions which may be of consequence, when viewed from the perspective of the victim of a crime, and which are contained in the Criminal Procedure Code, the Penal Code and the Law on juvenile offenders and the criminal protection of juveniles.

The Criminal Procedure Code¹⁵ with its article 236 introduces the principle of opportunity in the case of criminal prosecution of the adult offenders. This article provides that a public prosecutor, with the court's permission, may delay the criminal prosecution for criminal acts for which a fine or a prison penalty of up to three years is set, if the defendant accepts to fulfil one of the commitments set by law. From the victim's view point, the following commitments intended by the legislator appear interesting: removal of harmful consequences brought on by the criminal act or the redress, payment of a certain amount of money to a socially-pragmatic or humanitarian organisation, fund or a public institution, and the carrying out of socially-pragmatic or humanitarian work. Namely, the first commitment has as its aim the bettering of the damage and is directly focused on the material satisfaction of the victim itself, while in the case of the other two commitments the victim's consent is sought, or that of the injured party, thus giving the victim a more active part in the phase of the proceeding, as opposed to a possible outcome. If the defendant fulfils the com-

9 For more see: Čopić, S. (2006) "Zaštita žrtava i svedoka u Srbiji: nova zakonska i praktična rešenja" ("Protection of victims and witnesses in Serbia: new legal and practical solutions"), *Pravni život*, no. 9: p. 1141-1142.

10 Weitekamp, E. G. M. (2000) "Research on victim-offender mediation: findings and needs for the future", in: *Victim-offender mediation in Europe: Making restorative justice work*, The European Forum for Victim-Offender Mediation and Restorative-Justice, Leuven: Leuven University Press: p. 102-103.

11 For more see: Čopić, S. (2001) "Posredovanje između žrtve i učinioca (victim-offender mediation)". Beograd: *Temida*: vol. 4: no. 3: p. 34.

12 Weitekamp, E. G. M. (2000) op. cit. p. 103-104.

13 Wemmers, J. A., Cyr, K. (2003) "Victims' perspectives on restorative justice: How much involvement are victims looking for?", the paper was presented at the XI International victimological symposia, Stellenbosch, South Africa: p.1.

14 *Statement on the position of the victim within the process of mediation*, The European Forum for Victim Services, 2005.

15 Official gazette of SR Yugoslavia No. 70/2001, 68/2002, Official gazette of Serbia No. 58/2004, 85/2005, 115/2005.

mitment in the time which has been set, the public prosecutor will lift off the criminal charges, and therefore this solution may be viewed as a form of diversion from the traditional, criminal proceedings.

Apart from that, the possibility of lifting off criminal charges, and with that the diversion from the classical criminal procedure, is foreseen even in the case when the defendant, truly remorseful, has prevented the damage from occurring, or has already fully compensated for the damage, and the public prosecutor has in accordance with the circumstances evaluated that setting a criminal sanction would not be just. However, what is not clear from the legal solution is the exact role of the victim in the application of the principle of opportunity and what the procedure of the application of this regulation is. More precisely, it is not clear if and when the victim comes into view in this phase of the proceedings, who and how confronts the possibility that, if the victim consents that the offender should fulfil some of the intended commitments, the criminal charges are lifted off, as well as what happens in a case the defendant commits to fulfilling some other, legally anticipated commitments which do not aim to repair the damage caused to the victim, nor is the victim's consent sought. Apart from that, what one was able to hear during the discussion at the conference "*Alternative responses to crime and victim's rights*" was that the principle of opportunity is very rarely applied in practice, because the public prosecutors are not interested in the application of these regulations, and consider them too complicated, and above all, are afraid that if do not press charges, they will be considered corrupt.

The Penal Code of the Republic of Serbia¹⁶ provides a possibility that the court may free an offender of a penalty if the offender has fulfilled the commitments specified in the agreement which is reached between the offender and the victim. This provision may be applied in the case of a criminal offence for which an imprisonment of up to three years or a fine has been set. In the case of a criminal offence for which an imprisonment of up to five years has been set, the court may also free an offender of a penalty if after committing a criminal act, and before realising he/she was found out, the offender has remove the consequences of the act or has compensated for the damages caused. The application of this solution also leads to a diversion from the criminal proceedings but in a later phase (in the main hearing). The application is aimed towards repairing/compensating for the damages which the victim has suffered as a result of

a crime, but it may also lead to a more significant role of the victim itself in the part on reaching an agreement on the commitments that the offender has to fulfil. However, this can be reached only under the assumption that a suitable way of reaching an agreement is regulated, because at the moment we are lacking the mechanism for its application in practice.

The next novelty, introduced by the legislator is the removal or alleviation of the damage caused by a crime, and especially a reconciliation with the victim of a crime, as one of the commitments which may be a part of the protective surveillance in case of pronouncing a conditional sentence with the protective surveillance. The carrying out a conditional sentence with the protective surveillance is regulated by the Law on the execution of criminal sanctions RS¹⁷ but in the regulations of this Law the way/method in which the offender will apologise to the victim or will remove/repair the damage is not specified. That needs to be regulated through other bylaws. Due to that, in this phase attention should be paid to the procedure, i.e. to the mechanism which needs to be anticipated so that the role and the status of the victim will not be marginalised once again.

At the end, certain regulations of the Law on juvenile offenders and the criminal protection of juveniles¹⁸ appear significant – above all, the regulations concerning the educative (diversion) orders and special responsibilities.

The article 5 of the Law states that the public prosecutor or a judge may impose one or more educative (diversion) orders to a juvenile who committed a crime for which an imprisonment of up to five years or a fine is set. Whether this measure will ever be applied, depends, among other, on whether the juvenile admitted to a criminal offence and on the person's regard towards the criminal offence and the injured party. The basic purpose of educative (diversion) orders is not to bring criminal charges against a juvenile or its suspension, as well as an effect on a correct development of a juvenile and the strengthening of his/her personal responsibility in the aim of special prevention. The legislator has foreseen several educative (diversion) orders, out of which, for the victim, or the injured party, only one is of significance – that of a settlement. A victim-juvenile offender settlement has as its aim a full or partial eradication of harmful consequences of the committed criminal offence, by way of a redress, apology, work or any other form. It may be noticed that the application of

16 Official gazette of Serbia, No. 85/2005, 88/2005, 107/2005.

17 Official gazette of Serbia, No. 85/2005.

18 Official gazette of Serbia, No. 85/2005.

educative (diversion) orders presents a form of diversion in the proceedings when dealing with the juveniles, in varying phases of the proceedings. In accordance with the article 62 of the Law, the application of this educative (diversion) order is conditioned by the consent of the victim, which is entirely logical considering the nature of the measure. Through the completion of the educative (diversion) order, the injured party, or the victim, may have a moral and/or material satisfaction. Apart from that, this order assumes a more active part of the victim in the settlement proceedings, provided that, as in the case of a settlement between an adult offender and an injured party, the process of settlement itself is regulated in a suitable manner, because that, in accordance with the article 86 of the law, has been left to be arranged with the certain bylaws.

A novelty which this Law introduces is mirrored in objective of special responsibilities as unique kinds of educative measures of warning and referring, and which may be sentenced together with one of the educative measures with enhanced surveillance, foreseen by the Law. Viewed from the perspective of the status and the role of a victim, two special responsibilities appear significant: an apology to the injured party, and the compensation of the damage caused by a crime in the boundaries of the juvenile's ability. With the application of these responsibilities, the victim receives moral and/or material satisfaction. However, what may be observed, is that the application of these, as well as other special responsibilities, is aimed at the juvenile, or in other words that in the process of choosing a special responsibility the circumstances regarding the juvenile and the his/her readiness for cooperation in their fulfilment is primarily valued. Mainly, a victim's consent is not asked for, but when we are dealing with the application of damage compensation, the court is the one determining the amount and the method of damage compensation through work of a juvenile, so that the victim does not even appear to take an active role, nor are the victim's needs, feelings or thoughts taken into consideration, although the mere measure may not be sentenced without the consent of the victim.

On the basis of the analysis of the suggested solutions, one may conclude that they represent examples of two theoretical concepts of restorative justice.¹⁹ The first model would be the one in which the restorative justice is a part of the traditional, criminal system and in accordance with that, the application of elements/program of the restorative justice

leads to a diversion of the classical criminal procedure. This theoretical model would include measures such as the victim-offender settlement, which lead to an alleviation of the offender of the penalty, the application of educative (diversion) orders which leads to a halt in the proceedings by a juvenile judge, as well as the application of the principles of opportunity in the process of the commencement of the proceedings, adult and juvenile offenders alike, whose application is stipulated by certain commitments of the offender. Namely, in case of all these measures, there is a threat of criminal reaction in the case the offender does not fulfil some of the intended commitments, and then this becomes a question of a combination between the restorative and the retributive response to crime. According to the second theoretical model, restorative justice is viewed as a part of the execution of sanctions, so in order for this concept to include a conditional sentence with the protective surveillance and the commitments which are being imposed, and are related to an apology to the victim and the removal/compensation of the damage, as well as special responsibilities as a type of educational measures of warning and referring or as a part of an implementation of the educative measure with an enhanced surveillance. It may be observed that neither of the suggested solutions in our legislation would not be able to be a part of the third theoretical concept according to which the restorative justice represents an alternative to the traditional criminal system, co-existing with it, and maintaining its independence.²⁰

New solutions are, however, more in favour of the offender, who is still the main focus of the criminal reaction, than the victim. Enforcement of a chain of measures mainly depends on the offender, his/her readiness to fulfil the commitments, as well as the circumstances surrounding the offender, while the victim is barely mentioned. The victim's place and role are still insufficiently and ambiguously visible.

According to the UN Declaration of basic principles on the use of restorative justice programs in criminal matters (2000), the programmes of restorative justice refer to all the programmes which are based on the *restorative process* or are aiming to accomplish *restorative goals*. Restorative goals refer to a reaching of an agreement on the method of restoration of the

19 For more see: Čopić, S. (2001) op. cit. p.36-37.

20 An example of this model would be a police referral of the offender and the victim to resolve the conflict by themselves, which would eliminate every form of retributive reaction to a criminal behavior. An example of this model may be seen in: Wolthuis, A. (2000/01) "Restorative Aspects in the Dutch Juvenile Justice System", *Juvenile Justice Worldwide – A Publication by Defence for Children International to promote the International Network on Juvenile Justice*: no.3, p. 6.

existing damage, which also presupposes a specific process, a proceeding which is reached by way of an agreement. On the other hand, restorative process implies the inclusion of all the interested parties, the victim, the offender and the members of the local community who have been affected by the criminal act, in the resolution of the existing situation and in the finding of adequate solutions.

With that as the basis, it may be observed that the above shown solutions are primarily directed towards compensation, removal and a restoration of the damages brought on by the criminal offence. In other words, the solutions which our legislator has stipulated are more leaning towards restorative goals, rather than the implementation of the restorative process. Emphasise is still more on the outcome, rather than the restoration of the victim-offender relationship. Insofar, the enforcement of the majority of the above stated solutions may lead towards the victim having material advantage, but to still feel neglected, suppressed and marginalised if not directly included in the process. However, the regulations which foresee a victim-offender settlement set the basis for the development of the restorative process and a restoration of the relationships between the parties which have been directly involved in the event itself. In that way, furtherance of a conflict and of a cycle of violence would be avoided, thus also a re-victimisation of a victim, and it would be ensured that the victim feels safer, that his/her needs, feelings and views would be taken into consideration. But the main supposition for that is the regulation of the enforcement of a settlement in practice, in other words it is necessary to use suitable bylaws to foresee the mechanisms for the attainment of a victim-offender agreement. Regarding that, we should be following both good examples of the practice, as well as bad experiences of countries which have the tradition of the restorative approach in the resolution of victim-offender conflicts.

The most widespread form/programme of restorative justice, which should be applied in our country, and should enable the implementation of the above mentioned solutions in practice, is the victim-offender mediation.²¹ Unlike some other restorative programmes, the victim-offender mediation automatically includes the victim in the process. The active inclusion of the victim in the resolution of a certain

situation, based on the volunteer principle, may in many ways help the victim in the process of the recovery from the traumatic event, or in the process of regaining self-confidence, dignity and independence. The victim, then, does not feel rejected, and is offered the possibility to ask for, and receive information from the offender, and especially the answer to the question "why did this happen to me?". The victim is given room to communicate his/her feelings and needs. As the results of some research and the evaluation of the victim-offender mediation programme shows, what the victims want (from the traditional criminal system as well) is the possibility to express their feelings, to be listened to, accepted and respected, as well as that their opinions/views should be taken into consideration when reaching a decision, and not to be treated as mere witnesses, or as simple sources of evidence.²² In that sense, the focal point of the mediation should be precisely the meeting between the victim and the offender and their direct or indirect communication, and not the outcome. That would also be the main line of delimitation in terms of the criminal court and the status of the victim in criminal proceeding, because, as the Danish victimologist and criminologist Beth Grothe Nielsen noted, "the results of a criminal procedure usually bring no advantage to any party and mainly serve (a temporary) satisfaction of instinctive, emotional needs of the victims and the public".²³

Apart from that, as the same author states, "the mere fact that the dealing with the conflict is restricted to the criminal court, often creates additional, economic and personal problems and difficulties for the victim, while the conflict continues"²⁴ and produces a chain of negative consequences on the victim, even when the criminal proceeding is completed and when the offender has served the penalty. Namely, the application of all the measures which bring in elements of restorative justice into our system is tied to the appropriate judicial authority, which means that the victim enters the criminal system and may be faced with many problems which were already mentioned, or that precisely due to fear from secondary victimisation, the victim does not even report a criminal offence. For that reason also, we should be thinking of offering the possibility of realisation of victim-offender mediation even before a crime is reported to an appropri-

21 On the mediation programmes in certain countries see: Pelikan, C. (2000) "Victim-offender mediation in Austria"; Benzenberg, B. (2000) "Victim-offender mediation in Germany"; "Czarnecka-Działuk, B., Wojcik, D. (2000) "Victim-offender mediation in Poland"; Paus, K. K. (2000) "Victim-offender mediation in Norway". All the papers were published in: *Victim-offender mediation in Europe: making restorative justice work*, The European Forum for Victim-Offender Mediation and Restorative Justice, Leuven: Leuven University Press.

22 Wemmers, J. A., Cyr, K. (2003) op. cit. p. 6-9.

23 Nielsen, B. G. (2001) "Repressive, restorative and reflexive criminal law", in: Fattah, E., Parmentier, S. (2001) *Victim policies and criminal justice on the road to restorative justice*. Leuven: Leuven University Press: p. 147.

24 Nielsen, B. G (2001) op. cit. p. 147.

ate authority, as well as directing certain cases towards mediation by the police, or in other words offering of alternative possibilities to the resolution of the conflict, which would represent a true alternative to the traditional criminal reaction to crime. In the end, with the same aim – to help the victim in the process of recovery from the victimisation suffered – may serve as examples the programmes of mediation in prison, as a part of treatment, which exist in some countries, such as Belgium.²⁵

However, apart from many good points, there are also objections to victim-offender mediation, and one needs to be aware of some of these deficiencies. Here, we will point out only some of these which are significant from the aspect of the victim, but we will not analyse them in depth. As in the process of criminal proceedings, and in the process and the conclusion of mediation, the victim may be exposed to secondary victimisation. Afterwards, the victim may feel pressured to be included in the process of mediation, i.e. a certain responsibility if he/she rejects to participate in mediation. The practice shows that in most cases the suggestion for referral to mediation does not originate from the victim or the victim services, but from the offender, a prosecution authority or a judicial authority. Insofar as the victim rejects to take part in the mediation proceedings, may feel guilt, inadequacy and even fear from possible consequences. In the end, in the mediation proceeding itself, there must be a suitable balance between the victim and the offender, their status, rights and commitments, so that once again the offender is not the central focus.²⁶

Regarding that, and calling on the Statement of the European Forum for Victim Services on the status of the victim in the mediation process, the role of the victim services is a significant one. These services should be working on raising awareness of the restorative justice and the rights of the victim, and have a consulting role in the process of the development of the state policy with regard to the application of the restorative justice, or in other words to suggest changes in the law and the practice, as well as to follow the application of the existing solutions in practice and to evaluate them. The role of the victim services may also be significant in the mediator training domain, considering the accumulation of the experience, knowledge and skill in work with victims of a crime, which is very important

in order to preserve the victim's perspective in the mediation process, or so that the victim would no longer be marginalised. The victim services may and should offer victims help and support before, during and after the mediation, as well as to achieve the first contact with the victim in terms of the victim's preparation for the inclusion in the restorative process.

Conclusion

The adoption of the Law on juvenile offenders and the criminal protection of juveniles, as well as the new Code of Criminal Procedure, the trend of the improvement of the victim/offender status in a criminal proceeding is continued. The adoption of these laws, created a good legal basis for better treatment of victims. Nonetheless, a synchronization of the regulations contained in different laws is needed, as well as the monitoring of the application of new regulations and their further development. Apart from that, it is necessary that the possibility of imposing protective measures, such as the prohibition of access, mandatory treatment or others, which are in the cases of domestic violence foreseen by the Family Law from 2005, is expanded to all the victims of violence, as well as on the criminal and misdemeanour proceedings, and to provide surveillance over their execution, as well as a threat with an adequate sanction in case of their violation.²⁷

The latest reforms of the criminal and juvenile legislation in Serbia are going towards the implementation of certain elements of restorative justice into our, traditionally retributive, criminal justice system. That certainly represents a positive step in the process of the reform of the Serbian criminal system and its harmonization with the relevant international standards.²⁸ Viewed from the perspective of the vic-

25 For more see: Čopić, S. (2001) op. cit. p.37.

26 For more see: Pemberton, A., Willem Winkler, F., Groenhuijsen, M. (2006) "Restorativna pravda i Žrtve: odnos koji nije očigledan" ("Restorative justice and victims: not a self-evident relationship"). Beograd: *Temida*: no. 1: p. 11-26.

27 The suggestion of such legal changes was brought by the Victimology Society of Serbia and they may be viewed at: www.vds.org.yu. Also, the Penal Code of Serbia which came into force on 1. 1. 2006, included criminal responsibility in the case of the violation of a protective orders sentenced in the civil proceedings as the mildest form of a criminal act of family violence (art. 194 p. 5 PCRS).

28 Some of the more significant documents which set the basis for the implementation of restorative justice and all the alternative forms of reaction to crime, and which may be significant for the victims of criminal acts as well are: Declaration of the UN on the principles of justice for the victims of crime and the misuse of power (1985), Recommendation of the Committee of the ministers of the Council of Europe no. R (99) 19 on the mediation in criminal matters (1999), The basic principles of the UN on the application of programs of restorative justice in criminal cases (2000), Tentative decision of the EU on the status of the victims in criminal proceedings (2001) and others. See: Čopić, S. (2001) op. cit. p. 34-35.

tim, they bring a partial improvement of the status of victim in proceedings, and set the basis for a more active inclusion of the victim and the resolution of a conflict created by the criminal offence and for a possible affect on the outcome of the proceedings. However, what may be noticed is that there are still mechanisms lacking for a full enforcement of certain measures in practice, especially the ones which presuppose active inclusion of the victim. In that sense, a model of victim-offender mediation could be most optimal for the execution of the new measures, simultaneously taking care of possible challenges, deficiencies and problems which some states, which have an already established tradition of restorative approach to crime, have and are still encountering. Apart from that it is necessary to enforce a research which would question the views of professionals, in other words those who implement the laws, as well as the offenders and the vic-

tims, regarding possible forms of reaction based on the principles of restorative justice, and their advantages and the importance which they may have for all the parties involved in the conflict. Also, it is necessary to follow the implementation of these measures in practice and carry out their evaluation, in order to observe if and in what manner are the new legal solutions leading towards an improvement in the status of the victim in the criminal system, or is the victim still marginalised.

However, apart from the changes in the law and their effective implementation in practice, it is necessary to provide a number of other conditions which would guarantee the victim and the witnesses' safety and protection from secondary victimisation. That especially implies suitable rooms in the courts, victim and witness support services, as well as suitable education of the police, judges, prosecutors and lawyers.

Myths on violence among professionals in judiciary¹

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The presence of myths (incorrect but resilient and widely spread opinions) on violence among the professionals, who, by nature of their work, deal with violence, may interfere with the acquiring of relevant knowledge and thus present a hindrance in the process of relevant education. The aim of the research is to establish the presence of the various types of myths on violence among the judiciary professionals in Serbia and to determine how widely spread they are. Method: The research was conducted during a course of specialized education whose aim was for court judges to acquire specialized knowledge regarding the rights of the child in family relations. The questionnaire for detecting the presence of myths was constructed on the basis of educational material, and the data was gathered at the beginning of the education process. The total of 175 judiciary professionals was questioned. The results of the research show that a relatively small number of myths on violence, related primarily to the causes and the consequences of violence are present among the judiciary professionals. The results of this research are in many ways useful for the advancement of education and training, as well as for stimulating similar research during the course of educational work and intervention work of the professionals in practice.

Key words: myth, violence, education, the judiciary system, Serbia.

Introduction

What is a myth?

In psychological dictionaries, a myth is defined as an "incorrect but resilient idea or theory which is widely spread".² The term is used in the broad metaphorical sense of a fairy tale, fiction, misconception or a lie to mark a widely spread psychological theory, hypothesis or idea as fantastic or incorrect³. Trebjesanin gives examples of two very familiar myths in psychology: the myth of the sinless childhood, which is revealed by the father of psychoanalysis Freud in his works, and the myth on mental illness, about which Szasz wrote. Szasz also brought up the myth on psycho-therapy as being the metaphor for medical treatment. He found in it religious, rhetorical and repressive basic content.⁴ The concept of *family myths*, which in a covered up manner arranges family relations, has survived for 40 years developing family therapy both in theory and practice.⁵

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² English, H. B. English A. Č. (1972) *Obuhvatni rečnik psiholoških i psihoanalitičkih pojmova* (All encompassing dictionary of psychological and psychoanalytical terms), Beograd: Savremena administracija p. 293 See also Reber A. S. (1985) *The Penguin Dictionary of Psychology*, London: Penguin Books.

³ Trebjesanin Ž. (2000) *Rečnik psihologije* (The Dictionary of Psychology), Beograd: Stubovi Kulture.

⁴ Szasz, T. (1978) *The Myth of Psychotherapy*, Garden City, New York: Anchor Press/ Doubleday, str. 25.

⁵ Ferreira, A. J. (1965) "Family myths, the covert rules of the relationship", *Confinia Psychiatrica*, 8, 15–20; Byng-Hall, J. (1973) "Family myths used as defence in conjoint family therapy", *British Journal of Medical Psychology*, 46, 239–250; Imber-Black, E. (1988) *Families and Larger Systems*, New York: Guilford Press.

In an overview of contemporary clinical psychology literature reveals we come across myths on suicide,⁶ myths on the overcoming of loss,⁷ myths on the topic of child abuse⁸ as myth on sexual offenses, their perpetrators and victims.⁹ It could be said that myths usually exist in the domain of the so called taboos (mental illnesses, sexuality, death, violence, suicide) that is they are connected to topics for which there is a great need that something specific be known. As usually, not enough is known about these topics – in order for the need to be satisfied, the little we know is “complemented” or polished up”

From the manner in which a myth is usually defined it can be concluded that it is a question of an

- Explanation of a phenomena which is
- Incorrect, without a historical or scientific basis, closer to fiction than to fact, but which despite of that
- Resiliently persists and which is
- Popular, that is widely spread.

The stated aspects of myths are present in the defining of the following psychological terms: attitudes, prejudices and implicit theories. Contrary to the attitudes and the prejudices the myths do not contain the evaluation component, they are less resistant to relevant data and scientific knowledge than prejudices and stereotypes, that is they are subject to change, and in comparison to implicit theory they do not show such a clear systematization that is they do not need to be organized in certain schemes as a whole.

The function of a myth

The myth fulfills the essential need of a man to get on in the changing world that he lives in . He

does this by attempting to explain the world around him, to make it predictable and to thus provide a certain stability and safety for himself. From this we can see a two fold function of a myth: *knowledgeable-organizational and stabilizing*.

When we consider a myth as one possible way of looking at reality and as a direction in our activities, its function is creative and enriching. On the other hand, the tendency to resist changes is present in them, the tendency to maintain the homeostasis or the status quo. From that aspect, the presence of myths narrows the view of reality; it hinders the realization of possible of options and emphatic understanding. It organizes our behavior and interaction in the sense of preventing, holding up and slowing down the process of change.

The origin of myths on violence

Generally speaking the myth derives from a traditional, acquired experience in which we can recognize the psychological, social and cultural sources. Just as myths in general, myths on violence have psychological, social and cultural sources.

Thus, among the psychological sources of myths we can recognize fear, fascination or psychological resistance and defenses (i.e. “It is better not to say anything about it, for if we speak, the violence will increase,” “The basis of all the psychopathology is the abuse and the neglecting”, “Time heals everything even the consequences of violence”)

Social sources of myths on violence can be:

- The political attitude(i.e. “So much discussion on the topic is a fashion imported from the West”) prejudice (i.e. Violent people are crazy, weird people, homosexuals”)
- The professional attitude or the “policy of the profession” (i.e. “ If I report a case of abuse I will violate the principle of discretion and betray the trust of the patients”) or
- Outdated professional knowledge (“ Victims of violence always became the violators”)

Cultural source of the myths on violence is frequently determined by the patriarchal understanding that the family is untouchable (i.e “The Society should always respect the privacy of a family”) or that parenthood is ideal (“A parent would never abuse his/her child”)

Types of myths on violence

Contemporary programs of educating professionals both in the domain of violence and other

6 Moskos, M.A., Achilles, J., Gray, D. (2004) “Adolescent Suicide Myths in the United States”, *Crisis: The Journal of Crisis Intervention and Suicide Prevention*, 25, 176–182.

7 Wortman, C. B., Silver, R. C. (1989) “The myths of coping with loss”, *Journal of Consulting and Clinical Psychology*, 57, 349–345; Wortman, C.B., & Silver, R.C. (2002) “The myths of coping with loss revisited”, In: M.S. Stroebe, R.O. Hansson, W. Stroebe, & H. Schut (Eds.) *Handbook of bereavement research: Consequences, coping and care*, Washington, DC: American Psychological Association.

8 AMHCA – American Mental Health Counselors Association (2001) Myths about Child Abuse, document downloaded 20.12. 2001. from <http://www.amhca.org/>.

9 CSOM – Center for Sex Offender Management (2000) Myths and Facts about Sex Offender, document myths-facts.pdf downloaded 19. 9. 2001. from <http://www.csom.org/pubs/>; Borba, M. (2004) 7 deadly myths about violence, document downloaded 11. 10. 2004. from <http://www.micheleborba.com/Pages/ArtBMI25.htm>.

domains (suicide, mourning), anticipate an overview of myths (present both among the general and the professional public) which, during the course of education, contrast facts. For the needs of the education of professionals in the domain of protection of children from abuse and neglect,¹⁰ a list has been drawn up, arbitrarily – on the basis of recent professional experience of the authors, of myths on violence and they have been categorized into six groups. These are the myths about:

- *The appearance of violence that is denied and marginalized;*
- *The causes and the consequences of violence that are decreased, increased or in the various ways limited;*
- *The violator who is distanced;*
- *The victim who is deemed as having a problem;*
- *The family which is idealized and considered untouchable; and*
- *The professionals, who retreat, rationalize.*

The presence of myths (incorrect but resiliently persisting and widely accepted) on violence among professionals who, by the nature of their work deal with violence can interfere with the acquiring of relevant knowledge and thus represent an interference in the process of professional education and practice. Therefore it is very important to explore to what extent the various myths are present with the professionals who, within the framework of their work deal, among other things, with the prevention of violence and the resolving of problems which have arisen as the consequence of violence.

The research

The aim of the research

The aim of the research was to establish the presence and the extent to which various types of myths on violence are present with the judiciary professionals. Through the research we have also made an attempt to answer the following questions:

1. Whether the presence of myths on violence among the judiciary professionals was connected to sex, age and their professional experience in cases of abuse of children?

2. Are judiciary professionals different from professionals in education and social welfare in regard to the total presence of myths and the presence of certain types of myths?

Method

Sample

175 civil judges (141 women and 34 men) from the district and municipal courts from the district of Belgrade and Vojvodina took part in the research. The sample could not be planned in advance as the tested were attending the specialized studies entitled "The program, for judges, who arbitrate in the proceedings related to family relations, for attaining special knowledge about rights of the child". The training took place in June and October 2006. It was organized by the Legal center from Belgrade. In order to establish possible differences in the presence of myths among the professionals in justice and the professionals working in education and social welfare, the data, received from samples of professionals in education (n = 114) and social welfare (n = 51) which was used in our earlier research, was used.¹¹

Instrument

The presence of myths among the professionals was examined through a questionnaire for the detection of the presence of myths which was constructed on the basis of the educational material of multidisciplinary education in the domain of protection of children from abuse and neglect. Apart from the questions determining the sex, the age and the level of experience in the field of child abuse, the Questionnaire contains 20 statements formulating the myths on violence that is widely accepted attitudes regarding certain aspects of violence which persistently survive, and which are not in accordance with the existing scientific knowledge. To every of the statements a response was given by circling one of the three given answers: "correct", "I do not know" and "incorrect". A circled "correct" for a certain statement was considered an indicator of the presence of myths on violence formulated by this statement.

10 Srna, J (2001) "Multidisciplinarni pristup edukaciji stručnjaka za rad na problematici zlostavljanja i zanemarivanja dece – prikaz jednog modela" ("Multidisciplinary approach to education of professionals to be able to work on the problem of abuse and neglect of children – an overview of a model"), u: J. Srna (ur.ed.) *Od grupe do tima (From the group to the team)* (p. 375–383), Beograd: Centar za brak i porodicu, IP Žarko Albulj.

11 Srna, J., Tenjović, L. (2006) "Mitovi o nasilju kod stručnjaka u prosveti i socijalnoj zaštiti" ("Myths on violence among professionals in education and social welfare"), u: *Empirijska istraživanja u psihologiji 2006 (Empirical research in psychology 2006)* (p. 117–126), Beograd: Institut za psihologiju/Institute for psychology.

The procedure

The research was conducted during the specialized education of judges and the data were gathered at the beginning of the process of education. Out of 203 participants in the education program, the questionnaire was correctly filled in by 175 (86%). The questioning was anonymous.

The results and the discussion

The structure of samples by age, working experience and the experience in the field of the abuse of children.

The structure according to age, work experience and the experience in the field of child abuse of the samples of professionals in justice, who took part in this research, is shown in Table 1. As can be seen in table one, judges younger than 50 years of age prevail in the sample (67.4%), those having more than 20 years of work experience (53.1%) and those having insignificant experience in the field of child abuse (only 6.7% have at least one such experience).

Table 1. The structure of professionals in justice by age, working experience and the experience in the field of the abuse of children

Age			Work experience			Experience in the field of child abuse		
	f	%		f	%		f	%
Over 50 y	57	32.6	Over 20 y	93	53.1	More than 10 cases	1	0.6
From 30 to 50 y	118	67.4	From 10 to 20 y	72	41.2	Up to 10 cases	9	5.1
Up to 30 y	0		Up to 10 y	10	5.7	No cases	165	94.3

Despite the fact that our sample of judges, arbitrating in the proceeding related to family proceedings, is made up of experienced professionals (94.3% have over 10 years of work experience, and 53.1% have more than 20 years of experience) over 94% of judges state in their responses in the Questionnaire that in the course of their professional experience they have not had one (!) case of child abuse. Only one of the 175 questioned judges has had 20 cases of child abuse and 9 judges have had from 1 to 5 such cases.

Although this is hard to understand, we feel that it very explicitly shows that the violence phenomenon is insufficiently recognized in the current legal practice. Namely, the legal protection of children from violence has not been sufficiently regulated in

the criminal and family law. Cases of violence were "hidden" within the elastic very general legal terms, such as "the abuse of the rights of parents", "neglect of the parent responsibility", "violation of family obligations", "criminal acts against life and body and against the dignity of the personality and moral" and even within "violation of public peace and order".¹² We hope that in the future – with the change of the legal regulations – cases of violence over children will be more easily recognized.

The presence of the myths on violence

The answers "correct" to the statements in the Questionnaire researching the presence of myths on violence, were treated as indicators of the presence of a certain myth. The distribution of the total number of answers "correct" among the 20 statements from the Questionnaire for the professionals in justice is given in Table 2. As can be seen in the table 2, the presence of myths on violence among most of the questioned was not expressed to a great extent (average = 2). While most of the professionals possess one (33.1%) , two ((29.1%) or 3 (20%) of the researched myths on violence, the number of professionals in justice who possess 5 or more of the researched myths (4.6%) is not insignificant.

12 Mršević, Z. (2001) "Krivičnopravna zaštita dece od nasilja" ("Criminal legal protection of children from violence"), u: J. Srna (ur./ed.) *Od grupe do tima (From the group to the team)* (p. 256-263), Beograd: Centar za brak i porodicu (Center for marriage and family), IP Žarko Albulj; Obretković, M., Pejaković, Lj. (2001) *Zaštita dece od zlostavljanja (The Protection of Children from Abuse)*, Beograd, Jugoslovenski centar za prava deteta/Yugoslav Center for the Right of a Child; Šarkić, N. (2001) "Porodičnopravna zaštita dece od zlostavljanja-uloga porodičnog pravosuđa" ("Family and legal protection of children from abuse – the role of family law", u: J. Srna (ur.) *Od grupe do tima (from the group to the team)* (p. 251-255), Beograd: Centar za brak i porodicu (Center for marriage and family), IP Žarko Albulj.

Table 2. The distribution of myths on violence for the sample of professionals in justice (n = 175)

The total number of the answers "correct" to 20 statements of the Questionnaire for the detection of myths of violence	Frequency	Relative frequency (u %)
8	1	0.6
6	2	1.1
5	5	2.9
4	19	10.9
3	35	20.0
2	51	29.1
1	58	33.1
0	4	2.3

Statistical analysis does not support the existence of sexual differences among the professionals in justice in regard to the presence of myths on violence (average for men = 2.5, for women = 2; Mann Whitney's test: $z = 1.38$ $p = 0.17$). In the same way, the analysis of the differences among the professionals under the age of 50 and those who are older than 50 does not point out to the association between the age and the presence of the myths on violence (the average for those under 50 = 2, for those over the age of 50 = 2; Mann Whitney's test: $z = 1.40$ $p = 0.16$). Still, it must be stressed, that three professionals with the greatest presence of myths (6 and 8 myths) belong to the group of those over the age of 50. Considering that

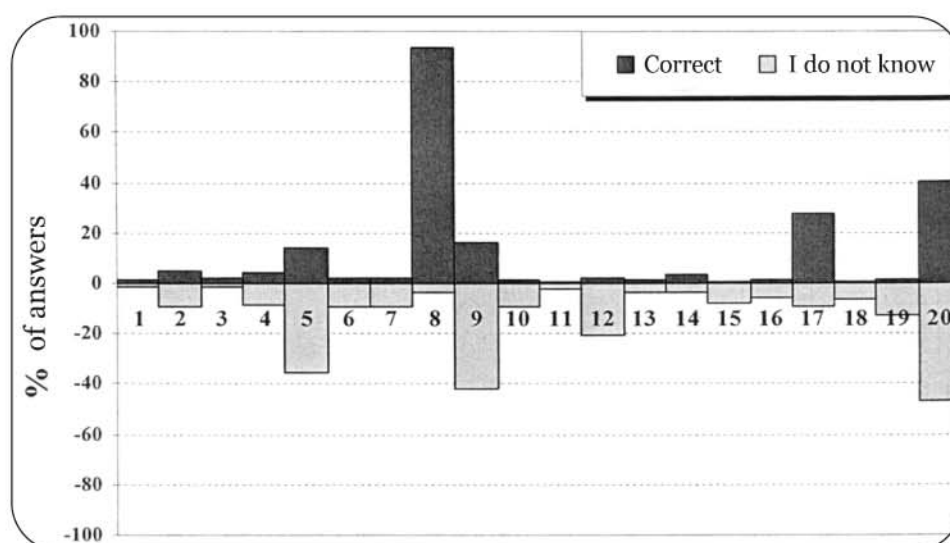
only a small number of the questioned professionals in justice had experience in cases of child abuse (see Table 1), the research of association between such an experience and the greater presence of the myths on violence could not be conducted in this paper.

The presence of certain myths on violence

The presence of certain myths is expressed by the percentage of the answers "correct" to the statement which

formulates a certain myth in the Questionnaire for the detection of presence of myths on violence. The extent to which certain of the 20 myths on violence are present among the professionals in justice is shown on Graph 1. As can be seen in the Graph, the myths present the most are those referring to causes and consequences of violence. The following are the myths that are most present: "Psychological consequences of abuse on children are always serious and permanent" (the myth is present in 92.9% of the cases, labeled by number 8 on the Graph 1) and "The basis of all psychopathology is abuse and neglect" (the myth is present in 39.6% of the cases, labeled number 20 on the Graph 1).

Graph 1. The percentage of the answers "correct" and "I do not know" to certain statements in the Questionnaire for the detection of the presence of myths on violence on the sample of judges (n=175)



Note: On the Graph the myths are labeled with numbers from the Questionnaire for the detection of the presence of myths on violence: 1. It does not exist in our society; 2 Even if it exists, the phenomenon is rare; 3. The violators are not our people, it is somebody else; 4. They are weird and crazy people (drunkards and homosexuals) 5. Sexual abuse is the result of uncontrollable sexual instincts; 6. Usually the victim is partly responsible for he/she provoked the attack; 7. Time heals everything, even consequences of violence; 8. Psychological consequences of abuse on children are always difficult and of permanent character; 9. Victims of violence always become violators; 10. Parents would never abuse their children; 11. Victims of sexual abuse are only girls; 12. Violators usually do not know their victims; 13. It is better to be quiet, if we talk about it there will be more of it; 14. The child claiming abuse is probably making it up or lying; 15. If I report a case of abuse I will violate the principle of discretion and I will betray the trust of clients; 16. It will be easier for me if I do not ruffle things up; 17. The society must always respect the privacy of a family; 18. We have many more important problems to solve than the problem of violence in the family; 19. We are not powerful enough to deal with such a complex problem as is abuse and neglect of children; 20. The basis of psychopathology abuse and neglect.

Although they can not be clear indicators of the presence of myths, answers "I do not know" to the statements in the Questionnaire formulating the

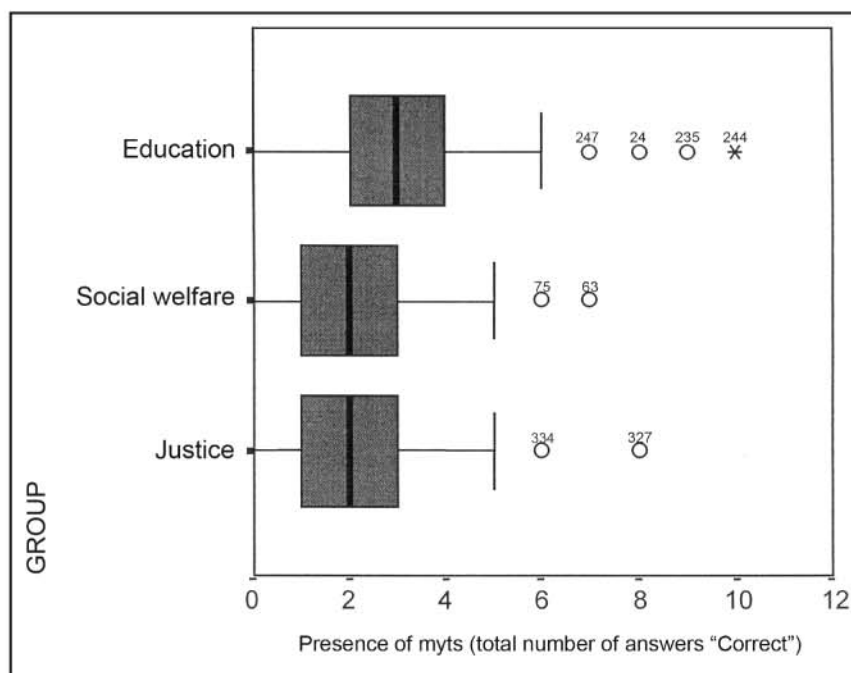
myths on violence, could be a rough indication of the presence of a myth. The answers "I do not know" are most frequent among the professionals in justice when they are responding to the following statements "The basis of psychopathology as a whole is abuse and neglect" (47% labeled by number 20 on graph 1), "Victims of violence always become violators" (41.7% labeled by number 9 on the Graph 1) and "Sexual violence is the result of uncontrollable sexual instincts" (35.4% labeled by number 5 on the Graph 1).

The similarities and the differences in the presence of myths on violence among the professionals in justice and the professionals in education and social welfare

In order to get a full picture on the presence and the frequency of myths on violence among the professionals in justice, we contrasted the results attained in this research with the data obtained from samples of professionals in education and social welfare in our previous research.¹³ The total number of answers "correct" to all 20 statements from the Questionnaire in individual groups is presented in squared diagrams on Graph 2. The results of the Kruskal-Wallis' test, show that there are significant differences in the presence of the myths on violence among different groups of professionals (Hi-squared =29.23, df =2, p = 0.000). Subsequent varied comparisons, conducted by the method of least significant difference among average ranks of groups, show that, according to the presence of myths, professionals in education significantly differ from the other two groups, while the professionals in social welfare do not differ from the ones from justice (the average for professionals in education =3, for the professionals in social welfare = 2, for the professionals in justice =2)

Considering that in the choice of samples from the researched population of professional it was not possible to take care of matching of the samples, the attained results could be a consequence of the sex and age differences of the researched

Graph 2. The presence of myths (total number of answers "correct" to 20 statements of the detection Questionnaire



13 Srna, J. Tenjović, L. (2006) op. cit.

groups (see Table 3). As can be seen from Table 3, among the questioned professionals in education there are relatively more men than in the other two groups. Also, in the group of professionals in education there are relatively more representatives of the age group over 50 than among the professionals in justice and social welfare. In the attempt to establish whether the differences in the presence of myths on violence among professionals from various fields is the consequence of evident sexual and age differences of the researched groups, we made separate statistical analysis of the differences among the groups for every sex and every age group. The

results of these analysis show that the established differences among the groups in the presence of myths on violence cannot be, in full, explained by the differences in the sexual and age structure.

Statistically significant differences among the group regarding the presence of myths are attained also when the analysis is performed separately according to sex. (women: Chi – square = 14.07, df = 2, $p = 0.001$; Men: Chi – square = 14.96, df = 2, $p = 0.001$). Also, statistically significant differences in the presence of myths among the professionals in education and the other two groups are attained when the analysis are performed separately for the

Table 3. The sex and age structure of the professionals in social welfare ($n = 51$), education ($n = 114$) and justice ($n = 175$)

Group	Sex		Age	
	Female	Male	Under 50 years old	Over 50 years old
Education	50%	50%	39.5%	60.5%
Social welfare	68.6%	31.4%	76.5%	23.5%
Justice	80.6%	19.4%	67.4%	32.6%

Tabela 4. The percentage of the responses "Correct" in the groups of professionals in social welfare, education and justice for those statements of the Questionnaire for the detection of the presence of myths on violence for which the percentages of such responses is greater than 30% in at least one group

Statement	Group		
	Social welfare ($n = 51$)	Education ($n = 114$)	Justice ($n = 175$)
<i>Psychological consequences of abuse are always serious and permanent in children</i>	96.1	94.7	93.7
<i>The basis of psychopathology as a whole is abuse and neglect</i>	35.3	33.3	46.9
<i>Sexual violence is the result of uncontrollable sexual drive</i>		50.0	
<i>The society must always respect the privacy of a family</i>		40.4	

Tabela 5. The percentage of the responses "I do not know" in the groups of professionals in social welfare, education and justice for those statements of the Questionnaire for the detection of the presence of myths on violence for which the percentages of such responses is greater than 30% in at least one group

Statement	Group		
	Social welfare ($n = 51$)	Education ($n = 114$)	Justice ($n = 175$)
<i>The victims of violence always become violators</i>	49.0	37.7	41.7
<i>The basis of psychopathology as a whole is abuse and neglect</i>	47.1	41.2	46.9
<i>Sexual violence is the result of uncontrollable sexual drive</i>	41.2		35.4

professionals under the age of 50 and for those above the age of 50 (under the age of 50: Chi – square = 14.62, df = 2, p = 0.001; above the age of 50: Chi – square = 7.91, df = 2, p = 0.019)

According to the presence of certain myths on violence, the professionals in justice somewhat differ from the professionals in education, but not from the professionals in social welfare (table 4). Two most frequently present myths in all the groups are: "Psychological consequences of abuse are always serious and permanent for the children" and "The basis of psychopathology as a whole is abuse and neglect". Among the professionals in education, the following myths are also widely spread "Sexual violence is the result of uncontrollable sexual instincts" and "The society must always respect the privacy of the family". If however, the answers "I do not know" are also taken as a rough indication of the presence of certain myths, it could be said that the professionals in justice and social welfare are also not "immune" to the myth "Sexual violence is the result of uncontrollable sexual instinct" (see table 5). We could also thus, according to the frequency of the presence of the response "I do not know" (table 5) include the myth "Victims of violence always become violators" into the group of myths obviously present in the population of professionals in these three domains.

The conclusions of the research

1. The questioned professionals in justice, to a great extent know, at least on the abstract level, the problem of violence, considering that a relatively small number of myths on violence is present among them. The most frequently present myths refer to the causes and the consequences of violence ("Psychological consequences of abuse are always serious and permanent in children", "The basis of psychopathology as a whole is abuse and neglect", "The victims of violence always become violators", "Sexual violence is the result of uncontrollable sexual drive").
2. A very significant result of this analysis is that the questioned judges are very prone to believing the child's testimony on abuse (one of the statements in the Questionnaire to which none of the judges responded by circling "Correct" is "The child that says that it has been abused is making that up or is lying").
3. Our result showing the insignificant experi-

ence of (of otherwise experienced) judges in the cases of abuse of children is in accordance with the attitude stated in legal literature which connects the insufficient recognition of the phenomenon of violence in the court practice with the insufficiently specific legal regulations.

4. Among the professionals in justice, as among the professionals in social welfare, myths are present in fewer numbers than among the professionals in education.
5. Among the professionals of all profiles, the most frequently present myths have to do with the causes and the consequences of violence and they are present in all groups in almost identical percentage of cases. The professionals here generally speaking show:
 - a high level of selectiveness (consequences are always serious and permanent)
 - a great tendency towards making the issue of violence pathological (violators are crazy people, violence is evident in the basis of psychopathology as a whole) and
 - a tendency towards mono-causality (they are satisfied with the simplified explanations of the complex phenomenon of violence: "uncontrollable instincts").

The implications of research

1. It is necessary to devote some attention to the education of professionals in various fields of social protection from violence considering
 - a) the disproportion of their rich professional experience and the modest experience in cases of violence towards children and
 - b) the presence of myths, especially those dealing with the cause and consequence of violence.
2. The results of the research on the existence of greater difference in the understanding of violence among professionals of various profiles support the idea of multidisciplinary education.
3. It is necessary to research the field of violence to a greater extent in order to provide solid arguments – facts strong enough to confront the myths, considering the old saying "Myths are carved in stone and the truth in sand".

Victimization and experience of crime victims with state institutions – the analysis of VDS info and victim support service's data

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This paper aims to identify the types and characteristics of primary and secondary victimization faced by the victims who turned to the VDS info and victim support service for assistance, with particular emphasis on their experience with governmental institutions as well as the assistance and support they received from the Service. In 2005, VDS info and victim support service received totally 452 calls from 94 persons, namely from 76 women and 18 men. In this paper, the data of VDS info and victim support service for the period from 1st July until 31st December 2005 are analyzed. This particular period has been chosen since it was the first period for which data were registered and processed by using a specially constructed questionnaire and specific methodology of data entry and processing.

Key words: victims, crime, victim support services, institutions, VDS info and victim support service, Serbia.

Introduction

Victim support service data, although not representable for the total victim population, is a source of information on both the work of these services

and on the work of the institutions and other organizations to which the victims turn for help. This data can also represent a solid source of knowledge on the victimization itself – both primary and secondary, which are the reasons why the victims turn to these services for assistance. Finally, data of this type can point to possible weaknesses in the work of those that the victims expect assistance from. It is thus, that the regular analysis and evaluations of the work of the victim support services, together with the noted changes in the structure of the victims that are turning for assistance, and the recorded needs and examples of best practice, all contribute to the development of their own work and of the work of other services. The fact that these analysis are based on the experience of the victims themselves gives them a special value.¹

This paper analyses the data of the VDS info and the victim support service,² for the period from 01

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1 On the importance of the researches based on the experience of victims see Mawby, R. I Walklate, S. (1995) *Critical Victimology*, London, Thousand Oaks i New Delhi: Sage Publications, p. 38.

2 VDS info and the victim support service offers emotional support, information and referrals to other relevant services, those who are victims of crime and their families – both women and men. The Service is primarily intended for persons over 14 years of age and assistance to children under the age of 14 is provided through their parents. The Service also provides assistance and support to women victims of violence who have killed their abusers and are in prison. According to the target group (women, men and convicts) the VDS info and the victim support service is unique both in Serbia and the region. The Service, in its work, applies European and world standards prescribed by the international documents, including documents of the European Forum of the Services whose member it is. More about that in: Čopić, S., Nikolić, J. (2004) "Služba za žrtve kriminaliteta VDS info i podrška žrtvama: analiza dosadašnjeg rada" ("Victim support service VDS info and victim support: analysis of the previous work"), Temida, 3: p. 17-29. In 2005 VDS info and the victim support service received the total of 452 calls from 94 persons – 76 women and 18 men.

July to 31 Dec 2005. We have decided to analyze the data related to this period having in mind that it is the first period that data has been recorded and processed since the founding of the Service by using specially prepared questionnaire for recording the data and a unique methodology for the entering and the processing of the same. Thus the basis was set for both the regular follow up, research, comparison and analysis of the work, that is, the data of the Service and for a better and more efficient use of the total capacities of the Victimology Society of Serbia through a coordinated work and a mutual complementation of the two basic wholes: the research unit and the victim support service. Also, a basis was set for a possible future model of uniform management of (the mutually comparable) data on the victims in this victim support service, as well as in other victim services in Serbia.

In that sense, the aim of this paper is to identify the types and characteristics of primary and secondary victimization faced by the victims who turned to the VDS info and victim support service for assistance, with particular emphasis on their experience with governmental institutions as well as the assistance and support they received from the Service. Although we are aware that it would be also very important to consider the experiences that the victims have had with the non-governmental organizations that they turned to for help, in this paper, we shall deal with it only sporadically. The only reason for that is that the victims rarely talked about it when they addressed the Service.

Data on the victims and the manner in which the VDS info and victim support service was contacted

From 01 July to 31 December 2005, VDS info and the victim support service have received the total of 245 calls from 64 persons. The majority of the victims were women – 49 or 77%, but the number of men is also not irrelevant – nearly a fourth or 15 that is 23%. In 31% of the cases, the victims called once, in 42%, twice, in 5%, three times and in 22% of the cases more than three times.

In more than a half of the cases (53% or 34 cases), persons that addressed the Service for assistance and support were from Belgrade. On the other hand, 28 persons (44%) who sought assistance from the Service were from other towns in Serbia, while 2 persons did not say where they were calling from.

Most frequently, that is, in 55 cases (86%) victims addressed the Service directly, while in 9 (14%) of the cases the Service was contacted by

the victims' parents, relatives, friends or some other persons who had wanted to help them.

The victims were provided assistance over the phone. However, in the cases of 18 persons (28.1%) – 11 women and 7 men, direct contact was also made. The total of 30 interviews was conducted on the premises of the Service. In one case, a victim sought assistance over e-mail, while victims of violence who are in prison were contacted by phone or letters.

In accordance with the principles of work of the Service, the persons who sought assistance were always given the option to remain anonymous. In the analyzed period, the Service was contacted by 9 persons (6 women and 3 men) who wanted to remain anonymous. Still, the majority introduced themselves and left a phone number so that they could be contacted if need arose and if this did not endanger their security. Citizens who contacted the Service were in most cases aware that more opened and fuller contact contributes to the more efficient assistance. This is well illustrated by the following example:

"You asked for my full name and telephone number or I could remain anonymous. I have been thinking to remain anonymous – because of the violator and from fear that he would find out that I was the one that reported it – but if it will help you solve the case I will give you my personal info."

Forms of victimization which were the motive for addressing the VDS info and victim support service

The need to address the Service arises from various forms of victimization faced by the persons who had contacted us. The analysis of the work of the Service in the stated period reveals that, as before, the most frequent motive for seeking assistance and support from the Service was domestic violence. Next in line are women victims of violence who have, defending themselves, committed a crime and are serving a prison sentence. Motives for addressing the Service were also threats, stalking and harassment at the work place, that is harassment by the colleagues, checking of the employment contract with the aim of preventing victimization through trafficking in human beings, as well as a series of other individual reasons, which can not be classified under a specific type of criminal offence.

Domestic violence was a motive for calling the Service in 31 cases (48.4%). In 7 cases (10.9%) the persons were women who were serving a prison sentence for a crime that they had committed defending themselves from the violence to

which they had been exposed for many years in their families. They addressed the Service directly, or members of their families, in most cases parents, approached the Service. The motive in most of these cases was the campaign conducted by the Victimology Society of Serbia, entitled "Amnesty for victims of violence". The aim of the campaign was to provide assistance to the women in the realization of their right to be paroled or to be granted amnesty. However, after the initial call, they were given other information and emotional support depending on the specific needs.

In 3 cases (4.6%), it was a question of threats, while in two cases (3.1%) the victims turned to the Service on account of the violence at the work place and for the purpose of checking the employment contract.

The remaining 19 cases (29.7%) were individual cases in which the citizens addressed the Service asking for various forms of legal assistance, advice regarding the realization of various rights or regarding the provision of practical assistance (for example – support in the court, information on drug addiction, compensation of damage, establishing of fatherhood, obtaining of the right to a pension etc.)

Domestic violence

Victims of domestic violence who approached the Service in the observed period, were in most cases women – 23 of them. Besides the women, 8 men addressed the Service. This represents a change in relation to the data received through analysis of the work of the VDS info and victim support service in the period from 01 April 2003 to 31 August 2004. The mentioned analysis showed that all the persons that contacted the Service with domestic violence as the motive, were women.³

The form of violence that most frequently emerges as the form of domestic violence was physical violence accompanied by the psychological violence – it was registered in 17 cases; next is psychological violence registered in 12 cases and sexual violence in 1 case. Combined presence of all three forms of violence appears only in one case. The experience of the Service confirms the existing knowledge that sexual violence causes a feeling of guilt, shame, distrust, denial and the fear of revealing the abuse.⁴ This is confirmed by the

observations of one of the coordinators in the Service regarding a conversation with a girl, who was psychologically and sexually violated by her father:

"It is very hard for her to relax and to start talking. At the mention of sexual violence she is disturbed and she cannot talk about the details. At first glance she seems relaxed, but it is obvious that inside she is holding up piled up anger."

The women had endured being violated mostly by their present or former husbands, partners and fathers. The following are examples of exactly that:

"My husband is very jealous. He accuses me of having affairs with relatives and friends, so most of them have started avoiding us. He hit me on several occasions..."

"My father has moved in by force and he continues to mistreat mother and me. He is always drunk and he breaks everything around the house. I have been physically hurt, my sinuses burst and he tried to rape me..."

On the other hand, the violence endured by the men was performed by their fathers or women partners, but also by their children and relatives. Testimony of this are the following examples:

"My father beat me again. I had head injuries and was in the Health center for three days. I try not to be at home when my parents are there. When I am in the flat, I close myself in my room and block the door with the wardrobe. The last time that I was attacked was when I left my room to go to the toilet."

"I have problems with my mother and brother. They are strange. Mother is nervous. My father died. My brother is threatening to kill me in my sleep. My mother bathes him and sleeps with him."

"She has a lover. She behaves very badly. She brings him to the house. They kiss in the bus. She is turning my son against me. I am thinking of getting a divorce."

Victims of domestic violence in most cases did not leave their number, but rather they called or came when they thought that it was safe for them to do so. The abusers tried to isolate them from the outside world and they applied various control tactics. They thus justifiably feared the violators and the consequences if it were found out that they were discussing the problem with somebody and asking for help.

The coordinator of the Service notes, after a direct contact with a woman who was exposed to violence by her former husband whom she was still living with:

"She frequently comes to talk as she can not talk from her place of work or from home..."

³ Čopić, S., Nikolić, J. (2004) op. cit. p. 17

⁴ Mršević, Z. (1997) *Incest između mita i stvarnosti, kriminološka studija seksualnog zlostavljanja dece (Incest between myth and reality, criminology study of the sexual abuse of children)*, Beograd: Institute for criminological and sociological research and the Center for the Rights of the Child, p.95

Not so rarely, intermingled with the domestic violence are problems regarding divorce or property. There were cases when the Service was approached by the women who had been victims of domestic violence for many years. These are the women that had divorced the violators, but were forced, due to the impossibility of division of property or the lack of alternative solutions, to continue living in the same household with the violator, thus continuing to endure the violence.

"I got divorced last year. I live with my former husband in a common household. He is an alcoholic. He is aggressive. He beats me and the children. He breaks things around the house."

"I am divorced and live in the attic of the common household. My former husband lives on the ground floor. He is threatening me. He does not allow my friends to enter the gate. He has brought a woman to live with him. I do not have anything against that. But, he does not allow anybody to visit me, not even my relatives who supply me with food. I am almost totally blind as a consequence of a thyroid gland disorder."

The violence can continue when the former spouses do not live in the same flat. In these cases, the children are also victims. In one case the victim stated:

"During the visit last week, he refused to return the children. He says all the worst things about me. He is turning the children against me. The boy is quite stable, but the girl is 5 years old and this is all very hard for her. When I came to pick up the children he called the police and said that I had kidnapped them."

The data that the Service has at its disposal points to other forms of violence, both direct and indirect forms of victimization, faced by the children in their families.

"He beat the son. In the meantime he pushed the daughter down the stairs, he ripped the flesh of the wife. He is torturing them all..."

"The father brings the children for visits sick and inadequately dressed. On one occasion the girl threw up and I had to call a taxi from the Center to take her to the doctor..."

"The child is sad, unhappy, she has gained weight. She is dressed as the worker at the garbage deposit..."

"The child found beaten up in the grass was not only beaten up, but rather had injuries sustained from a weapon. The father takes off his clothes in front of the children and he forces them to do certain things..."

"He beats me with various objects. The children can not study. They are afraid. The older daughter constantly cries..."

Women victims of violence who are in prison

In 2002, the Victimology Society of Serbia initiated the campaign *"Amnesty for the victims of violence"* interceding in favor of amnesty for women who had, defending themselves from violence, killed their abusers. 8 women have been granted amnesty so far – 6 were paroled while for two the sentence was reduced. In 2005, unfortunately, not one of these women was granted amnesty.

In three cases, the convicts called personally, while in 4 cases their parents or relatives appealed for help. The main reason why these women or their relatives called, was obtaining information in regard to initiating or the further course of the amnesty process or parole. Apart from that, the reason for approaching the Service was the possibility for making contact or seeing the children. In that regard, the activities of the Service were above all directed towards the improvement of the communication between the convicts and their children.

"I have been in prison for more than one year and I have not seen my children once. In the social welfare center they tell me that the children do not wish to see me. I told them: 'Bring them, let them tell me that they do not wish to see me.'"

The coordinators of the Service appealed to the competent welfare centers on many occasions with the aim of obtaining information on the children of the convicts and the possibility of organizing their visit. From the conversations with the convicts, the significance of support has been noted – of the support provided by the VDS info and the victim support service and the significance of the support provided by their parents.

"Today I did not work so I could call you. I have been in touch with my parents. V. (daughter) is well. I can only thank my mother, she is taking care of her as if she were her own child. I have not seen my sons nor have I heard of them for a long time. I can only entrust you with how I feel about that. I do not wish to burden my mother with that..."

"I have been in touch with my son, it was his birthday, after that I was very sad. I cannot understand that the social welfare center has allowed me to be in touch with him only five times a year. I did not dare tell my mother about that. She is sick and can hardly move. It means a lot to me that I can talk to you sometimes..."

The parents or the relatives of the convicts called when they needed some information regarding the rights or the status of the women in prison, but also when they themselves needed support. Sometimes they called at the request of the convict

for they were not able to personally call because of their working hours. Also, from the conversations with the parents of the convicts, it could be noted that they were very worried about their daughters (the woman in prison) but also that they worried a great deal about their grandchildren who do not live with them, but in the families of the killed father.

"I have not seen B. (my grandson) for a year. J (granddaughter) was here a month ago for 5 minutes only. I prepared them presents and set aside money from my pension, but they did not come. I went in front of the school to see them..."

"My daughter is imprisoned, she does not want to show that she is hurting. I know that she is suffering a lot, but I cannot help her, I am old and sick, my husband is bedridden..."

In the researched period, the Victimology Society of Serbia received 12 letters from the convicts from the Prison for women in Pozarevac. The convicts thus confided their life stories and asked for assistance. From their letters it can be concluded that practical assistance is not the only reason for their appeal, but rather it is the knowledge that VDS is an organization that also provides emotional support to the convicts, so they thus have a possibility to confide to somebody.

Threats

In 3 cases (4.6%) the motive for calling was threats. All victims were women. In one case the threats had to do with a conflict with the neighbor:

"The neighbor broke into my house at 5 in the morning and threatened me and my 17 year old daughter. I took my daughter to a psychologist. The case is currently with the prosecutor."

The remaining two cases had to do with the threats which attacked not only the physical integrity, but also the sexuality and the sexual freedom of the victim. In other words, the violators threatened with physical and sexual abuse as well as with trafficking.

"I was asked (by the young man) whether I wanted him to stab me with the knife or whether to bring his friends to rape me. He forced me to say that I am whore. He threatened to sell me in Italy as a prostitute."

"My partner whom I have known for two years is threatening me over the phone. I know that he has mistreated other women. He lives in Germany. He sends me SMS messages that scare me."

Besides providing support to the persons who have become victims of crime, the work of the Service has a preventive dimension. By providing

assistance and support to the victims of less serious crimes, like threats, we prevent them from becoming victims of far more serious criminal offences, such as murder, rape and trafficking in human beings.

Violence at the work place

In two cases (3.1%) the reason for addressing the Service was violence at the work place. Both persons were women. One was a case of stalking, while the other was a case of sexual harassment by the supervisor who had even tried to rape her:

"My colleague is harassing me at work – he is sending me SMS messages, calling me on the phone. He waits for me when I go to work and when I return in the evening. He has tried to kiss me. He is threatening to tell my partner that we are having an affair."

"He is declaring love to me. He keeps a diary on the computer of all our conversations, my reactions. He tried to rape me."

Checking of employment contracts

In two cases (3.1%) the motive for appealing to the Service was checking of the employment contract. The persons that contacted us wanted to prevent a possible victimization by trafficking, labor or other exploitation. One was a case of checking up an employment contract in Dubai and the other one for employment in Kosovo.

"I have heard that you deal with the problem of trafficking in human beings. I would like to check an employment contract for work in a hotel in Dubai..."

"I am to make a contract with a foreign company and to work in Kosovo. I wonder if I can consult with anybody regarding the validity of the contract – what it has to contain, etc."

Experience with the governmental institutions

As far as the governmental institutions are concerned, the data of the VDS info and the victim support service provides most of the information on the experience that the victims have had with the police and the social welfare centers and in individual cases on the treatment that they have had before the court or in prison.

The victims have approached the welfare centers and the police prior to contacting the Service or they were referred to them by the Service. In individual cases, the victims, besides addressing the

police and the social welfare centers, addressed other state services. They often also put in individual efforts, in various forms, wishing to resolve the problem that they were confronted with: they wrote letters to the Ministry of Justice, the Ministry for Human and Minority Rights; they appealed to the media, they engaged lawyers, they obtained medical certificates, wrote reports etc.

In 13 cases (42%), the persons that approached us undertook more than one option with the aim of resolving the problem. Thus, one woman who had contacted the Service regarding the kidnapping of her child said that she had already reported the case to the police, that she has addressed the social welfare center and that she has written to the Ministry of Justice of Serbia. For 27 persons (42%) there is no evidence of what they had done prior to contacting the Service.

Four victims had experience with the court, but only one of them provided information regarding the manner of treatment, that is, she informed the Service that she was not satisfied. Also, a mother of one convict approached the Service and pointed out the bad living conditions in prison that her daughter was complaining of.

Experience with the police

In 18 cases (28.1%), the victims turned to the police for help before approaching the VDS info and victim support service. Out of 18 victims who had addressed the police for assistance, 10 were victims of domestic violence. 24 persons (37.5%) did not seek assistance from this state authority while for 22 persons (34.3%) there is no data. In most cases the victims were not satisfied with the police reaction. Out of the 18 persons that had turned to the police for help, 10 of them were not satisfied with the police's work. For 6 persons, there is no information on whether they were satisfied with the reaction of the police. Only 2 persons, of whom one was a woman, a victim of domestic violence, were satisfied with the reaction of the police.

Despite the fact that domestic violence is incriminated by the criminal law since March 2002, data of the Service shows that the police often do not file criminal reports for domestic violence although they are obliged to do so *ex officio*. Rather, the police characterizes these as "family problems". The dissatisfaction of the victims in most cases refers to: ignoring of the seriousness of the problem; often they are reproached for being called in such a case (for example: marriage problems do not fall under the category of domestic violence - she was not

raped but rather "only harassed"; because they are married "they cannot do anything until they get divorced" etc) giving support to the violator due to acquaintance or due to his connections and the influence that he has in the police, keeping the violator only for a few hours until he sobers up, causing him to be even more aggressive and revengeful when he returns home.

"I think that the police and my husband have some kind of a deal. They keep calling me in for interviews. They do not provide me with adequate protection. They do not come when I call them, while they come and file reports regularly when my husband calls them when I break a bottle or something of the kind."

"The police has established that there is domestic violence, but they have stressed that they cannot do anything before I get divorced."

"Sometimes the police take him to the police station for a couple of hours.. After that he returns even more drunk and angry..."

"I have reported to the police on several occasions. The former head of the police said in my presence that my husband has the right to beat me...."

"Father is a family friend of the head of the competent police and in every conflict he takes his side. He even put on the record that he was the one beaten up, not me, although I have medical papers to support my case."

One of the rare people that was satisfied with the reaction of the police said the following:

"When my former husband falsely accused me of kidnapping the children they came to check. I explained everything and they showed understanding."

Experience with the social welfare centers

In 14 cases (21.8%), victims turned to the social welfare centers for assistance before approaching the VDS info and victim support service. Out of 14 persons that had addressed the social welfare centers, 10 were victims of domestic violence. 24 persons (37.5%) did not address the welfare center for help, while for 26 persons (40.6%) there is no data. In most cases, the victims were not satisfied with the work of the social welfare centers. Out of 14 persons that had contacted the social welfare center, 9 of them, which is more than a half, were not satisfied. Only 3 were satisfied with the work of the centers while there is no data for 2 persons.

Out of the total of 31 victims of domestic violence, ten of them turned to the welfare centers for

help and only 2 victims of domestic violence were satisfied with the reaction of the center. Victims of domestic violence make up the majority for whom there is data that they were dissatisfied with the work of the social welfare center (8 out of 9). Reasons for dissatisfaction with the work of the welfare centers: inability to recognize domestic violence as a criminal act; delayed reactions; insensitivity; not providing protection; justification of violence and accusation of victim.

Workers of the social welfare centers often do not know how to, or they do not wish to, recognize, cases of domestic violence, describing them as cases of "family conflicts" or justifying the perpetrator and thus giving a trivial character to the violence endured by the women and the children. The following statements of the welfare workers testify this:

"This is not a case of a victim of domestic violence, but rather it is a family conflict. The children did not complain of the violence."

"He is handsome and hardworking. He is only bad when he had had a few drinks." (Statement of a social welfare worker in charge of estimating violence committed by the husband/father who was later convicted for domestic violence).

Statements by victims testify that they had often been additionally victimized by the reaction of the welfare center workers, who would, with obvious misunderstanding, blame the victim revealing their patriarchal stereotypes. The following words of a social welfare worker directed at the woman who is enduring violence from her jealous husband, verify this:

"You should not have gone to Banja alone. You should have stayed at home and not nourished your husband's jealousy."

Victims have additionally been victimized by the untimely reactions, indifference, and lack of protection, tolerance of violence and even fulfilling of the demands of the perpetrator, occasionally shown by social workers in social welfare centers.

"The social welfare center did not respond to my request to procure a way to see my daughter. When I addressed the Center with the issue I was told they do not know where my application is."

"The last time I saw the children in the welfare center, he yelled at me in front of the children. None of the workers in the center reacted."

"The social welfare center has for a long time had an insight into the violent behavior of the father of the family –two children have even been accommodated in foster families, but the children were returned to the family and continued to endure the violence after the violator intervened at the then

Director of the Center."

Three persons were satisfied with the work of the center for social work.

"They have met my request to have the custody papers as soon as possible as well as the schedule for seeing the children."

"They gave me good advice. I will bring a witness who will testify of my partners alcoholic state, so that I do not get thrown out of the flat just as he is threatening to do."

"I am very pleased with the way the social worker has received me. She even contacted your Service instead of me. I was not capable of doing so at the time."

How the victims found out about the VDS info and victim support service and how the Service helped them

The persons that approached the Service found out about it in various ways: through members and associates of the VDS, other non-governmental organizations, journalists, friends or relatives who had previously turned to the Service for assistance, and other persons, through television programs and press, through social welfare centers, through the internet and printed material of the VDS. As far as offering assistance to the women who are serving a prison sentence is concerned, they found out about the Service from other women in the prison who had previously contacted the Service, through persons who are related to persons who are serving a prison sentence or through the persons employed in the prison.

The victims most frequently found out about the Service through the media (13, TV -7 and press – 6 cases) from the members and associates of the Victimology Society (8) and from the social welfare centers (7). Some persons found out about the Service from the printed materials of the VDS (2), through the internet (2), other non-governmental organizations (Astra and AZIN) (2), through relatives or friends who had previously approached the Service for assistance (2). One victim was referred by journalists and one by some other person. In the observed period, the police did not refer a single person to the VDS info and victim support service.

Depending on the specific needs of the victim, the Service provided information on the rights of the victims and the ways in which they could realize these rights. It provided emotional support and referred the victims to other services and organizations, which could provide the person with most adequate assistance.

According to the experience of the Service, the persons that contacted it needed emotional support. A nice word and understanding were frequently exactly what the victim lacked the most in order to be able to articulate the problem and to become strong to deal with it. That can be seen from the following examples:

"Thank you so much for listening to me. I can see some things more clearly now..."

"I know that you have so many cases and yet you have allocated so much time to me. Thank you for thinking about me. These conversations mean a lot to me."

In order to strengthen the victim and to support him/her, in the previous period the coordinator of the Service has, in two cases, accompanied the victim to the court and to the Mental Health Institute.

"I am afraid that my husband will take all the property away. Can you come to the court with me?"

"I have received a summon for the expertise at the Institute for Mental Health. Can somebody come with me?"

Depending on the nature of their needs, the victims were referred to other organizations/institutions which provide specific forms of assistance. In 39 cases (61%) the persons were referred to other institutions/organizations. In 19 cases (30%) it was estimated that there is no need for them to be referred elsewhere, while in six cases (9%) there is no data on them being referred anywhere.

As to the state institutions, victims were referred to the social welfare centers, police, judicial authorities, marriage and family counseling, municipal offices for legal assistance, the psychological counseling of the Youth Club and the National office of the President of the Republic of Serbia. The victims received telephone numbers and addresses of these institutions/organizations, as well as the information regarding their working hours and the ways in which they could be contacted.

The woman who had called on account of violence in the form of stalking at the work place was referred to the police and the person interested in the possibility of realizing his/her right to the pension and the disabled persons insurance was referred to the socialwelfare center. Persons needing psychological assistance were referred to the psychological counseling office in the Youth Club.

In the observed period, the Service had approached the state institutions in six cases, asking them to consider cases of various people that had addressed the Service: the social welfare center in Loznica, Cuprija, Paracin and the department of the City social welfare center in Zemun as well as the police in Cuprija and the border police of

Serbia – the department for suppressing illegal migrations and trafficking in human beings. In five cases, official responses were received in written form and they had a positive effect on the protection of the rights of the victim.

In 20 cases (51%) persons were referred to NGOs: Trade Union Independence, the Committee of Legal Advisors for Human Rights, the Counseling center against domestic violence, the Orthodox pastoral center; the shelter for victims of domestic violence; the legal group of the Autonomous Women Center; the Incest trauma center, the International Aid Network; the Humanitarian Rights Fund; the Helsinki Human Rights Board; Astra and the SOS telephones. In the observed period only one victim was accommodated in the shelter managed by the Counseling center against domestic violence, while two victims received the necessary information and were prepared for cases of acute danger.

Persons who needed legal assistance were directed to turn to the Committee of legal advisors for human rights, the Humanitarian Rights Fund, Helsinki Human Rights Board, the legal group of the Autonomous Center for Women, Trade Union Independence and the Counseling center against domestic violence.⁵ What is common to all the mentioned organizations, which offer legal assistance, is that they have limited capacities as far as provision of legal assistance is concerned, especially in cases of representation. Thus, it may happen that victims do not obtain prompt legal assistance, that is they are faced with the long wait and thus they are forced to fend for themselves. This is often not easy, for the persons in question are not capable of paying legal advisors themselves. All this points to the weaknesses in the system/services providing free legal assistance in our society and the necessity for their development.

Victims have turned to other NGOs for assistance before contacting the Service, such as: Trade Union Independence, the Association of mentally insufficiently developed persons Cukarica, the Committee of legal advisors for human rights, the Humanitarian Rights Fund, the Association for Women Initiative, the Autonomous Center for Women, ASTRA and the SOS telephone Cuprija.

In individual cases, the persons that have previously contacted other NGOs have had complaints regarding their work and the manner in which they had been treated, while in most cases there was no data regarding the same.

⁵ The Counselling center against domestic violence, the legal group of the Autonomous center for women and the UGS Independence offer legal assistance only to women

Conclusion

The analysis of the data of VDS info and victim support service for the period from 01 July to 31 December 2005 reveals that domestic violence is the dominant form of victimization on account of which the victims and their family members have approached the Service. Apart from that, the Service was approached by the women who, as victims of domestic violence, have killed their abusers, but also by the victims of other criminal acts, that is, persons who needed assistance with other problems that they have recognized as victimization and the domain of work of the Service as such.

The Service was approached for assistance mainly by women, but by a significant percent of men as well, including men who were victims of domestic violence. The analyzed data reveals a high percentage of victims from other towns outside of Belgrade. Despite the fact that the VDS info and victim support to victims service acts primarily in Belgrade, it was noted that in this period there was a greater number of calls from other towns than before. This leads to a conclusion that there is a need for a data base of the cases at the country level, as well as that there is a need for similar services in other towns in Serbia. The Victimology Society will work on this in the following period.

The Analysis of the data of VDS info and victim support service points to the fact that the victims have often approached other state institutions and NGOs for help before addressing the Service. Also a number of victims were referred to state institutions and NGOs by the VDS info and victim support service. Finally, the social welfare centers have relatively frequently referred victims to the Service while the police did not do this at all in the observed period.

In individual cases, the victims were satisfied with what they received from the state authorities, but the number of those that have stressed being subjected to secondary victimization on the basis of inadequate reaction, above all by the police and the welfare centers, is much greater. In that sense, the data gathered through this analysis confirms the data of the previous studies, both the studies based on the data of the similar services⁶ and those based on the interviews with the victims, experts and the analysis of the criminal files.⁷

On the basis of the results of the analysis,

it can be concluded that, besides providing support in cases of primary victimization, the provision of support and assistance in the case of secondary victimization, is very significant as well. It is for that reason that an important segment in the process of decreasing secondary victimization is the direct assistance to the victims in contacting institutions as well as the development of services for victims-witnesses. The first is already a component of the VDS info and victim support service and it is manifested in the efforts put into the protection of the victims both at the individual and the general level. This aspect of assistance encompasses provision of information, as well as the assistance in the process of realizing contacts with the institutions and the realization of specific rights. The other form of prevention of secondary victimization, that is the development of the Service for victims-witnesses is a part of the plan of the VDS info and victim support service for the following year. It is also very important to work on the education of the police and the social workers in the sense of training them to adequately approach the victims of crime in general and especially the sensitive categories of victims, such as victims of domestic violence and sexual offences. Finally, significant also is a similar educating of the staff in prisons, considering that it is known that a significant number of women in prison are victims of violence. In regard to that, it would be essential to perform an evaluation of the education so far. Namely, despite the great number of training sessions organized in the recent years, especially training sessions for police officers and social workers, studies show that victims are not satisfied with the reactions of the police and the work of the social welfare centers.

Unfortunately, the data available to the Service gives sporadic information regarding the experiences the victims have had before the court and with the public prosecutor and regarding the manner in which they had been treated by the NGOs. In regard to that, one of the recommendations for the future could be that effort be made for the experiences of the victims to be included in the record of the VDS info and the victim support service and the future analysis of its data.

6 Nikolić-Ristanović, V. and Milivojević, S. (2000) „Viktimizacija Žena nasiljem u porodici: uticaj socijalnih faktora vezanih za društvene promene i Životnu dob“ („Victimization of women through domestic violence: the influence of the social factors related to the social changes and the age“), *Temida*, 3, p. 26.

7 Čopić, S. (2002) „Nasilje u porodici i društvena reakcija“ („Domestic violence and the social reaction“) in Nikolić-Ristanović, V. (ur.) *Domestic violence in Serbia*, Beograd: Victimology Society of Serbia and Prometej, str. 96, 97 i 101, i Konstantinović-Vilić, S. i Petrušić, N. (2004) *Krivično delo nasilja u porodici: pravna praksa u Republici Srbiji (Criminal offence of domestic violence: legal practice in the Republic of Serbia)*, Niš: Ženski istraživački centar za edukaciju i komunikaciju, p. 166-167.

New legislation on juveniles in Serbia: importance of alternatives to institutional treatment

(in the light of the offender's reintegration and victim's empowerment)

Ivana STEVANOVIĆ, MrSc.*

In this paper the author points out some of the new legal provisions contained in the Law on juvenile offenders and criminal protection of juveniles of the Republic of Serbia, in the light of both the reintegration of juvenile offenders and future more active role of a victim of crime committed by a juvenile offender – the role that would contribute to victim's empowerment. Likewise, the author points out the importance of alternative sanctions, i.e. procedures and measures that should enable diversion from the classic criminal procedure or its suspension. The paper signifies the importance of non-custodial measures as alternatives to institutional treatment, in terms of the new provisions contained.

Key words: juveniles, restorative justice, victim, diversion, alternative sanctions, Serbia.

Introduction

The system of juvenile legislation develops both internally and internationally. Every country has a certain form of this system. National regulations are different. They reflect not only the different legal systems, but also cultural and historical values, the regional or national politics and different political interests. However, the basic demand that is set in this domain is that the juvenile judiciary system must be understood as an inseparable part of the national development process of every country, in the all-encompassing framework of social justice for all juveniles. This will, at the same time, contribute to the protection of the young and the maintaining of

peace in a society (*UN Standard minimal rules for the juvenile justice, general principles 1.4.*).

As an especially complex topic, juvenile justice encompasses the system and the organization of the protection of rights in regard to the most sensitive and endangered groups of children: those exposed to abuse and neglect, children, whose development is endangered through malfunctioning of the family, and those children who are in conflict with the law. Considering the knowledge on the abuse of children and the etiological factors of offence, a symbol of equality can be placed between these groups of children. The *UN Convention on the rights of the child*, adopted at the UN General Assembly in 1989 and other international documents all contain standards and norms which denote the responsibility of the state and the state authorities regarding the protection of the family, legal protection of the child in a family and the protection of a child from various forms of abuse in a wider social environment. Complementary provisions of the Convention refer to the protection of the rights of children who have violated certain norms of behavior.

As far as the reaction to juvenile delinquency is concerned, the *Convention on the rights of a child* builds a new corporate model,¹ based on mutual permeation and reconciliation of „the protective“ and the „justice model“ as the dominant models of the criminal legal theory up to the mid 20th century. It demands from the signatory states that not

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¹ The term „corporate“ represents a heritage from the English legal science and it is used to emphasize the essential components of „alternative proceedings“ towards juvenile crime offenders: an attempt to deviate from the classical court procedure, the existence and the curbing of juvenile offences, joint action of all authorized services and institutions... See: Škulić, M. (2003) *Maloletnici kao učinioci i kao žrtve krivičnih dela (Juveniles as offenders and victims of crime)*, Beograd, Dosije, p. 133, Filipčić, K. (1998) *Obravnavanje mladotnih delinkventov*, Ljubljana, p. 42-44.

one single child may be subjected to the cruel, inhuman or degrading conducts or punishment. It eliminates the application of the death penalty or the life sentence and establishes the universal system of the rights of a child as the concept of the basic human rights. In general, the *Convention on the rights of the child* insists on the individual rights of the child, on the right to self-determination and the right to the protection of individual freedoms in relation to the state.² Also, the *Convention*, spurs the states to establish laws, regulations, authorities and institutions which explicitly deal with children for whom it is claimed, who are accused or for whom it has been established that they have violated the criminal code, and especially: pronouncing measures, whenever possible and desirable, for dealing with such children, without resorting to court proceedings, that is making available a wide range of measures such as: care, directing, supervision and other alternatives to institutional care. The aim of all this is to ensure that the children are dealt with in a manner adequate for their welfare.³

Considering the stated, the very concept of the alternative criminal sanctions that the *Convention* insists upon, can be understood differently depending on whether it is related exclusively to the system of criminal sanctions or to the function which is realized in the system of juvenile justice through the application of measures which are alternative to measures of criminal sanctioning. In the first case scenario, the term alternative sanctions is considered from a more narrow point of view, while in the second case, the term is widened so that it encompasses various measures (of medical, educational and behavioral character) as well as actions aimed at avoiding the classical criminal procedure for the persons against which the criminal proceedings have been instigated due to a committed criminal offence. Moreover, in the second case, the term "alternative sanctions" is broadened to encompass the measures applied outside the system of criminal law, within the framework of social care.⁴

The model of alternative reaction (the corporative model)

The concept of the need to combine two opposing models, in the comparative criminal legal systems of reactions to the offences of juveniles - "the protection" and the "justice model", goes back to the second half of the 20th century. As a legal and sociological concept, this model is founded on the studies of Dirkem and Veber. It is expressed in the ideas that were set forth by the Norwegian criminologist and sociologist Nils Christie in the mid seventies of the 20th century. This legal-sociological concept represents the beginnings of the thinking of the possibilities of a peaceful non-custodial solution of a conflict between the victim and the criminal offender.⁵ According to the concept supported by Christie, the conflict between the victim and the criminal offender is resolved through a settlement of the request for damage compensation. This concept allows the state to limit itself to the role of an objective third party, which, through, above all, informal actions, intervenes between the victim and the criminal offender.⁶ A concept thus established was in time developed in theory and legal decrees in the domain of criminal juvenile legislation in Norway, England, France, Germany, Austria, Belgium, Holland, Spain, Poland, Slovenia, Croatia and other countries.

As far as the alternative procedure is concerned, it is characterized by the broad processing possibilities of pronouncing various measures in regard to the juvenile offenders. Their execution is adapted to the personality of the minor and the need for a successful suppressing of his socially unacceptable behavior. On the other hand, the alternative forms of reaction means the discretion right, above all to the application of the principle of opportunity of prosecuting those who have committed a less serious crime by the police, the prosecution service, the court.

Such forms of alternative proceedings are in theory called, diversion models. The name comes from the Anglo-Saxon terminology and has a two-fold meaning in the sense of application - a "simple diversion" or "a diversion with an intervention". As far as the legislation on the territory of Former Yugoslavia is concerned, it is largely a follower of the German, that is, the Austrian theory and practice. Thus, the "simple diversion" is nothing, but the possibility that the prosecution and the court have,

2 Janjić-Komar, M., Obretković, M. (1996) *Prava deteta, prava čoveka (The Rights of the Child, the Rights of a Man)*, Beograd: Dosije, p. 142.

3 Article 40, point 3 (b) and 4. *The Convention on the Rights of the Child*.

4 See: Mrvić-Petrović, N., Obradović, M., Novaković, N. (2005) "Alternativne krivične sankcije (studija o prihvatljivim modalitetima izvršenja)" ("Alternative criminal sanctions (a study on acceptable modalities of execution)", in: *Alternativne zatvorskim kaznama (Alternatives to imprisonment)* (group of authors), Beograd: Fund for an open society, p. 37-39.

5 Mrvić, N. (1996) "Diverzioni model krivičnog sistema - realnost ili utopija" ("Diversion model of the criminal system - a reality or utopia"), *Sociološki pregled (Sociology Overview)*, Vol. 28, no. 1, p. 100.

6 Christie, N. (1977) "Conflicts as Property", *The British Journal of Criminology*, Vol. 17, p. 1-15.

of applying the principles of opportunity in cases of less serious individual crimes and not prosecuting the juvenile criminal offender.

In German law, this possibility has been legally regulated since the twenties of the last century. The German legislator today sees it as a means at least equally valuable as the implementation of adequate criminal sanctions. Many feel that this possibility is more effective in the process of prevention of recidivisms. In that sense, during the last half a century, the German law has, in the general, but above all in the juvenile criminal proceedings broadened the possibility for diversion, re-direction in the sense of increasing the number of reasons for its application. The possibilities for deciding to implement the principle of opportunity have broadened and in that regard this possibility has been transferred to the specialized state prosecution for juveniles at the same time decreasing the need of the juvenile judge to give his consent for its application. Such proceedings are in theory called – the simple diversion.

Apart from the simple form of diversion, the other form of diversion proceedings is a 'diversion with an intervention'. The theoretical concept of this form of diversion encompasses various measures which are combined in respect to the specific criminal offender and are reflected in the defining of various forms of supervision; the obliging of the juvenile to perform certain activities to the advantage of the social community or the injured party, to compensate the victim, that is, to take part in a certain counseling or therapeutic treatment; to attend educational courses or to be additionally educated and so on. The tendency is to, through the implementation of this form of procedure, divert from the classical criminal proceedings to individual treatment of the juvenile to depend on the seriousness of the committed act and the personality of the minor. The foreseen measures are graded in accordance with the seriousness of the effect that they have on the criminal offender, i.e. his experience of the measures. Basically, the application of this concept is founded on the strengthening of the personal responsibility of the juvenile offender, the acceptance of the responsibility and, in individual cases, including the victim, that is, the injured party, in the process of the realization of the measure. A positive outcome of the "diversion with an intervention" in a specific case means not instigating criminal proceedings that is suspending them. Of course, one should always keep in mind that the contemporary systems of juvenile legislation establish the stated measures as a form of alternative criminal sanctions which can be mutually combined, i.e. individualized to the specific juvenile criminal offender.⁷

The importance of alternatives to institutional treatment in the Law on juvenile offenders and criminal protection of juveniles

The socially protective approach still dominates in the anticipated system of criminal legal reaction to juvenile offences described in the *Law on juvenile offenders and criminal protection of juveniles of the Republic of Serbia*.⁸ However, the *justice model* permeates it to the greatest possible extent. The main material presumptions of the combination of these two models contained in the *Law on juveniles* are: 1. that the committed criminal act of the juvenile offender is a symptom of a problem in the socialization process, 2. that the committed criminal act is an incentive or a starting point for instigating a proceeding and 3. that the main goal of this proceeding is providing adequate protection in accordance with the development needs of the juveniles and the needs for his social integration that is reintegration, now combined with the basic postulations of the restorative law, that is the diversion concept which enables diverting from the classical criminal proceeding, even prior to its instigation. In that sense the *Law on juveniles* contains for the first time, apart from the criminal sanctions, the now numerous provisions on diversion orders which represent measures *sui generis*, whose goal is not to instigate proceedings (the "diversion of the criminal proceedings") or to suspend the same. Thus, the *Law* is based on the principle of subsidiary application of criminal sanctions prioritizing the non-custodial forms of intervention. In short, *The Law on Juveniles* broadens the possibility of implementation of the diversion procedure⁹ and measures. It enables

7 See: Stevanović, I. (1995) „Alternativne krivične sankcije prema maloletnicima“ („Alternative juvenile criminal sanctions), *Zbornik Srpskog udruženja za krivično pravo – Current issues on juvenile delinquency*, Kopaonik; Škulić, M., Stevanović, I. (1999) *Maloletni delinkventi u Srbiji – neka pitanja materijalnog, procesnog i izvršnog prava (Juvenile delinquents in Serbia – some issues of material, processing and executive law)*, Beograd: Yugoslav center for the rights of the child, p. 349-357; Škulić, M. (2003) op. cit. p. 133-135.

8 In further text *Juvenile legislation*.

9 The Juvenile Legislation besides establishing conditioned opportunity still contains provisions on a simple diversion. This provides the juvenile prosecutor with the possibility not to instigate criminal proceedings for criminal acts for which the imprisonment sentence is up to five years or a pecuniary penalty although there is evidence from which it can be concluded that the minor has committed a certain criminal act. This in case that the juvenile prosecutor feels that it would be useless to conduct a proceeding against the minor considering the circumstances under which the criminal act had been committed and the nature of the criminal act, taking into account the previous life of the minor and his personal characteristics (article 58 point 1 of the Juvenile legislation).

the diversion from a classical criminal procedure and redefines the rights of the juveniles in respect to the diversion procedure. It determines the following as the purpose of diversion orders: not instigating criminal proceedings against the juvenile, that is the suspension of the same with the aim of influencing the correct development of the juvenile and the strengthening of his personal responsibility so that he would not commit criminal acts in the future.

According to the Law, diversion orders are the following:

Settlement with the injured party so that by compensating the damages, apology, work or otherwise, the detrimental consequences would be alleviated either in full or partly;

- Regular attendance of classes or work;
- Engagement, without remuneration, in the work of humanitarian organizations or community work (welfare, local or environmental);
- Undergoing relevant check-ups and drug and alcohol treatment programs;
- Participation in individual or group therapy at suitable health institution or counseling centre.

Their choice and its implementation is performed in cooperation with the parents, adopted parents or guardian of the minor and the competent guardianship facility (article 7 of the *Law on Juveniles*).

In choosing one or more diversion orders the juvenile public prosecutor, and the judge, take into account the interest of the juvenile and the injured party as a whole. It is ensured that the implementation of one or more diversion orders does not interfere with the schooling or the employment of the juvenile.

Introducing diversion orders into the system of juvenile legislation, to a great extent also changes the role of the injured party. It actively includes the injured party in the realization of individual order (the first order can only be realized if there is a consent of the injured party in the sense of the provisions of article 62 point 3 of the *Law on juveniles*) and provides continued informing on the processing of the specific case (article 62 point 7 of the *Law on juveniles*). Thus, the injured party takes upon him/herself a much more active role than that of a victim of a criminal act. This contributes to his/her empowerment. A criminal offence committed by the juvenile personalizes in the sense of his/her understanding it, above all, as a way of hurting people and damaging their relations and then also as the violation of the law. The primary goal of the proceeding is fixing the damage that has been caused

to the injured party and the reintegration of the offender instead of his alienation and isolation from the society.¹⁰

This Law also anticipates the processing provisions on the implementation of the stated diversion orders, as the type of conditioned opportunity. It also anticipates the possibility of further implementation of the principle of simple diversion, which has existed in our legislations before, but which has been broadened further by the Law. The very execution of the measures of diversion orders will be regulated by the special bylaws as anticipated by the Law.

As far as the criminal sanctions are concerned, the *Law on Juveniles* confirms to the greatest possible extent the principle of education as opposed to punishment. It stresses the implementation of non-custodial forms of reactions, emphasizing that the purpose of the criminal sanctions applied to the juveniles is to influence the development and the strengthening of the responsibility of the juvenile, his upbringing and the correct development of his personality. This is to be achieved through supervision, provision of protection and assistance, as well as through the provision of general and professional training with the aim of ensuring the reintegration of the juvenile into the society (article 10 point 1 of the *Law on juveniles*). When determining the purpose of the juvenile imprisonment, besides establishing the general purpose of the criminal sanctions towards juveniles, the Law states that its purpose is greater influence on the juvenile offender so that in the future he does not commit criminal acts and also influencing the other juveniles not to commit crimes (in the sense of general prevention in the light of the article 10 para 2 of the *Law on juveniles*).

When choosing the type of educational measures the court will take into special consideration the following: the age and the maturity of the juvenile; other characteristics of his personality and the degree of disorder in the social behavior; the seriousness of the crime; the reasons for committing the crime; the milieu and the circumstances under which he lived; his behavior after having committed the criminal act and especially, whether he had prevented or had tried to prevent the occurring of the damaging consequences; whether he has compensated or tried to compensate the damage caused; whether a criminal or misdemeanor sanction had

10 See: Nikolić Ristanović, V. (2005) „Restorativna pravda, kažnjavanje i žrtve“ (“Restorative justice, punishment and the victims”), in: *Alternative zatvorskim kaznama (Alternatives to imprisonment* (group of authors), Beograd: Fond za otvoreno društvo, p. 13-14.

been pronounced towards the juvenile previously, as well as other circumstances which can influence the pronouncing of the measure which will be the most effective in achieving the purpose of the educational measures (article 12 of the Law on Juveniles).

There are three groups of criminal sanctions in the Law on Juveniles: educational measures are the first group, juvenile imprisonment and certain security measures. Conditions under which they are implemented have not been significantly changed, but other facts deserve attention. The number of education measures has been increased with the introduction of new ones. As far as the measures of institutional character are concerned, apart from the emphasized principle that they are the last means to be resorted to, the time of their possible duration has been decreased. The same has been done as far as the juvenile imprisonment sentence is concerned. It can now be pronounced to months and years (in the duration of six months to five years, and only in exceptional cases ten years). Besides this, as far as the measures of institutional character are concerned the possibilities of parole have been broadened.

Educational measures prescribed by the Juvenile Legislation are the following (article 13 and 14):

- Warning and guidance: Court admonition and special responsibilities;
- Measures of increased supervision: increased supervision by parents, adoptive parent or guardian, increased supervision in foster family, increased supervision by guardianship authority, increased supervision with daily attendance in relevant rehabilitation and educational institution for juveniles;
- Institutional measures: remand to education institution, remand to correctional center, committal to special institution for treatment and acquiring of social skills.

As can be concluded from the stated in the range of criminal sanctions, the priority is given to non-custodial criminal sanctions in the sense of them being an alternative to institutional treatment. The most important novelty in the range of educational measures is the possibility for pronouncing one or more special responsibilities as individual criminal sanctions (article 14 of the *Juvenile Legislation*) that is the possibility for them to be pronounced in the combination with the educational measures of increased supervision (article 19 of the *Juvenile Legislation*). This is a solution pre-

scribed in the previous legislation as well. In specialized literature, these sanctions are often called alternative sanctions. Their main goal is to appeal to the responsibility of the juvenile and to demand a fulfillment of certain responsibilities from him or to impose a certain prohibition upon him. This is achieved through the active cooperation of the juvenile. The legislation mentions ten special responsibilities giving authority to the court to pronounce one or more of them.

They are adapted to the personality of the juvenile and the circumstances under which he or she lives. Special responsibilities prescribed by the *Juvenile Legislation* are:

- 1) To apologize to the injured party;
- 2) To, within the framework of juvenile's own possibilities, redress the damaged he/she has caused;
- 3) To regularly attend school or not to be absent from work;
- 4) To receive vocational training which suits his abilities and disposition;
- 5) To, without being reimbursed, take part in the work of humanitarian organizations or jobs of social, local or ecological character;
- 6) To take part in certain sport activities;
- 7) To be subjected to adequate medical check ups and to give up the addiction caused by the use of alcoholic beverages and narcotics;
- 8) To take part in individual or group treatment in an adequate health institution or counseling office or to act in accordance with work programs made for him/her in those institutions;
- 9) To attend courses for professional training or to prepare for and sit exams testing certain knowledge;
- 10) That he or she can not leave the place of residence without the consent of the court and a special permission by the guardian.

In order for the special responsibilities to achieve their purpose, they must be strictly individualized, but on the other hand they may to the greatest extent contribute to the need for a total individualization of criminal sanctions in regard to the minor criminal offenders. Also, it is very important, to always keep in mind, that they should never be pronounced as additional disciplinary measures, whose purpose would be to additionally burden the juvenile with certain responsibilities, orders or prohibitions.

Besides the educational measures of special responsibilities the *Legislation* introduces another

educational measure: the educational measure of increased supervision with daily attendance in relevant rehabilitation and educational institution for juveniles. The establishing of this measure is in accordance with the contemporary tendencies to, with the introduction of new semi-institutional forms of bringing up juveniles with a smaller or greater behavior disorder; avoid their total separation from the environment they live in. Numerous researches have established the existence of a great number of juveniles for whom it is not enough to pronounce a measure of increased supervision by a competent person, but rather it is necessary that their day be filled with organized content – from vocational training to active rest and entertainment, but without their total separation from the community they live in.

We feel that in the future the measure of increased supervision with daily attendance in relevant rehabilitation and educational institution for juveniles will represent the basis of criminal legal reaction to the offences of the juveniles together with the already existing educational measures of increased supervision: increased supervision by the parents, foster parents or guardian, increased supervision in another family, that is increased supervision by the guardian authority. Also, we believe that in the time to come, these measures will be enriched by content in their immediate realization, above all keeping in mind the *Strategy of development of the social protection*,¹¹ that is that some of the weaknesses in their realization that have existed in the past will be eliminated.

The law maker has also attempted to eliminate these weaknesses by introducing a new liability of the court in the checking of whether the educational measure of increased supervision is being realized. Thus, for example, the measure of increased supervision by the parents, foster parents or guardian, the court is obliged to check the realization of this measure and to draw up a program of action. This measure is enriched by the obligation of the social welfare center to “assist” its realization whenever this measure is pronounced.

The court also controls that the measure of increased supervision is realized, when it takes place in another family. In this case the court can regulate, but also prohibit the connections of the juvenile with his primary family. The court can, at the proposal of the public prosecutor for juveniles or the social welfare center, decide on the change of accommodation of the juvenile, that is decide on

the transfer of the juvenile to another family. In the past, this measure was only sporadically implemented, but, keeping in mind the affirmative processes of the Ministry of labor, employment and social policy of Serbia in the sense of improvement of the institution of fostering, in this case of “specialized fostering” we feel that the realization of this educational measure will be more widely implemented in the time ahead of us.

In the case of increased supervision by the guardian authority, the law maker also anticipates the novelty that implies the possibility that the social welfare center, which is responsible for the realization of this measure, entrust this measure to another competent person. However, the social welfare center is to notify the juvenile court immediately upon receiving the executive decision and appointing the executor of the measure. The aim of this was for the welfare center to step out from its daily routine and provide a more content filled and continuous supervision of the minor for whom the measure was pronounced.

By anticipating a wide range of non-custodial measures, the law maker has attempted to set the foundation for a maximum individualization of the criminal sanctions towards the juvenile criminal offenders and to confirm their priority in comparison to the institutional treatment. That is, that even in the cases when certain types of institutional sanctions are prescribed, their duration is limited to the greatest extent possible in order to avoid the damaging consequences of prolonged institutionalization.

Conclusion

With the adoption of the Law on juvenile offenders and the criminal protection of juveniles by the Parliament of the Republic of Serbia, legal presuppositions have been established for the building, or better said, the creating of a new system of juvenile legislation in the Republic of Serbia. Its basic aim would be the establishment of legislation for children¹² which would:

- be founded on the rights of the child;
- take into account the best interest of the child as the basic principle of this system;
- focus on the prevention as its primary goal;
- consider the imprisonment of the children as the last available measure and even

11 *The Strategy of welfare system development in the Republic of Serbia* presents a strategic document adopted by the Government of the Republic of Serbia in December 2005.

12 In accordance with the provisions of the Convention on the right of a child: “A child is every human being that has not turned 18 unless, in accordance with the law, it is not prescribed differently that is that a child comes of age before the age of 18” (article 1 of the Convention on the right of a child).

then it would be for the duration the shortest possible;

- apply the principles of re-direction, diversion and restorative justice with the goal of diverting the children from the formal system of criminal legislation and resolving the conflicts within the framework of the local community;
- give priority to non-custodial sanctioning in regard to the modalities of institutional treatment;
- be directed towards strengthening of competencies and training of all actors in the system of juvenile legislation;
- be based on strict implementation of international norms and standards.

Of course, one should always keep in mind that the reform of legislation presents only the first step in the improvement of the legal protection. The comprehensive approach to the realization of the

rights of juvenile in a conflict with the law implies a systematic development of a legal, institutional and methodological basis of both legal and social protection activities, the police and other services which participate in the process of protection. In that sense, it is necessary to harmonize and amend regulations on social protection, legal profession, the internal affairs service etc.

However, the reform of the legal system can only give expected results if, at the same time, corresponding standards of professional work are built, together with the adequate response of the education system at the university level. We are here, above all, referring to professionals who will at their universities obtain the knowledge necessary for taking part in the process of creation of this system which would be in accordance with the needs of those it refers to. At the same time it will not neglect the needs of the community (both in the narrow and wider sense) as far as juvenile crime is concerned.

War veterans: the instability factor or a peace (building) factor

Jelena GRUJIĆ*

Despite the fact that different approaches exist in the process of solving the problems of the veterans of the 1991 to 1999 wars in the region of former Yugoslavia, as well as different social perceptions of their war merits, the whole region is characterized by the marginalizing of this social group. Besides the negative consequences, that the war veterans themselves face, their marginalization is significantly reflected on the societies whose members they are and the very sensitive post-conflict relations in the region. However, enough space exists, for the negative consequences, faced by the veterans, to be transformed into their positive potential in the process of peace building. Despite the permanent recommendations of the experts from the region and abroad, this, especially numerous social group, has still not been recognized as a very significant factor in the process. A factor which cannot be separated from the rebuilding of the qualitative regional relation. This work is focused on the position of the veterans in Serbia where the issue of the war veterans was recently made current with the publishing of the book of veteran testimonies *Oh, where have you been, my blue-eyed son?*. The book was published by the Association for the protection of mental health of the war veterans and victims of the 1991-1999 wars.

Key words: veterans, war, society, marginalization, reintegration, peace, Serbia, region.

The paper deals with the position of the war veterans in Serbia and their potential in the peace building process. This potential has not been socially recognized. That is supported by the fact that veterans of the regional conflicts from 1991 to 1999 do not enjoy a social influence and respect. On the contrary, they suffer serious consequences

of the very negative social perception of their role in the conflicts of the nineties. Also, the war veterans do not play a significant role, neither in the public debates nor in the process of building a positive peace and good neighborly relations in the region.

An important indicator of a bad social status of the veterans is the fact that the Serbian public does not have at its disposal the basic relevant statistics which would enable to the (good willed) governmental and nongovernmental institutions, the media, the researchers and others to qualitatively bring up and analyze these issues which is a precondition for qualitative development towards the solving of the veterans themselves and subsequently towards the curing of the society.

The book of the testimonies of the veterans *Oh, where have you been, my blue-eyed son?*¹ presents a significant contribution to the opening up of the veteran issue. This book was published in April 2006 by the Association for the protection of mental health of the war veterans and victims of the 1991-1999 wars. The book presents valuable material on the topic of the internal world of the veterans and their perception of the war experience as well as after the war confrontations with the (mis) understanding by the family and social environment.

In former Yugoslavia, the veterans were a significantly numerous social group: (justified) presuppositions state that there are over a million and a half in the region. They are a topic of high political intensity: they represent explicit symbols of the immediate (especially Serbian) past in the region. The symbolism of the veterans played a key role in contributing to their becoming one of the most marginalized groups in the (especially Serbian) society.

Still, their great potential to pass on the message of peace and to "research their mutual possibilities and to build bridges between various nation-

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1 The book is published both in Serbian and English.

al and religious groups on the territory of former Yugoslavia",² lies in their numbers and their immediate connection to the recent experience of war.

The coordinates of the problems of the war veterans

It has already been stated that there is not a relevant statistic on the war veterans. This actually means that, first of all, it is impossible to make a trustworthy estimate of the proportions of the problem: it is not known how many people (from Serbia) took part in the wars in the nineties.³ A much bigger problem lies in the fact that the public, as it does not possess real information on the problems that the veterans faced after the war, does not recognize the fact that the marginalization of the veterans affects their families, relatives and neighbors, that is their immediate surrounding; thus the circle of victims of passive and re-active attitude towards the veterans (and thus towards the war as well) is much greater. The basis of all the post-war life problems of the veterans lies in the fact that the extreme experience of the war has emotionally and totally separated them from their immediate surrounding. Their lives, like them themselves, never again resemble those of the pre-war period. That negative fact can, however, transform into a positive, driving energy of the current social processes. Research has shown that their need for communicating traumatic experiences, which has been left unsatisfied in their own environment, motivates them to exchange the same with their recent enemies who have also been, after the war, left to fend for themselves and lonely.

Besides the size of the group directly connected to war, another factor which can be used as a potential in the positive peace building process, is the qualitative regional communication of the veterans.

A series of meetings of the veterans from the region – Croats, Serbs, Bosnians, Albanians, – organized by the Trauma Center of the Society for the mental health protection of the veterans and the victims of the wars 1991–1999 from Novi Sad, have had significant results. There were no incidents at any of the meetings and the veterans themselves reacted very positively to the possibility of direct exchange with the former enemies. It has been

proven that the total experience (pre and post war) is totally the same on all sides, that it is characterized by the same feeling of rejection, alienation and misunderstanding from the society.

What does that experience represent? It is a form of serious trauma which permanently changes the personality to a degree that depends on personal characteristics; for the treatment of (unresolved) consequences of the traumatic experience, serious, continuous work is needed which encompasses both sessions with the therapist and a great understanding and assistance of the family.

Unfortunately, for Serbia it can be said with certainty that the assistance offered to the veterans after their return from the war front was to the largest extent inadequate and insufficient and in a majority of the cases it was based on a completely wrong diagnosis. According to a report of the Trauma center given a year ago, symptoms, such as "insomnia, anxiety, aggressive impulses and the impossibility to fit into the social milieu" were often diagnosed as the "anxious depressive syndrome" which was further treated with "inefficient medicaments which, in the best case scenario, only eliminate the need (of the veterans) to solve the problem"⁴.

The symptoms in question are actually symptoms of the *Posttraumatic stress disorder* (PTSD) which, as is stated by the authors of the book *Oh, where have you been, my blue-eyed son?*, Vladan Beara and Predrag Miljanovic, appears "after a traumatic reaction, when everything cools down"⁵.

"Sometimes it appears not long after the traumatic experience, and sometimes several years after the incident. When everything settles, if the traumatic experience has not been overcome, a PTSD or a traumatized man appears".⁶

2 Center for Nonviolent Action/Centar za nenasilnu akciju (CNA) (2004) "War Veterans and Peace building in Former Yugoslavia", Berlin: Berghof Research Center for Constructive Conflict Management, p. 5.

3 Estimates for Serbia range from 400 000 to 600 000 veterans: professional soldiers, drafted men, volunteers, members of the paramilitary formations and others.

4 Ig. M "Veterani zbrinuti samo tokom rata" ("Veterans cared for only during the war"), *Dnevnik* 17. February 2005; www.dnevnik.co.yu

5 Trauma... implies a notion of tearing, rupture, of structural breakdown; it can only be defined and understood with reference to a specific context, which must be described in detail; it is a process that develops sequentially; it contains both an individual intrapsychic dimension and a collective, macro-social dimension that are interwoven". Becker D (2004) "Dealing with the Consequences of organized Violence in Trauma Work", u: A. Austin, M. Fisher, N. Ropers (eds) *Transforming Ethnopolitical conflict. The Berghof Handbook*. Quoted as to the: Center for Nonviolent Action (, CNA) (2004) "War Veterans and Peace building in Former Yugoslavia", op.cit. p. 4., italic J.G.

6 Beara, V., Miljanović, P. (2006) *Gde si to bio, sine moj?/Oh, where have you been, my blue-eyed son*, Novi Sad: Centar za traumu Društva za zaštitu mentalnog zdravlja ratnih veterana i žrtava ratova 1991–1999/Trauma Center of the Society for the mental health protection of the war veterans and the victims of 1991–1999 wars, p. 41.

As Beara and Miljanovic state, expert estimates show that PTSD symptoms appear in 15% to 30 % of all the people who have experienced trauma (which means that at least 60 000 people in Serbia suffer from PTSD). According to the experience of the authors, veterans who have been subjected to trauma, have an active but not a passive attitude towards what they have experience and they are occupied with intensive thinking and estimation of their experience even many years after it has occurred, without being aware of that "cognitive – emotional process".

The traumatized person develops a unique attitude towards its difficult experience. Whether a person will be traumatized or not depends on the attitude which is characterized by cognitive elements (beliefs) that can be summed up as: Rejection of what has happened, being shocked by the experience, belief that it is impossible to deal with the memories of the incident, avoiding remembering in order to avoid painful emotions. Some of the cognitive elements lead to depression, such as self accusation and belief that due to participation in the undergone experience one does not deserve to live.

"War trauma implies the construction of a belief in regard to one incident, which after some time leads to (construction of) a new life philosophy. All veterans whom we have worked with have made changes at the level of the deep life philosophy regarding *what reality is like and what it should be like*. Their personality has relatively permanently changed under the influence of the traumatic experience."⁷

The stated characteristics are very significant for the understanding of the internal structure of the veterans; a better understanding of the problems is necessary in the process of de-marginalization of this social group which encompasses not only veterans but also (or at least) the members of their families.

One must keep in mind that among the veterans there are many of those who have been traumatized "twice", like the refugees. Also, there are certainly those who suffer from the PTSD, who have not "held a gun" but who have had an immediate experience of war. Beara warns that many people acquired PTSD after the bombing of Serbia and Montenegro. This paper deals primarily with veterans.

Current social perception

Social perception of the veterans (more precisely, of the part of the society that has no personal connection to them) is mostly, unfortunately, based on inci-

idents which most frequently cause negative reactions of the observers. The fact that the negative perception is founded is caused by numerous accompanying factors. I feel that the most significant factor is the fact that the incidents caused by war veterans, or incidents that war veterans take part in, systematically hushed up by the police which does not reveal full biographical data of the committers of (frequently tragic) incidents and what is most important, they do not reveal data on the origin of the weapons used in the committing of the incidents. Actually there are many reasons to believe that the (individual) incidents of the veterans are more numerous than is known. They are certainly hidden in the numerous news on (tragic) conflicts inside broader or nuclear families and in news on homicides⁹.

Individual incidents remain almost unknown to the wide Serbian public. They end up as brief information for the media for whom the door of the police is sealed for further questions which might reveal that the person in question is a war veteran. A good example is the incident from Pancevo, which occurred several months ago. A middle-aged man randomly shot from a Kalashnikov at the crowded market. The police notified the public that the person in question is a person with a mental disorder and until today nothing more has been said of the man (in an army coat).

Greatest media echo is attained by the collective incidents and/or protests of veterans which are – considering that in most cases they are organized so that they significantly affect the rhythm of life of the community – usually characterized by negative comments and counterproductive public debates on the topic of veterans or automatically on the topic of the role of Serbia in the wars in the nineties. Great danger lies in the "automatic" connection that is formed between the topic of wars and the topic of veterans. The veterans are probably the most explicit symbols not only of wars in which the Serbs (or Serbia) took part but of the experience of total defeat which accompanies the topic in Serbia. Thus, on one side the veterans suffer on account of the association with the defeat, and on the other hand, the confrontation with the immediate war past has been significantly blocked by the really bad perception of the veterans.

7 Beara, V., Miljanović, P. (2006) op. cit. p. 122.

8 The Croatian public is much more informed of the incidents caused by the veterans. Comparison wise, a known fact is that until now more than 1300 Croatian veterans have committed homicide (according to Beara and Miljanović op. cit.) despite the fact that the Croatian public has a protective attitude towards the veterans. They receive many social benefits from the state and most important they are the carriers of the general social feeling of "victory" in the war.

The current perception of the public is based, in short, on the lack of real and complete information on the veterans (both during and after the war). This leaves a vast space for construction and manipulation⁹. It is also based on the impression left by the (individual and collective) incidents of veterans which are publicized only when the aggression crosses the threshold of possibly being hushed up¹⁰.

That is why it is very important to include the veterans into the positive peace building process in the region. They are practically irreplaceable in the process.

Peace factors

Bonn International Center for Conversion (BICC), which plays an important role in the process of reform of the Serbian and Montenegrin Army, now the Army of Serbia (VS), in its report on the condition of the VS, states as the most important the need to urgently solve the problem of war veterans. BICC states that the marginalization of the former warriors is not surprising: on one hand, the majority of the Serbian society sees itself as the victim of the 1991-1999 war and on the other hand it places a doubt or openly denies the question of responsibility for the war crimes of the Serbian and Montenegrin military. The end result is the good reputation of the army and the bad reputation of the veterans¹¹.

The Center for Non-violent Actions has also (just as has the Trauma Center) organized many meet-

ings of the veterans from the region. On the basis of the experience gathered at those meetings, it makes the same recommendation (as the Trauma Center and the BICC): the veterans can serve as moderators in public debates on the past, especially regarding the recent wars on the territory of former Yugoslavia.

Finally there is a large enough group of the veterans who are ready to undertake such a role¹². Here are several testimonies on the topic of peace taken from the book "Where have you been my son":

"Peace is something beautiful. Peace and quiet. Peace and prosperity. Somebody allows living in peace, to drink coffee, to rest. For me peace is holy."

"Ordinary man never questions the value of peace and on it is on his behalf that peace is violated. I have not heard of a state which has passed a referendum on whether the people want war. Nobody asks the people"

"There is good peace and bad peace, but war is always bad. Man kills in war both the body and the soul for no reason at all. In the end, he starts killing for pleasure. There is a lot of war even before the war...Any peace is better than any war."

And, one more message from the veterans which gives the coordinates of the potential that the veterans have in the building of peace:

"The veterans are rightfully embittered, and nobody asks them anything. Everyone should say: I want to be asked, to understand that he is not "nobody". It seems to me that the people are scared

9 „War veterans are also one of the main target groups of the radical and non-democratic parties in Serbia and Montenegro. In 2003 and 2004 the Serbian radical party won the majority of votes in the regions where the draft rate was the highest during the wars and where the majority of the refugees from the other republics reside now." Pietz, T. (2005) *Demobilizacija i prekvalifikacija za budućnost: Vojska Srbije i Crne Gore (Demobilization and pre-qualification for the future: the Army of Serbia and Montenegro)*, Bonn: BICC, p. 20.11 Recently, 11 May 2006, the veterans had blocked the center of Belgrade at the busiest time of the day, dissatisfied with the decision reached by the Government to abolish the decrees passed in 1992 and 1993 which prescribed a series of social allowances for the veterans. The Government promised that the problem of social benefits (for war veterans) would soon be resolved through the decree being prepared. In Kraljevo on 13 January 2006 the veterans threatened to "mine" the concert of Željko Joksimović which was organized for the Serbian New Year's Eve and which was to be attended by ten thousands of people for "money was being spent on pleasure instead of for providing assistance to the war invalids" (D. Stojić, *Večernje novosti*, 15. januar 2006.) <http://www.novosti.co.yu/code/navigate.php?id=15&status=jedna&vest=84111&datum=2006-01-15>

10 The large protest of the war veterans in Kraljevo during the NATO bombing and the war in Kosovo had a largest echo in Serbia. The veterans protested against the continuous and selective drafts and the long term sojourn on the war front.

The protest was stopped by the General Nebojša Pavković himself (source J.G.) There are many incidents in the region through which the veterans try to influence the making of decisions at the highest level. Here are some examples:

- Priština, 21 December 2005, the veterans burn the (unofficial) flag of Kosovo dissatisfied with the public discussions on the national (Kosovo) identity. RTK, "Kosovska zastava i simboli" ("Kosovo flag and symbols"), 21 December 2005, Priština, www.birn.eu.com/kosovo/lifeinkosovo_ep6_ser.php.
- Sarajevo, 6 January 2006, the war veterans of the BH Army, conditioning the government with a series of threats are asking to be allowed to take part in the negotiations regarding the new Constitution of BH. www.bosnjacki-front.com 1 June 2006.

- Pula, 13 March 2003, promotion of the book by Ivo Banac (the president of the Liberal party in Pula) was interrupted by a member of the Army forces for „Banac is holding a political and not a cultural gatehiring". Erceg. I "Doživotne privilegije" („Lifelong privileges"), *Danas*, 13 March 2003, <http://www.danas.co.yu/20030313/terazije.htm>

11 Pietz, T. (2005) *Demobilizacija i prekvalifikacija za budućnost: Vojska Srbije i Crne Gore (Demobilization and prequalification for the future: the army of Serbia and Montenegro)*, op.cit., p. 19.

12 The stated organizations emphasize that not all of the contacted veterans showed readiness to participate in the peace building process, but it is encouraging that the number of veterans that are thus decided is constantly increasing.

of listening to the stories of the war veterans. They are afraid to hear how evil it is. People are so traumatized that they are afraid to listen to the topic. The man who has tried a hot pepper, he can explain."

The authors of the book however also bring up the significant remark on how complex it is to include the veterans in the positive peace building process.

"People who try to speak of the war from a wider reference framework sooner or later are confronted with the fact that some deem them as radical nationalists and the other as national traitors. This is not characteristic only of those poorly educated, but also of the highly educated collocutors."¹³

Finally the key potential of the positive peace which is hidden within the process of (individual) curing of the veterans lies in what the authors of the book called the "return of humanity". The authors remind that war is preceded by "the psychological preparation of the population" through propaganda which "dehumanizes the enemy". Thus "the human being status is taken away from the enemy" and they are presented as "inhuman, beasts, criminals".

"Reconciliation represents the return of humanity to those that we reconcile with. Forgiveness of sins implies the restitution of the image of other as a human being despite the fact that he has done this and that. The acts that they have committed make them eligible for a punishment or for medical treatment, but they do not take away the humanity from them. In the long run, have not we been taught for thousands of years that the possibility of performing a criminal act is imminent to men?"¹⁴

The war veterans, as the implementers of the dehumanization process (war) can be the most pre-

cious actors in the process of (re)humanization (of peace).

Conclusion

War veterans are still – seven years after the end of the last conflict in which Serbia had taken part and nearly 11 years from the end of the regional wars - not only a marginalized social group, but they are still a very negatively seen group within a society whose equal members they are and with which they are supposed to share their experience of war. Such a marginalization is a reflexion of a still very problematic attitude of the public towards the immediate war past in the region. It is in that explicit connection of the veterans and the attitude towards war that the precious potential of the veterans as the basis of the positive peace building process in the region lies.

The extreme experience of war which has completely separated the veterans emotionally from the immediate surrounding, as well as the size of this group, are facts which can be used as channels for communication of the recently warring sides and the opposing "interpreters" of the nature of war and the responsibility within the societies themselves. Veterans in the region have already stepped towards each other. It is necessary that they be followed by the societies that they belong to. Finally, the participation of the veterans in the positive peace building process is not only important for the society itself, but also represents a significantly large assistance in the (individual) curing of the veterans themselves.

¹⁴ Beara, V., Miljanović, P. (2006) op. cit., p. 204.

¹³ Beara, V., Miljanović, P. (2006) op. cit., p. 193.

Association Joint action FOR truth and reconciliation: activities in the 2006 and the future plans

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In the paper, a detailed overview of activities of the Association joint action FOR truth and reconciliation in 2006 has been given, and the basic directions of its expected enforcement in the future, or in the 2007. Activities of the Association in the 2006 were primarily directed toward its internal development, or in other words, its formation, identification of goals and of basic values, as well as the strengthening and the mutual support of its members. The other activities, but to a considerably smaller extent, were external, such as the public promotion of the idea of the "third way" and the promotion of the Association itself. The activities pursued in the 2006 were: activities aimed at the development of the Association, development of resource centre for research, activities aiming at the increase of the public awareness of the Association, and activities aiming at the cooperation and promotion of the idea of the Third way in the countries of the ex SFRJ.

Key words: truth and reconciliation, Serbia, civil society, Association joint action FOR truth and reconciliation

Introduction

The idea of the search for the "third way" to truth and reconciliation gathered in the Victimology Society of Serbia a group of organisations and individuals

who represented varying segments of the society and different regions of Serbia. Through their interconnection, the Association *Joint action FOR truth and reconciliation* (ZAIP) was formed, through whose works, a model of cooperation of varying social groups and regions is endeavoured to be developed. These social groups and regions would be the embodiment of Serbia, and by that also a possible model of all-encompassing dealing with the past, a model which would be adapted to our social context. The Association was founded on the June 10th 2005 at a meeting in Belgrade, at which this form of a continued action of citizens was initiated.

The Association was founded by 20 small and middle-sized non-governmental organisations and several individuals, interested in the development of a new approach in dealing with the past.² During 2005 and 2006, there have been 6 meetings and two seminars held in various cities in Serbia, and the Association received a large number of members, so that the total number of members at the moment is 76.

Non-governmental organisations and individuals, gathered around the ideas promoted by the Association, are offering help and support to the victims and participants of war, gathering of documentation and deposition, and their presentation to the public via speaker's platforms, exhibitions, documentaries, travelling film festivals and others, education, campaigns, research, projects of internal and external cooperation, and other activities which help the opening of a public discussion and a social

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¹ More on the formation of the Association, its activities in the 2005, and the idea of the "third way" see in Nikolić-Ristanović, V. and Hanak, N. (2005) "Asocijacija Zajednička akcija ZA istinu i pomirenje: koordinacija inicijativa civilnog društva i povećanje društvene vidljivosti Trećeg puta" (Association Joint action FOR truth and reconciliation: coordination of civil society's initiatives), *Temida*, 4, p. 33-36.

dialogue, as well as an establishment of perturbed relationship in the society.

The Association welcomes all the people who wish to give their contribution to a non-conflict-provoking dealing with the past, and who wish to contribute to peace in Serbia and in the region. The Association differs from similar initiatives in its inclusion of the representatives of the victims of war, ex-prisonniers of war, war veterans and other persons who have, in the most direct way possible, been affected by war. It also differs from other initiatives by its decision to deal with all victims and all crimes, regardless of their national, political or other affiliations. In this paper, an overview of the activities of the Association in the 2006 is given, as well as basic directions of its expected action in the future, and in the 2007.

Activities of the Association in the 2006

Activities of the Association in the 2006 were primarily directed toward its internal development, or formation, identification of goals and of basic values, as well as the strengthening and mutual support of its members. The other activities, but to a considerably smaller extent, were external, such as the public promotion of the idea of the "third way" and the promotion of the Association itself.

In the project *The Development of the Association Joint action FOR truth and reconciliation*, the following groups of activities were covered:

- Activities directed toward the development of the Association,
- The development of a resource centre and research,
- Activities aiming at the increase in public awareness of the Association,
- Activities aiming at the cooperation and promotion of the idea of the Third way in the countries of the ex-Yugoslavia.

Activities directed towards the development of the Association

Activities which were directed towards the development of the Association were comprised of the following segments: gradual inclusion of new members and individual contacts with the old members, expansion of the mailing list/list of the members of the Association, distribution of leaflets and brochures on the Third way and brochures on truth and reconciliation, meetings of the temporary Board, and meetings and seminars for the members of the Association.

During 2006, eight meetings with persons interested in the membership in the Association were held. In 2006, the members were delivered around 580 leaflets explaining the idea of the Third way, in the name of the further distribution and promotion of its idea. Also, around 160 brochures titled "Od sećanja na prošlost ka pozitivnoj budućnosti: kakav model istine i poverenja/pomirenja je potreban Srbiji?" ("From the memories of the past to a positive future: what kind of model of truth and trust/reconciliation is needed in Serbia?") were distributed. Through these, the VDS (Victimological Society of Serbia) gathered public ideas and opinions regarding this subject.

In Belgrade, two meetings of the temporary Board and two meetings-seminars of the Association were held. The meetings and the seminars of the Association took place in Novi Sad and Kragujevac.

A meeting and a seminar in Novi Sad

The fifth meeting of the Association Joint action FOR truth and reconciliation, and a seminar "Why is reconciliation in Serbia not functioning and how it may function", were organised by the Victimological society of Serbia and the NGO "Vojvodjanka" from Novi Sad. The seminar took place from the 11th to the 13th of May, 2006. On the second day, a press conference was held, when the Association was presented as well as the aims of the seminar. At the meeting and the seminar, 19 members of the Association were present, as well as several persons interested in understanding the problems of facing the past in Serbia and in the program of the Association.

The Seminar was comprised of three workshops: "Why does reconciliation not function in Serbia – how we view ourselves and how the world views us", an identification of obstacles and potentials. This workshop was run by prof. dr Jelena Srna, and the aim of the workshop was to understand how the members of the Association, who have for a long time, continuously, and dedicatedly been working on reconciliation in Serbia, view their initiatives and actions on the subject of reconciliation, their visibility, effects, obstacles and resources in their further work. The second workshop was titled "How can reconciliation in Serbia work – communication as an obstacle and a resource" – it was run by prof. dr Vesna Nikolić-Ristanović. The aim of the workshop was the recognition of the varying means of communication (one's own and somebody else's) on the past, war, war crimes and other

related subjects, a communication which induces good feelings and promotes work on reconciliation, as well as a communication which induces bad feelings and unwanted effects. The third workshop was "*Association Joint action for truth and reconciliation and I: the place of the Association in the process of truth and reconciliation and our place in the Association*" – it was run by Nataša Hanak and Jelena Grujić. The aims of the workshop were to question how the members view the Association and their role in it, their understanding of the activities and the purpose of the Association, as well as a jointly reaching a definition of the Association.

The most important conclusions which came as an outcome of mainly interactive work, and which were significant for the further development of the idea of the Third way were:

1. Activities of members may be divided into two large groups: activities which imply *concerns for people and their relationships* and activities which imply *concerns for context*: family, community, society, culture.

2. The most significant obstacles for reconciliation are: stereotypes and prejudices, deficiency in political will, media, un-attainability, words of hatred, poor influence of the NGO sector, poor development of the NGO, competition, monopolisation, absence of the culture of dialogue between persons who deal with truth and reconciliation, bad reputation of NGO in public, deficiency of solidarity, "work for foreigners", "dealing with truth and reconciliation has become a business", misuse of initiatives for the daily-political purposes, absence of political will to face the past and grovelling of politicians to the electorate, persuasion of individuals that only they know the truth whilst others are wrong.

3. The most significant resources for reconciliation are: resources which need to be an outcome of the government, or those in power, resources of the society (media, mixed marriages and multinational environments as positive examples and motivators, strengthening of the civil society, its direct cooperation with citizens and a positive representation of the role of the non-governmental sector) and individual resources.

4. Association Joint action for truth and reconciliation is an important resource whose main asset is its "mixed" membership.

5. A strengthening communication, in which the interlocutors are mutually respected and listened to despite their differences, is a key element of the Third way to truth and reconciliation.

6. The development of communication between conflicted parties is gradual, and it begins

from a complete blockade in communication, moving on to an establishment of contact and then of communication and its qualitative development toward a re-establishment of the damaged relations.

7. Between what we think-state regarding a communication with a not like-minded person, and the actual actions we take, or what we are prepared and to what extent are we prepared to do it, in reality, an agreement cannot always be reached, so one needs to revitalise these differences and work on their eradication.

8. The following definition of the Association joint action FOR truth and reconciliation has been reached:

a. The longer definition: The Association ZAIP is a continued activity and an open interaction between different persons who are mutually solidier and who recognise similarities which connect them, and whose aim is establishing trust and the search for truth and reconciliation.

b. The shorter definition: Association ZAIP is a continued activity of people united in their differences in the *idea of regional* reconciliation.

9. The aims of the continued function of the Association are: strengthening, promotion and support of multiculturalism, building and strengthening of trust, truth, continuity and development.

10. The principles of the functioning of the Association are: solidarity, open interaction/dialogue and perseverance.

A meeting and a seminar in Kragujevac

The sixth ZAIP meeting and a seminar "The Third way to truth and reconciliation in Serbia and us" was organised by the Victimology Society of Serbia and the NGO Millennium from Kragujevac. The meeting took place from the 27th to the 29th of October, 2006, and was held in hotel "Kragujevac" in Kragujevac. At the meeting and the seminar, 16 members of the Association were present. On the second day of the seminar a public debate titled "*Serbia and Bosnia – truth, responsibility and reconciliation*" was organised, whose participants were Vesna Pešić, one of leading politicians and representative of NGO Center for democracy development from Belgrade, prof. dr Vesna Nikolić-Ristanović and Vladimir Paunović. Apart from the members of the Association, representatives of the local media were present as well. The public debate was done in cooperation with the project "Communication on the stage", which was imple-

mented by the NGO Millenium, and financed by the Embassy of Great Britain. It was held on the small stage of the National theatre "Joakim Vujić" in Kragujevac, and was a good demonstration of the idea of the Third way and the communication in the same spirit, with the possibility of viewing the differences in terms of varying approaches. The participants of the debate presented their view of dealing with the past, with a special look at the situation regarding Bosnia and Herzegovina.

The seminar was comprised of two workshops. The first workshop was titled "Myself in the reconciliation", and was run by prof. dr Jelena Srna. The aim of this workshop was to investigate how the activities of the NGOs working on reconciliation, presently see their activities over the past 15 years, their personal work experience on the questionnaire on the activities, as well as their personal motives for dealing with these activities and their expectations of reconciliation. The second workshop was titled "Ja u Asocijaciji" ("Myself in the Association"), and was run by Nataša Hanak and Jelena Grujić. The aim of this workshop was the analysis of interests which tie the participants to the Association, research of resources of the Association which lie in the readiness for the individual contribution in the work and the development of the Association and the continued work on the definition of the Association.

The most significant conclusions, which came as a result of mainly interactive work, and the analysis of the first ten filled out questionnaires, which were significant for the further development of the idea of the Third way and the Association were:

1. Phases which mark the path toward dealing with reconciliation are: 1. pre-war state; 2. war, confusion; 3. adaptation-rehabilitation; 4. action for the others; 5. vision for the future.

2. The most significant *motives* for work on the reconciliation of the members of the Association are: un-reconciliation with the existing conflict situation, understanding oneself, the need to listen, hear and share one's own experience with others, the need to prove that we are victims as well, rejection of worthlessness, a wish to feel good, return of dignity, personal value, a need for integration and support, many friendships with people from ex-Yugoslavia and the wish to preserve those, a wish to help the rehabilitation of people who had fled, a wish to satisfy justice, and to achieve the freedom of speech, movement and others.

3. The most significant *expectations* from the reconciliation of the members of the Association are: a revitalised individual, freedom of movement,

achievement of normal communication in which all the subjects may be discussed (mutual confidence of the mutually different), eradication of prejudices and stereotypes, cooperation, the damage compensation to the victims, reconciliation with oneself, social equality, a reaching of a similar level of consciousness on the social level regarding universal human values, a recognition (judicial or others) that violence had happened, no longer turning offenders into heroes, inclusion of veterans in that process and the acceptance of personal responsibility.

4. The most significant *personal interests* for the participation in the Association were: exchange of experiences/information, understanding of the process related to war conflicts, other's respect of ourselves (as an individual, an organisation, a nation), representation of rights and the resolving of problems of participants of war/victims, the atmosphere of trust in which the opinions and experiences may be shared without the fear of reproach, opening of a way for better future, a building of personal attitudes, help, solidarity with organisations which have trouble providing the means and projects, a help in building the capacity, writing projects, consulting, establishing contacts, connecting with other organisations, possibility of joint projects, maintenance of optimism, a feeling of personal belonging, a contribution to a general interest (change), clearing up the past and clearing up the truth, a building of a normal society, an understanding of the processes in relation to war conflicts, promotion of its own actions.

5. The most significant, realistic and possible *contributions-resources* of the members are: the promotion of the Association and the idea of the Third way in our country and the surrounding ones in terms of distribution of the material and peace-keeping activities, collaboration with governmental institutions, and other NGOs, in our country as well as abroad, empowerment of the members, research, fund raising for the activities, information gathering on the needs and demands of war veterans, access to groups that are of interest for the Association, as well as everything the members have as professionals (research, books, information gathering, clearing up of concepts).

6. In the course of the seminar, the members of the Association came to a final definition of the Association which is as follows: *The Association FOR truth and reconciliation is an initiative based on a continued action and open communication of solidar individuals and organisations in a conflict and post-conflict society, unified in differences and the recognised similarities, whose aim is to come to a truth regarding the offenders and victims of war*

and political conflicts, understanding of past and establishment of permanent trust and reconciliation, through unification of individual potentials and strengths, international cooperation and exchange of experiences and knowledge.

Activities in the direction of increasing social visibility of the Association

Activities aimed at the increase of the social awareness of the Association include activities in the aim of increasing media awareness of the idea of the "third way", as well as the activities of the members that are related to the participation in other expert gatherings, publishing of the works in scientific and expert journals, as well as other similar activities in which the Association and the idea of the "third way" is presented.

Activities connected with media promotion came to the light at the time of marking the June 10th, Day of the establishment of the Association. So, on that occasion in the program "This is Serbia" on Radio Television Serbia, that is arranged and managed by a member of the Association, journalist Tatjana Manojlović, guests were several members of the Association: Dr Vesna Nikolić-Ristanović from VDS, Novica Kostić and Dejan Milutinović from the organisation "War veterans for peace" from Vranje, as well as Zdravko Marjanović from the "Society for tolerance" from Bačka Palanka, who, with the team of journalists filmed a story about the relations of the people, i.e. relations between Serbs and Croats in Ilok (Republic of Croatia). Also on June 8th, 2006 in the program "Magnifying" on radio B92 with the journalist Miša Stojiljković, another member of the Association, guests were Dr Vesna Nikolić-Ristanović and Petar Fjodorov (member of the Association and the president of the Association of the prisoners of war 1991-1999). On the occasion of the Day of the Association, Victimology Society of Serbia published a public announcement titled *"One year from the establishment of the Association the Joint Action FOR truth and reconciliation"*.

The marking of the Day of the Association in Kragujevac on June 10th, 2006 was organised by Vladimir Paunović, a member of the temporary Board of the Association and NGO Millennium from Kragujevac. He marked the Day of the Association with a one-day media campaign by distributing announcements for public and with a Victimology Society's documentary *Serbia on the way to truth and reconciliation* shown through local media in Kragujevac (Radio TV Kragujevac, TV K9, Radio

34, as well as on the web page of the city of Kragujevac (www.kragujevac.co.yu). On the occasion of the Day of the Association, by way of a member of the Association, Zdravko Marjanović, there was an article on the Association in the local weekly "Nedeljne novine" (*The weekly newspaper*), Bačka Palanka.

Several members of the Association presented the activities of the Association and the idea of the "Third way" in our country and abroad at the conferences, on the lectures within teaching at the university as well as in the works published in expert and scientific journals in our country and abroad.

A development of a resource centre, research and activities aiming at the cooperation and promotion of the idea of the "Third way" in other republics of the former Yugoslavia

In the scope of the activities connected with the development of the resource centre and research, archived are reports from the meetings and other project material, collected and systematized printed, audio and video material about the truth and reconciliation as well as press clippings. Also, processing of the answers to brochures was carried out, and the processed data on the activities of the members of the Association between 1990-2006 was gathered.

Activities aiming at the cooperation, i.e. promotion of the idea of the "Third way" in other republics of the former Yugoslavia mostly were related to the distribution of the leaflets, of journal *Temida* in which an article was published on the subject of the Association, as well as the copies of the book *Od sećanja na prošlost ka pozitivnoj budućnosti* (*From remembering the past towards a positive future*).

Conclusion

As it was, we hope, shown in this text, one of the most important characteristics of the Association Joint action FOR truth and reconciliation, and at the same time its uniqueness in comparison with similar projects, is its attempt to deal with the past in complex manner and to try to close the existing spirals of the conflicts and violence in the society. The dealing with the past has as its aim to deal not only with the consequences, but also with the reasons, that is to say long term healing of the society and not only temporary solution of the problems, i.e. conflicts. In that sense the idea of the "Third way" as the main framework of the activities of the

Association, includes also pledging for the responsibilities of the offenders, but also a recognition of the sufferings of the victims, help and support to the victims, work on the reintegration of the offenders into the society and, when possible and sensible, intermediation between the two groups. Through the activities till now related to the development of the Association, above all through work of the workshops within the seminars of the Association, these ideas have been developed, and a model of the non-violent communication and the acceptance of the differences were "trained" in the most immediate way through contact and the dialogue of the persons that were in varying ways affected by war.

In the next period it is planned to make an analysis of the activities till today from the perspective of the accomplished experiences (learned lessons) regarding the idea of the "third way" and development of the process of reconciliation through the

developments of the Association as a formalised initiative for an innovative way of dealing with the past. The analysis, which will be published in the form of a book, with a pamphlet and a film about the Association, will serve as mean of promotion of the Association and its ideas in the country and in the region, but also as a basis for planning the future activities. Although the meetings and the seminars of the Association will continue to be the most important way of communication, cooperation and exchange of ideas of its members, in the following period, the activities of the Association will mainly be external – a promotion of the ideas and activities of the Association and an increase in public awareness of the same. Also, it is expected that a turn towards the public and the new memberships will prove easier and more effective once the mission, and the basic values and ideas of the Association are finally defined.